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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Thursday, September 22, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

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FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 614, 615, and 620

RIN 3052–AC21

Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders; Preferred Stock

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or Agency) amends its rules governing preferred stock issued by Farm Credit System (FCS or System) banks, associations, and service corporations. This final rule requires greater board involvement and oversight in the retirement of preferred stock, enhances FCA's current standards of conduct regulations to specifically address insider preferred stock transactions, modifies and streamlines the FCA review and clearance process, and requires disclosure of senior officer and director preferred stock transactions. Lastly, we add a new provision to require FCA prior approval of investments by FCS banks, associations, and service corporations in preferred stock of other System institutions, including the Federal Agricultural Mortgage Corporation (Farmer Mac).

EFFECTIVE DATE: This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**. However, we have delayed the effective date of § 612.2165(b)(12)–(15), § 615.5245(a), and § 615.5270(d) of the rule for 6 months from the effective date of this final rule in order to allow System institutions with existing preferred stock programs to adopt the policies and procedures necessary to comply with the rule. We will also publish a notice of the effective date for the delayed portion of this rule.

FOR FURTHER INFORMATION CONTACT: Dennis K. Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479; TTY (703) 883–4434; or Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

Through this rulemaking we strive to:

- Ensure the stability and quality of capital at FCS institutions;
- Ensure fair and equitable treatment of all shareholders of FCS preferred stock and minimize the potential for insider abuse;
- Modify and streamline our review and clearance process for equity issuances; and
- Require disclosure of senior officer and director preferred stock purchases and retirements.

The Agency believes additional regulatory guidance and requirements will help ensure consistent treatment for all FCS institutions seeking to issue preferred stock.

II. Delay of Effective Date and Application of Rule to Existing Preferred Stock Programs

All provisions of this final rule will apply to existing preferred stock that has been issued by System institutions prior to the effective date of this rule. All System institutions issuing preferred stock subsequent to the effective date of this rule will be required to fully comply with the provisions of this rule as the preferred stock is issued. However, we have delayed the effective date of the following sections of the rule for 6 months from the effective date of this final rule to allow System institutions with existing preferred stock programs additional time to adopt the policies and procedures necessary to comply with the rule:

- Section 612.2165(b)(12)–(15) (Policies and Procedures);
- Section 615.5245(a) (Limitations on association-issued preferred stock); and
- Section 615.5270(d) (Policy on retirement of preferred stock).

Any institution-specific conditions of clearance for any previously cleared preferred stock program remain in effect regardless of the provisions of this rule. However, an institution may apply to FCA to revise any condition of clearance. Additionally, as before, any new or modified preferred stock issuances will be subject to institution-specific conditions that the FCA Board considers appropriate.

III. Background

On June 4, 2004, we published a proposed regulation (69 FR 31541) that would change the regulatory capital treatment for preferred stock issued by Farm Credit System institutions and place certain restrictions on a System institution's ability to retire [1] preferred stock. The proposed rule would also: (1) Require greater board involvement and oversight in the retirement of preferred stock, (2) enhance current standards of conduct regulations to specifically address insider preferred stock transactions, (3) require disclosure of senior officer and director preferred stock transactions, (4) modify and streamline our review and clearance process, and (5) add a new provision to require FCA prior approval of investments by FCS banks, associations, and service corporations in preferred stock of other FCS institutions, including Farmer Mac.

In the preamble to the proposed rule, we noted our concerns about the stability (or "permanence") of preferred stock that an institution plans to retire routinely with few limitations or without direct involvement or consideration by the institution's board of directors. (We will refer to this stock as "continually redeemable preferred stock" in our discussions that follow.) In particular, we noted our concerns about the risk associated with the capital and earnings volatility that may result from fluctuations in purchases and retirements that could occur daily. We further noted that continually redeemable preferred stock may be an especially volatile source of capital under adverse credit or interest rate

[1] In this preamble, we use the term "redeem" interchangeably with "retire," which is the term used in the governing provisions of the Farm Credit Act.

conditions when the likelihood of requests for redemption increases.

In addition to that safety and soundness concern, we expressed "mission and policy concerns" over FCS institutions' issuance of equities that have many characteristics of deposit or money market instruments and limited attributes of equity. We did recognize, however, that System institutions have statutory authority to issue debt and equity securities (subject to FCA regulation) to fulfill their mission of serving the needs of farmers, ranchers, and rural residents. We noted that preferred stock can be a valuable tool for FCS institutions to increase their capital and generate additional loanable funds to meet the credit needs of their borrowers. Additionally, we recognized that preferred stock issued to eligible borrowers provides FCS associations a mechanism for members to invest and participate in their cooperative beyond minimum borrower stock purchases.

IV. General Comments

We received a comment on the proposed rule from the Farm Credit Council and 3 separate comments from individual FCS institutions. We also received a comment from the Independent Community Bankers of America (ICBA) and approximately 150 very similar comments from commercial banks or individuals associated with commercial banks. Both System and non-System commenters expressed strong opposition—albeit from very different perspectives—to major portions of the rule.

A. System Comments

System commenters stated that:

- The restrictions on retirement of preferred stock and the limits on inclusion of preferred stock in permanent capital ratios violate provisions of the Farm Credit Act of 1971, as amended (Act);
- The proposed rule's definition of "effective maturity" would improperly prohibit an association from issuing certain forms of preferred stock that meet the statutory definition of permanent capital;
- FCA has no discretion to narrow the statutory definition of permanent capital;
- FCA lacks a statutory basis to limit or restrict issuance or retirement of association preferred stock provided the association is in compliance with all regulatory capital standards;
- Many of the concerns raised about the "permanence" of preferred stock are also applicable to borrower stock, the primary form of equity issued by System associations;
- All System institutions are currently very well capitalized and System institutions would still meet or exceed all minimum capital levels even if all preferred stock were retired at once;
- Instead of adopting one rigid set of rules, the FCA should look at different approaches to address the issues and concerns raised by preferred stock programs and to deal with those issues through the examination process;
- Existing regulatory controls and conditions on preferred stock issuances adequately address safety and soundness concerns regardless of the permanent capital ratio;
- There have been no complaints from System institution members about any aspect of existing preferred stock programs; and
- Preferred stock programs provide value to System institution members while giving them an opportunity to support their cooperative lender.

B. Non-System Comments

Non-System commenters stated that:

- FCS institutions should not be allowed to issue preferred stock at all because such stock represents unfair and improper competition for commercial bank deposits by a Government-sponsored enterprise (GSE);
- Threatening the deposit base of community banks hurts rural America, which is inconsistent with the aims of the Act;
- System institutions have sufficient sources of capital and therefore don't need preferred stock to raise capital;
- If allowed at all, preferred stock issuance should be in lieu of System institutions offering cash management accounts in order to avoid System entities becoming depository institutions with unique GSE benefits; [2]
- Preferred stock should have a minimum effective maturity of 5 years to better recognize the purpose of preferred stock to provide stable, long-term capital and to prevent preferred stock from performing too much like money market or deposit instruments;
- FCS preferred stock should be subject to the same limits imposed by the Federal Deposit Insurance Corporation (FDIC) for commercial bank preferred stock;
- Retirements should be conducted on the basis of the entire class of stock, rather than on an individual basis, so that preferred stock does not function as a deposit; and
- Given the purpose of the FCS to serve a specific market—agricultural lending—and the risks associated with this industry, the retirement of preferred stock should be allowed only if the entity has a permanent capital ratio of at least 12 percent.

C. Our Consideration of the Comments Received

Upon consideration of all the comments, FCA has decided to delete proposed § 615.5203 ("Treatment of Preferred Stock in the Permanent Capital Ratio") and proposed § 615.5270(c) and (d) (restrictions on preferred stock retirements) from the final rule because we believe that FCA can achieve the safety and soundness objectives articulated in the proposed rule in a manner that does not implicate the authority issues raised by commenters. As discussed in detail below, we also made other relatively minor changes in response to the comments.

V. Authority To Issue Preferred Stock

As discussed in the preamble to the proposed rule, Congress broadly authorized each FCS bank and association to adopt bylaws providing for the classes and terms of stock issued by the institution.[3] Congress specifically defined "stock" to include "voting and nonvoting stock, (including preferred stock)." [4] Congress did not further define "preferred stock" in the Act. Congress defined "permanent capital" in section 4.3A of the Act to mean:

> (A) Current year retained earnings;
> (B) Allocated and unallocated earnings * * *;
> (C) All surplus (less allowances for losses);
> (D) Stock issued by a System institution, except:
> (i) Stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder; and
> (ii) Stock that is protected under section 4.9A of the Act or is otherwise not at risk; and
> (E) Any other debt or equity instruments or other accounts that the FCA determines appropriate to be considered permanent capital.

[2] As acknowledged by the ICBA, the Act specifically authorizes System lenders to offer its members a funds-held account (known as a Voluntary Advance Conditional Payment account). Additionally, the Act authorizes System institution members to invest in Farm Credit Bank bonds, which may be structured as short-term investment accounts. ICBA asserts that "FCA is allowing FCS to offer cash management accounts, which basically amount to checking accounts, clearly in contradiction to the Act." This comment does not appear germane to the proposed rule, and FCA does not authorize any institution to engage in activities that violate the Act.

[3] *See* 12 U.S.C. 2013(9), 2073(16), 2093(8), 2122(9), and 2154a(b).

[4] 12 U.S.C. 2154a(a)(2).

Congress authorized System institutions to issue preferred stock so long as the stock is at risk and the institution's board retains discretion over stock retirements. When first implementing the new capitalization statutes added by the 1987 amendments to the Act, FCA stated: "[n]o stock may be issued by Farm Credit institutions after October 5, 1988, that is not both at risk and retireable at the discretion of the board of directors provided minimum capital adequacy standards are met. These are the essential characteristics of permanent capital." [5]

While, from the holder's standpoint, continually redeemable preferred stock is in many ways functionally similar to a deposit, there is a significant legal distinction: a deposit is a debt on which the depositor has a legally enforceable right to demand repayment, while continually redeemable preferred stock is an "at-risk" equity of the issuing institution for which a preferred stockholder ordinarily does not have an enforceable right to demand redemption. Furthermore, the deposit holder (a creditor) has priority in liquidation over the preferred stockholder (an equity holder). This important distinction makes preferred stock "at-risk" (meaning the shareholder can lose some or all of the principal investment). This also means that preferred stock is not a deposit, not insured, and, contrary to non-System commenters' assertions, not subject to rules governing commercial bank deposits.

Non-System commenters suggest that FDIC rules related to issuance and treatment of preferred stock should apply to System institutions. While FCA's risk-based capital rules are generally similar to those of Federal banking regulators, FCA operates under a different controlling statute than those banking regulators. Unlike the banking statutes, Congress created and defined "permanent capital" in the Act and granted System institutions certain express authorities over the issuance and retirement of stock, including preferred stock that meets the statutory definition of permanent capital. FCA does not have discretion to adopt capital rules that contradict provisions of the Act.

Because Congress authorized System institutions to issue preferred stock, FCA has no basis to restrict the activity simply because it creates competition for commercial banks. However, we share the concern expressed by non-System commenters that System institutions not advertise or otherwise represent that their preferred stock offerings are deposits or "money market" accounts. Current § 615.5250(c)(1) (redesignated as new § 615.5255(c)(1)) requires that the disclosure statement that must be provided to purchasers of preferred stock must state that the equity is an "at-risk" investment. Existing § 615.5250(c)(4) (redesignated as new § 615.5255(h)) prohibits any System institution representative from making any disclosure in connection with the sale of an equity that is inaccurate or misleading. We consider any explicit or implicit representation by a System institution or its representatives that preferred stock is a "deposit," "money market instrument," or anything other than an "at-risk" equity investment to be a violation of our regulations.

VI. Inclusion of Preferred Stock in the Permanent Capital Ratio

Proposed § 615.5203 would have established a sliding scale of how much preferred stock could be included in an institution's permanent capital ratio calculation based on the "effective maturity" of the instrument. System commenters argued that this would violate the Act, since instruments that meet the statutory definition of "permanent capital" must be treated as permanent capital in the permanent capital ratio. Non-System commenters stated that preferred stock should not be included in permanent capital unless it is perpetual preferred stock that has no maturity and no requirements for future redemption.[6]

In addition, a System commenter stated that the proposed rule added "needless complexity" to the computation of the permanent capital ratio. System commenters also indicated that the proposal created confusion as to how a particular instrument's "effective maturity" would be established for purposes of computing the permanent capital ratio.

Upon review, we agree with the commenters that the proposal was more complex than needed and that we already have adequate means to address the safety and soundness concerns raised by the issuance of continually redeemable preferred stock. Therefore, we are eliminating proposed § 615.5203 in its entirety. FCA previously recognized the limitations of the permanent capital ratio as a meaningful measurement of the stability and adequacy of an institution's capital when we adopted new surplus and net collateral requirements in 1997.[7] Therefore, FCA's examiners will focus on total and core surplus, and net collateral measurements of capital when examining institutions. Moreover, when FCA examiners review an institution's capital, they continue to have the discretion to evaluate the effect continually redeemable preferred stock has on capital when assigning a numerical rating to an institution's capital under the Financial Institution Rating System (FIRS).[8]

Deleted § 615.5203(e) provided that the total amount of preferred stock with an effective maturity of less than 5 years that an institution may include as permanent capital for computation of the permanent capital ratio is limited to 25 percent of the institution's permanent capital (after deductions required in the permanent capital ratio computation). As discussed above, the FCA has adequate tools to evaluate an institution's capital without the need for this type of adjustment to the permanent capital ratio. Moreover, we recognize that System institutions require a diversified capital base and that one fixed cap amount may not be appropriate for all institutions.

Therefore, we expect each System institution to incorporate appropriate limits on preferred stock in its capitalization plan. FCA will review proposed limits in connection with its clearance of new preferred stock offerings, and FCA examiners will monitor the appropriateness of limitations on existing programs.

Additionally, FCA will monitor System disclosures to ensure that any public representations regarding strength of capital are not misleading because of the inclusion of "continually redeemable preferred stock" in the permanent capital ratio.

Additionally, we note that the volatility of continually redeemable preferred stock can affect an institution's funding and liquidity needs. Although funding and liquidity risks are not specifically addressed in this final rule, we expect an institution's board and management to consider these risks when deciding whether to issue continually redeemable preferred stock. We intend, through our examination efforts, to monitor an institution's management of its

[5] 53 FR 40033 (October 13, 1988).

[6] Continually redeemable preferred stock does meet the basic definition of perpetual preferred: it has no stated maturity and there is no binding obligation requiring the institution to redeem it. However, we interpret the comment as relating to what we described as "continually redeemable preferred stock."

[7] *See* 62 FR 4429 (January 30, 1997).

[8] The FIRS is the FCA's system for rating the capital, assets, management, earnings, liquidity, and interest-rate risk of an association. This rating is not subject to public disclosure.

preferred stock program and will consider the funding and liquidity effects of preferred stock issuances on an institution's risk profile.

VII. Restrictions on Retirement

Proposed § 615.5270(c) would have generally prohibited a System bank, association, or service corporation from retiring continually redeemable preferred stock unless the institution's permanent capital ratio would be in excess of 8 percent after any retirement. Proposed § 615.5270(d) would have generally prohibited retirement of any preferred stock prior to 12 months after the date of issuance. Proposed § 615.5270(e)(3) would have prohibited a board from delegating authority to retire preferred stock to institution management unless the institution's permanent capital ratio would be in excess of 9 percent after any retirement. System commenters asserted that these restrictions violated the Act. Non-System commenters stated that longer holding periods were appropriate and that preferred stock should only be retireable as a class.

Congress gave FCA broad powers over the adequacy of System institution capital. Section 4.3 of the Act requires FCA to ensure that System institutions "achieve and maintain adequate capital." [9] Title V of the Act authorizes FCA to adopt regulations to implement the Act and to take enforcement actions in response to, or to prevent, an unsafe or unsound practice.[10] The Act also provides that capitalization of System institutions, including the manner in which stock is issued, held, transferred, and retired, is subject to FCA regulation.[11] However, as pointed out by System commenters, the Act gives System institutions specific authority over retirement of equities. In particular, section 4.3A(c)(1)(I) of the Act provides that "notwithstanding any other provision" of the Act, an institution's bylaws "shall permit the retirement of stock at the discretion of the institution if the institution meets the capital adequacy standards established under section 4.3(a)." [12] System commenters assert that any FCA restriction on the ability of an institution to retire stock when that institution meets capital adequacy standards would violate the Act. Non-System commenters' suggestion that retirements be allowed only by class raises the same legal issues.

We believe, as discussed above, that we can adequately address and monitor safety and soundness concerns over the potential volatility of preferred stock through our examination process. Therefore, we are not adopting the proposed restrictions on retirement of preferred stock. Instead, the final rule requires that each institution's board of directors establish policy guidance on retirement of preferred stock that is specific to the capital needs of the institution. This guidance must specify the threshold levels of total surplus and core surplus that must be met before any delegation of retirement of preferred stock from the board to management may be effective. Given the potential volatility of continually redeemable preferred stock, we expect these threshold delegation levels to be set above the regulatory minimums.

VIII. Section-by-Section Response to Comments

A. Standards of Conduct—§ 612.2165

Proposed § 612.2165(b)(14) requires FCS institutions to establish policies that prohibit directors and employees from purchasing or retiring any stock in advance of the release to other stockholders of material non-public information concerning the institution. Proposed § 612.2165(b)(15) requires FCS institutions to establish policies and procedures specifying when directors and employees may purchase and retire preferred stock in the institution.

One System commenter stated that the proposed rule addresses only retirements of preferred stock but that the establishment, allocation and distribution of dividends also present potential for conflicts of interest. The commenter suggested that each System institution have the opportunity to address these issues in its own way.

First, proposed § 612.2165 specifically applies to purchases as well as retirements of preferred stock. Second, we believe the timely disclosure requirements of this rule provide a check on potential conflicts of interest. Third, as stated in our Standards of Conduct regulations applicable to directors and employees, "the avoidance of misconduct and conflicts of interest is indispensable to the maintenance" of the standards.[13] Therefore, we adopt the proposed changes to § 612.2165 as final.

B. Lending Limits—§ 614.4351(a)(3)

This provision will require FCS institutions to deduct from their lending limit base any amounts of preferred stock not eligible to be included in total surplus as defined in § 615.5301(i). We received no comments and adopt the proposal as final.

C. Investments in FCS Institution Preferred Stock—§ 615.5175

Proposed § 615.5175 provides that FCS banks, associations, and service corporations may purchase preferred stock issued by another FCS institution, including Farmer Mac, only with the written prior approval of the FCA, except pursuant to § 615.5171 (which relates to transfer of capital from banks to associations).[14]

Non-System commenters requested that FCA prevent any System entity from purchasing preferred stock in any other System institution. We did not receive any other comments on this provision. As we stated in the preamble to the proposed rule, the Act specifically authorizes System institutions to purchase non-voting equities in other System institutions.[15] As we also stated in the proposed rule preamble, while there have not been any recent investments by one System institution in the preferred stock of another, System institutions have historically invested in preferred stock of other System institutions to provide financial assistance. In addition, because we are requiring FCA prior approval, we do not see any purpose or need for a rule prohibiting such investments. Therefore, we adopt proposed § 615.5175 as final without changes.

D. Capital Adequacy—Definitions—§ 615.5201

We proposed to modify our definitions in subpart H that apply to our capital adequacy regulations by defining preferred stock by class and maturity and to use those definitions in differentiating how each class is treated for permanent capital ratio computation purposes. However, since we are not adopting proposed § 615.5203, separately identifying classes of preferred stock is unnecessary. We retain the general definition of "preferred stock" and also add a separate definition of "term preferred stock," which is currently located within the definition of "permanent capital" in § 615.5201.

[9] 12 U.S.C. 2154.

[10] 12 U.S.C. 2241 *et seq.*

[11] *See* 12 U.S.C. 2014, 2074(a), 2094, 2146.

[12] 12 U.S.C. 2154a(c)(1)(I).

[13] 12 CFR 612.2135.

[14] The FCA adopted on June 9, 2005, regulatory amendments that address investments by Farmer Mac in other FCS institutions. (70 FR 40635, July 14, 2005).

[15] *See* 12 U.S.C. 2013(11), (16), 2073(7), (8).

E. Treatment of Preferred Stock for Permanent Capital Computations—§ 615.5203

For the reasons discussed in detail above, we delete proposed § 615.5203 in its entirety from the final rule. This deletion does not affect FCA's existing "phase-out" treatment of term preferred stock, as is made clear by revised § 615.5201, which retains the definition (and treatment) of term preferred stock from previous § 615.5201(1)(5).

F. Implementation of Cooperative Principles—§ 615.5230

We proposed to make a one-word addition to § 615.5230(b)(1) to clarify that a class stockholder vote is required only when a new issuance would "adversely" affect the interests of that class. This change will conform the language of the rule to our current interpretation of this rule. We did not receive any comments on this proposal, and we adopt the proposal as final.

G. Permanent Capital Requirements—§ 615.5240

We did not propose any substantive changes to this section and we received no comments. We therefore adopt paragraphs (a) and (b) (with a minor grammatical correction) as proposed. Current paragraph (c), addressing an institution board's authority to delegate retirement of borrower stock to management, is moved to new § 615.5275(a) and broadened to include all "stock." This was included in the proposed rule as § 615.5270(e).

H. Limitation on FCS Association Preferred Stock—§ 615.5245

Paragraph (a) of the proposal would limit the amount of preferred stock that a single investor may hold in any one FCS association offering to the greater of $2 million or 5 percent of the issuance. This limitation was intended to reduce the potential that any one holder of association preferred stock could have undue influence on any one class of stock.

Non-System commenters suggested that "these levels seem excessive" since individual borrowers "supposedly" capitalize the System with a $1,000 stock purchase when they apply for loans. They further suggested that this provision was aimed at allowing agribusinesses to invest in the FCS, which they asserted was unnecessary because the System can access capital markets for funding. The non-System commenters suggested a $5,000 cap for all borrowers.

We believe this comment contains an unrealistically narrow and outdated understanding of the role of borrower stock in the System. As we stated in the proposed rule preamble, we believe that it is important for System institutions to build their capital primarily through earnings, but that diversified capital can be a valuable source of additional financial strength. Most System associations have lowered their borrower stock purchase requirements to the statutory minimum so that borrower stock now plays a minor role in capitalizing the System. Additionally, FCA's capital rules now give greater consideration to other types of capital when gauging the stability of an institution's capital.

System commenters asserted that System institutions can and should be able to use all statutorily authorized programs at their disposal to determine the best method of capitalization. System commenters also asserted that, in addition to the capital benefits to the institution, preferred stock provides a valuable service to their members and allows them to further invest in their cooperative lender.

We continue to have concerns over the potential for one or a small group of holders to dominate a class of preferred stock. Related to that is our concern that all association members have an equal opportunity to purchase preferred stock. However, in considering all the comments, we concluded that a "one size fits all" rule establishing a specific dollar or percentage cap is not desirable or necessary to achieve our objectives. Instead, final § 615.5245(a) and (b) provides that each association offering preferred stock to its members must adopt a policy that:

(1) Addresses applicable ownership issues related to the issuance of the preferred stock. We expect an association's policy to address the association's limits on ownership by any one holder or small group of holders, if such limits are deemed necessary by the association's membership. In addition, we expect the policy to address such items as an amount (*e.g.*, 5 percent) of preferred stock held by any one holder that would require internal disclosure to the association's membership of such ownership concentration.

(2) Makes the stock available for purchase to each of its members on the same basis. In other words, an association may not limit the opportunity to purchase preferred stock to only selected members.

We believe that these provisions will be more effective than a specific cap to ensure, on an institution-specific basis, that any one holder (or small group of holders) of association-issued preferred stock will not have undue influence over any one class of stock. The required association policy is designed to require the association board to develop and support institution-specific controls and procedures for administering its preferred stock issuances with the full knowledge and support of the association's membership. The policy requirement is intended to place ultimate control, outside of specific safety and soundness concerns, of the preferred stock program in the hands of the association membership. We will monitor the institution's policies and programs to determine whether these objectives are met and will consider in a future rulemaking whether additional disclosure requirements—such as requiring additional disclosure of preferred stock holdings to include non-insiders when those stock holdings exceed a certain numerical threshold—are necessary.

Paragraph (c) requires boards of directors of FCS associations offering preferred stock to eligible borrowers to adopt a policy that prohibits the association from extending credit to eligible borrowers to purchase preferred stock in the association. Non-System commenters supported this proposal and System institutions did not comment on the proposal. Therefore, we adopt paragraph (c) as final without change.

I. Disclosure Requirements for Borrower Stock—§ 615.5250

The proposed rule reorganized this section but retained the same requirements. We received no comments on this proposal and adopt § 615.5250 as final without changes.

J. Disclosure and Review Requirements for Other Equities—§ 615.5255

The proposed rule retained the same basic regulatory framework as our existing rules, requiring banks, associations, and service corporations to submit a proposed disclosure statement to FCA before any sale may take place, but clarifies and streamlines the current review and clearance process. The proposal also added a new paragraph (h) (now redesignated as paragraph (i)), under which each bank and association must establish a method to disclose and make information on insider purchases and retirements readily available to the public.

System commenters objected to proposed paragraph (h), because it makes insider information available to the public generally, and not just to institution stockholders/members and the FCA. System commenters stated that the requirement served no legitimate

safety and soundness issue, was invasive of insiders' privacy, and would provide competitors with an opportunity to distort the operations of the System and FCA. Non-System commenters supported the proposed disclosure requirements.[16] We believe that transparency in this area is very important to avoid any appearance of impropriety by institution insiders and that disclosure should not be limited to existing institution members. Publicly disclosing this information reduces the potential for insider abuse and may provide potential new members/stockholders with useful information. Therefore, we have adopted redesignated paragraph (i) as final without changes.

One Farm Credit Bank suggested that because proposed § 615.5255(d) (streamlined review process for issuances to sophisticated investors) incorporates the Securities and Exchange Commission (SEC) definitions of "accredited investor" and "qualified institutional buyer," we should remove the $250,000 minimum purchase requirement because there is no comparable requirement in the Federal securities law. The purpose of this provision is to minimize the possibility that privately offered FCS securities could be marketed to non-qualified investors by subsequent purchasers in the secondary market. Because FCA does not have comparable securities enforcement authority to the SEC, we believe that a prohibition on sales in denominations below $250,000, coupled with a requirement that such prohibition be disclosed on the face of the instrument, is necessary to effectively achieve the purpose of the rule.

The Farm Credit bank commenter also requested that the expedited review process be available for any registered offering for which SEC approval is required in the event that the bank becomes an SEC registrant. Since no System institution currently registers securities with the SEC, the request is premature and beyond the scope of this rule.

Additionally, FCA must review applications to ensure compliance with Farm Credit Act and FCA regulatory requirements (including permanent capital requirements), something the SEC review does not cover. Therefore, we have adopted § 615.5255(d) as redesignated § 615.5255(e) without change.

[16] The ICBA stated that this information "should be available through Freedom of Information Act (FOIA) requests without restrictions." We note, however, that System institutions are not Government entities subject to FOIA.

In the final rule we adopt proposed § 615.5255(j) as redesignated § 615.5255(k), which provides that in addition to FCA requirements, each institution is responsible for ensuring its compliance with all applicable Federal and state securities laws. Therefore, each institution must affirmatively determine whether they are subject to SEC oversight requirements. Non-System commenters "strongly urged" FCA to require any issuance of System preferred stock to be registered with the SEC. We do not believe that we need to address this issue in order to achieve the objectives of this rule and therefore the suggestion is beyond the scope of this rulemaking.

We received no other comments to proposed § 615.5255 and adopt all other proposed changes as final.

K. Retirement of Other Equities—§ 615.5270

As discussed above, because we have decided to address our safety and soundness concerns through other means, we have deleted proposed § 615.5270(c), which would have tied the ability to retire preferred stock to levels of permanent capital in excess of the regulatory minimum. We also delete proposed paragraph (d), which would have generally required a 12-month holding period before retirements of preferred stock were allowed.

In the final rule, we adopt proposed paragraph (e), now designated as new paragraph (c), placing limitations on the ability of bank, association, or service corporation boards of directors to delegate authority to retire any at-risk stock to management. Non-System commenters stated that boards should not be allowed to delegate any decisions regarding retirement of preferred stock. They said this would help avoid any conflicts of interest with management and their decisions to retire stock when it may not be completely in the best interests of the institution. They also stated that if all decisions on preferred stock retirements are made directly by the board, then all relevant information will be recorded and maintained in the minutes of the board meetings. We continue to believe that the proposed restrictions, coupled with the other provisions of this rule, are sufficient to ensure that institution boards retain sufficient control and oversight over all stock retirements, not just preferred stock and therefore adopt paragraph (c) without change.

We also adopt proposed § 615.5270(f), now designated as § 615.5270(d), without substantive change other than as described in Section VII, *Restrictions on Retirement*, of this preamble. This provision requires each bank, association, or service corporation that issues preferred stock to adopt a written policy covering retirement of preferred stock that, at a minimum: (1) Describes any delegations of authority, (2) identifies any limits on the amount of stock that may be retired during a single quarterly (or shorter) time period, (3) ensures all stockholder requests for retirement are treated fairly and equitably, (4) prohibits any insider from retiring preferred stock in advance of the release of material non-public information concerning the institution to other stockholders, and (5) establishes when insiders may retire their preferred stock.

As we stated in the preamble to the proposed rule, we believe these new regulations are necessary to ensure that FCS institutions operate in a safe and sound manner and that these provisions will reduce the potential for insider abuse and the potential or appearance of unfair treatment or dealings relating to the retirement of preferred stock. We received no comments on this provision.

L. Payment of Dividends—§ 615.5295

Proposed § 615.5295 would: (1) Require an institution's board of directors to declare a dividend before any dividends may be paid to stockholders; (2) prohibit an institution from declaring or paying any dividend unless after declaration or payment of the dividend the institution would continue to meet its regulatory capital standards under this part; and (3) require an FCS institution to exclude any accrued but unpaid dividends from regulatory capital computations.

Non-System commenters agreed with this proposal because, in their view, it helps address the issue of the stock functioning like a deposit and helps ensure there are no discriminatory practices involved with the payment of dividends only to particular stockholders upon their request.

System commenters suggested that FCA clarify that institutions may declare dividends on at least a monthly basis and that a board may adopt a continuing resolution to pay dividends as long as the institution continues to meet regulatory capital standards. First, the rule does not include any frequency restrictions, so board action could theoretically take place on a monthly basis. However, we expect that any board decision on dividends be undertaken with the same formality as any other decision of the board. Second, a "continuing resolution" to pay dividends would defeat the purpose of the rule and therefore, FCA will

consider such a resolution to violate this rule. As we stated in the preamble to the proposed rule, we are adding this provision to emphasize the distinction between debt and equity securities. Declaration of dividends relates to the capitalization of the institution and is not equivalent to setting interest rates or other routine business decisions. Therefore, we adopt § 615.5295 without change and expect System institutions to treat dividend decisions in the same manner as other capitalization issues.

M. Disclosure of Insider Preferred Stock Transactions

Proposed § 620.5(j)(2) would add new required disclosures of transactions with senior officers and directors in FCS institution annual reports to shareholders. System commenters asserted that the proposal is overly broad and that disclosure of individual information is unnecessary. They suggest that FCA impose certain minimum thresholds, such as aggregating all directors and senior officers or, at a minimum, impose specific amounts or percentages below which no individual disclosure need be made.

We proposed this new disclosure requirement along with other disclosure amendments previously discussed in an effort to increase the transparency of insider preferred stock transactions. Because we are removing some of the most restrictive provisions of the proposed rule, full disclosure of insider activities is even more vital to ensure transparency of System operations. Therefore, we adopt the proposed rule as final without change.

IX. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the rule will not have a significant impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations and service corporations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 612

Agriculture, Banks, banking, Conflicts of interests, Rural areas.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

■ For the reasons stated in the preamble, we now amend parts 611, 612, 614, 615, and 620 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 611—ORGANIZATION

■ 1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2278a–9, 2278b–6, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

Subpart I—Service Organizations

■ 2. Amend § 611.1135 by revising paragraph (f) to read as follows:

§ 611.1135 Incorporation of service corporations.

* * * * *

(f) *When your service corporation issues equities, what are the disclosure requirements?* Your service corporation must provide the disclosures described in § 615.5255 of this chapter.

PART 612—STANDARDS OF CONDUCT

■ 3. The authority citation for part 612 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

■ 4. Amend § 612.2165 by revising paragraphs (b)(12) and (b)(13) and adding new (b)(14) and (b)(15) to read as follows:

§ 612.2165 Policies and procedures.

* * * * *

(b) * * *

(12) Establish reporting requirements, consistent with this part, to enable the institution to comply with § 620.5 of this chapter, monitor conflicts of interest, and monitor recusal compliance;

(13) Establish appeal procedures available to any employee to whom any required approval has been denied;

(14) Prohibit directors and employees from purchasing or retiring any stock in advance of the release of material non-public information concerning the institution to other stockholders; and

(15) Establish when directors and employees may purchase and retire their preferred stock in the institution.

PART 614—LOAN POLICIES AND OPERATIONS

■ 5. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5, of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart J—Lending and Leasing Limits

■ 6. Amend § 614.4351 by adding a new paragraph (a)(3) to read as follows:

§ 614.4351 Computation of lending and leasing limit base.

(a) * * *

(3) Any amounts of preferred stock not eligible to be included in total surplus as defined in § 615.5301(i) of this chapter must be deducted from the lending limit base.

* * * * *

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 7. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart F—Property, Transfers of Capital, and Other Investments

■ 8. Add new § 615.5175 to read as follows:

§ 615.5175 Investments in Farm Credit System institution preferred stock.

Except as provided for in § 615.5171, Farm Credit banks, associations and service corporations may only purchase preferred stock issued by another Farm Credit System institution, including the Federal Agricultural Mortgage Corporation, with the written prior approval of the Farm Credit Administration. The request for approval should explain the terms and risk characteristics of the investment and the purpose and objectives for making the investment.

Subpart H—Capital Adequacy

■ 9. Amend § 615.5201 by removing and reserving paragraph (5) of the "permanent capital" definition and adding new definitions for the terms "preferred stock" and "term preferred stock" to read as follows:

§ 615.5201 Definitions.

* * * * *

Preferred stock means stock that is permanent capital and has dividend and/or liquidation preference over common stock.

* * * * *

Term preferred stock means preferred stock with an original maturity of at least 5 years and on which, if cumulative, the board of directors has the option to defer dividends, provided that, at the beginning of each of the last 5 years of the term of the stock, the amount that is eligible to be counted as permanent capital is reduced by 20 percent of the original amount of the stock (net of redemptions).

* * * * *

Subpart I—Issuance of Equities

■ 10. Revise § 615.5230(b)(1) to read as follows:

§ 615.5230 Implementation of cooperative principles.

(b)* * *

(1) Each issuance of preferred stock (other than preferred stock outstanding on October 5, 1988, and stock into which such outstanding stock is converted that has substantially similar preferences) shall be approved by a majority of the shares of each class of equities adversely affected by the preference, voting as a class, whether or not such classes are otherwise authorized to vote;

* * * * *

■ 11. Revise § 615.5240 to read as follows:

§ 615.5240 Permanent capital requirements.

(a) The capitalization bylaws shall enable the institution to meet the capital adequacy standards established under subparts H and K of this part and the total capital requirements established by the board of directors of the institution.

(b) In order to qualify as permanent capital, equities issued under the bylaws must meet the following requirements:

(1) Retirement must be solely at the discretion of the board of directors and not upon a date certain (other than the original maturity date of preferred stock) or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan;

(2) Retirement must be at not more than book value;

(3) The institution must have made the disclosures required by this subpart;

(4) For common stock and participation certificates, dividends must be noncumulative and payable only at the discretion of the board; and

(5) For cumulative preferred stock, the board of directors must have discretion to defer payment of dividends.

■ 12. Add a new § 615.5245 to read as follows:

§ 615.5245 Limitations on association preferred stock.

(a) The board of directors of each association offering preferred stock must adopt a policy that addresses the association's conditions or limits on the amount of preferred stock that any one holder, or small number of holders may acquire.

(b) Each association offering preferred stock must make the stock available for purchase to each of its members on the same basis.

(c) An association may not extend credit for purchases of preferred stock in the association.

■ 13. Revise § 615.5250 to read as follows:

§ 615.5250 Disclosure requirements for borrower stock.

(a) For sales of borrower stock, which for this subpart means equities purchased as a condition for obtaining a loan, an institution must provide a prospective borrower with the following documents prior to loan closing:

(1) The institution's most recent annual report filed under part 620 of this chapter;

(2) The institution's most recent quarterly report filed under part 620 of this chapter, if more recent than the annual report;

(3) A copy of the institution's capitalization bylaws; and

(4) A written description of the terms and conditions under which the equity is issued. In addition to specific terms and conditions, the description must disclose:

(i) That the equity is an at-risk investment and not a compensating balance;

(ii) That the equity is retireable only at the discretion of the board of directors and only if minimum permanent capital standards established under subpart H of this part are met;

(iii) Whether the institution presently meets its minimum permanent capital standards;

(iv) Whether the institution knows of any reason the institution may not meet its permanent capital standard on the next earnings distribution date; and

(v) The rights, if any, to share in patronage distributions.

(b) Notwithstanding the provisions of paragraph (a) of this section, no materials previously provided to a purchaser (except the disclosures required by paragraph (a)(4) of this section) need be provided again unless the purchaser requests such materials.

■ 14. Add new § 615.5255 to read as follows:

§ 615.5255 Disclosure and review requirements for other equities.

(a) A bank, association, or service corporation must submit a proposed disclosure statement to the Farm Credit Administration (FCA) for review and clearance prior to the proposed sale of any other equities, which for this subpart means equities not purchased as a condition for obtaining a loan.

(b) An institution may not offer to sell other equities until a disclosure statement is reviewed and cleared by FCA.

(c) A disclosure statement must include:

(1) All of the information required by part 620 of this chapter in the annual report to shareholders as of a date within 135 days of the proposed sale. An institution may incorporate by reference its most recent annual report to shareholders and the most recent quarterly report filed with the FCA in satisfaction of this requirement;

(2) The information required by § 615.5250(a)(3) and (a)(4); and

(3) A discussion of the intended use of the sale proceeds.

(d) An institution is not required to provide the materials identified in

paragraphs (c)(1) and (c)(2) of this section to a purchaser who previously received them unless the purchaser requests it.

(e) For any class of stock where each purchaser and each subsequent transferee acquires at least $250,000 of the stock and meets the definition of "accredited investor" or "qualified institutional buyer" contained in 17 CFR 230.501 and 230.144A (or successor provisions), a disclosure statement submitted pursuant to this section is deemed reviewed and cleared by FCA and an institution may treat stock that meets all requirements of part 615 as permanent capital for the purpose of meeting the minimum permanent capital standards established under subpart H unless FCA notifies the institution to the contrary within 30 days of receipt of a complete disclosure statement submission. A complete disclosure statement submission includes the proposed disclosure statement plus any additional materials requested by FCA.

(f) For all other issuances, a disclosure statement submitted pursuant to this section is deemed cleared by FCA, and an institution may treat stock that meets all requirements of part 615 as permanent capital for the purpose of meeting the minimum permanent capital standards established under subpart H unless FCA notifies the institution to the contrary within 60 days of receipt of a complete disclosure statement submission. A complete disclosure statement submission includes the proposed disclosure statement plus any additional materials requested by FCA.

(g) Upon request, FCA will inform the institution how it will treat the proposed issuance for other regulatory capital ratios or computations.

(h) No institution, officer, director, employee, or agent shall, in connection with the sale of equities, make any disclosure, through a disclosure statement or otherwise, that is inaccurate or misleading, or omit to make any statement needed to prevent other disclosures from being misleading.

(i) Each bank and association must establish a method to disclose and make information on insider preferred stock purchases and retirements readily available to the public. At a minimum, each institution offering preferred stock must make this information available upon request.

(j) The requirements of this section do not apply to the sale of Farm Credit System institution equities to:

(1) Other Farm Credit System institutions,

(2) Other financing institutions in connection with a lending or discount relationship, or

(3) Non-Farm Credit System lenders that purchase equities in connection with a loan participation transaction.

(k) In addition to the requirements of this section, each institution is responsible for ensuring its compliance with all applicable Federal and state securities laws.

Subpart J—Retirement of Equities and Payment of Dividends

■ 15. Amend subpart J of part 615 by revising the heading to read as stated above.

■ 16. Amend § 615.5270 by adding new paragraphs (c), (d), and (e) to read as follows:

§ 615.5270 Retirement of other equities.

* * * * *

(c) A bank, association, or service corporation board of directors may delegate authority to retire at-risk stock to institution management if:

(1) The board has determined that the institution's capital position is adequate;

(2) All retirements are in accordance with the institution's capital adequacy plan or capital restoration plan;

(3) The institution's permanent capital ratio will be in excess of 9 percent after any retirements;

(4) The institution will continue to satisfy all applicable minimum surplus and collateral standards after any retirements; and

(5) Management reports the aggregate amount and net effect of stock purchases and retirements to the board of directors each quarter.

(d) Each board of directors of a bank, association, or service corporation that issues preferred stock must adopt a written policy covering the retirement of preferred stock. The policy must, at a minimum:

(1) Establish any delegations of authority to retire preferred stock and the conditions of delegation, which must meet the requirements of paragraph (c) of this section and include minimum levels for total surplus and core surplus commensurate with the volatility of the preferred stock.

(2) Identify limitations on the amount of stock that may be retired during a single quarterly (or shorter) time period;

(3) Ensure that all stockholder requests for retirement are treated fairly and equitably;

(4) Prohibit any insider, including institution officers, directors, employees, or agents, from retiring any preferred stock in advance of the release of material non-public information concerning the institution to other stockholders; and

(5) Establish when insiders may retire their preferred stock.

(e) The institution's board must review its policy at least annually to ensure that it continues to be appropriate for the institution's current financial condition and consistent with its long-term goals established in its capital adequacy plan.

■ 17. Add new § 615.5295 to read as follows:

§ 615.5295 Payment of dividends.

(a) The board of directors of a bank, association, or service corporation must declare a dividend on a class of stock before any dividends may be paid to stockholders.

(b) No bank, association, or service corporation may declare or pay any dividend unless after declaration or payment of the dividend the institution would continue to meet its regulatory capital standards under this part.

(c) Each bank, association, and service corporation must exclude any accrued but unpaid dividends from regulatory capital computations under this part.

PART 620—DISCLOSURE TO SHAREHOLDERS

■ 18. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart B—Annual Report to Shareholders

■ 19. Amend § 620.5 by revising paragraph (j)(2) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(j) * * *

(2) *Transactions other than loans.* For each person who served as a senior officer or director on January 1 of the year following the fiscal year of which the report is filed, or at any time during the fiscal year just ended, describe briefly any transaction or series of transactions other than loans that occurred at any time since the last annual meeting between the institution and such person, any member of the immediate family of such person, or any organization with which such person is affiliated.

(i) For transactions relating to the purchase or retirement of preferred stock issued by the institution, state the name of each senior officer or director

that held preferred stock issued by the institution during the reporting period, the current amount of preferred stock held by the senior officer or director, the average dividend rate on the preferred stock currently held, and the amount of purchases and retirements by the individual during the reporting period.

(ii) For all other transactions, state the name of the senior officer or director who entered into the transaction or whose immediate family member or affiliated organization entered into the transaction, the nature of the person's interest in the transaction, and the terms of the transaction. No information need be given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed $5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

* * * * *

Dated: September 7, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–18053 Filed 9–12–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22332; Directorate Identifier 2005–CE–46–AD; Amendment 39–14262; AD 2005–18–21]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models 1900, 1900C, 1900C (C–12J), and 1900D Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Raytheon Aircraft Company Models 1900, 1900C, 1900C (C–12J), and 1900D airplanes. This AD requires you to inspect all elevator hinge support attachments on both left and right elevators for loose and missing rivets, replace rivets if loose or missing rivets are found, inspect the elevator hinge joints for looseness and clearance of each elevator to its stabilizer, correct looseness and clearance if incorrect, and report results of the required inspections. This AD results from a report of excessive movement of the elevator and elevator trim. The hinge support attachment that attaches the elevator to the horizontal stabilizer was loose and had loose and missing rivets. The elevator counterweight horn showed evidence of rubbing against the horizontal stabilizer, indicating possible incorrect clearance. We are issuing this AD to detect and correct any looseness in the elevator hinge support attachments, which could result in binding of the elevator control system. This elevator binding could lead to loss of control of the airplane.

DATES: This AD becomes effective September 13, 2005.

As of September 13, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by October 20, 2005.

ADDRESSES: Use one of the following to submit comments on this AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201; telephone: (800) 625–7043.

To view the comments to this AD, go to *http://dms.dot.gov.* The docket number is FAA–2005–22332; Directorate Identifier 2005–CE–46–AD.

FOR FURTHER INFORMATION CONTACT: Steven E. Potter, Aerospace Engineer, Airframe and Services Branch, ACE–118W, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

What events have caused this AD? On a recent flight, a Model 1900D experienced a binding elevator control column during takeoff. The pilot was able to free the control column. During continuation of the flight the elevator trim moved slowly nose up and required a one-half unit trim adjustment every one to two minutes. An inspection found a missing rivet and other loose rivets on the outboard hinge attachment that attaches the elevator to the horizontal stabilizer. The elevator counterweight horn showed evidence of rubbing against the horizontal stabilizer, indicating possible incorrect clearance. Loose rivets were found on other airplanes of the same type design.

What is the potential impact if FAA took no action? Looseness in the elevator hinge support attachments could result in binding of the elevator control system. This elevator binding could lead to loss of control of the airplane.

Is there service information that applies to this subject? Raytheon Aircraft Company has issued Safety Communiqué No. 261, dated August 2005.

What are the provisions of this service information? The service information specifies inspecting all elevator hinge support attachments on both left and right elevators.

FAA's Determination and Requirements of the AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on other Raytheon Aircraft Company Models 1900, 1900C, 1900C (C–12J), and 1900D airplanes of the same type design, we are issuing this AD to detect and correct any looseness in the elevator hinge support attachments, which could result in binding of the elevator control system. This elevator binding could lead to loss of control of the airplane.

What does this AD require? This AD requires you to inspect all elevator hinge support attachments on both left and right elevators for loose and missing rivets, replace rivets if loose or missing rivets are found, inspect the elevator hinge joints for looseness and clearance of each elevator to its stabilizer, correct looseness and/or clearance if incorrect, and report results of the required inspections.

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously

was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

Will I have the opportunity to comment before you issue the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–22332; Directorate Identifier 2005–CE–46–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

Will this AD impact various entities? 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.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket FAA–2005–22332; Directorate Identifier 2005–CE–46–AD" in your request.

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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–18–21 Raytheon Aircraft Company: Amendment 39–14262; Docket No. FAA–2005–22332; Directorate Identifier 2005–CE–46–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on September 13, 2005.

Are Any Other ADs Affected By This Action?

(b) None.

What Airplanes Are Affected by This AD?

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

Models	Serial Nos.
(1) 1900	UA–3;
(2) 1900C	UB–1 through UB–74 and UC–1 through UC–174;
(3) 1900C (C–12J).	UD–1 through UD–6; and
(4) 1900D	UE–1 through UE–439.

What Is the Unsafe Condition Presented in This AD?

(d) This AD results from a report of excessive movement of the elevator and elevator trim. The hinge support bracket that attaches the elevator to the horizontal stabilizer was loose and had loose and missing rivets. The elevator counterweight horn showed evidence of rubbing against the horizontal stabilizer, indicating possible incorrect clearance. We are issuing this AD to detect and correct any looseness in the elevator hinge support attachments, which could result in binding of the elevator control system. This elevator binding could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect all elevator hinge support attachments on both left and right elevators on both left and right elevators for loose or missing rivets.	Within 50 hours time-in-service (TIS) after the effective date of this AD.	As specified in Raytheon Aircraft Company Safety Communiqué No. 261, dated August 2005, following the applicable Raytheon Aircraft Company Maintenance Manual, Chapter 5–20–07 and Structural Repair Manual, Chapter 51–40–02.
(2) If loose or missing rivets are found in the inspection required in paragraph (e)(1) of this AD, replace reviets.	Before further flight	As specified in Raytheon Aircraft Company Safety Communiqué No. 261, dated August 2005, following the applicable Raytheon Aircraft Company Maintenance Manual, Chapter 5–20–07 and Structural Repair Manual, Chapter 51–40–02.

Actions	Compliance	Procedures
(3) Inspect the elevator hinge joints for looseness and the clearance of each elevator to its stabilizer.	Within 50 hours TIS after the effective date of this AD.	As specified in Raytheon Aircraft Company Safety Communiqué No. 261, dated August 2005, following the applicable Raytheon Aircraft Company Maintenance Manual, Chapter 5–20–07.
(4) If looseness of the elevator hinge joints or incorrect clearance between the elevators and their stabilizers is found, correct the discrepancies.	Before further flight	As specified in Raytheon Aircraft Company Safety Communiqué No. 261, dated August 2005, following the applicable Raytheon Aircraft Company Maintenance Manual, Chapter 5–20–07.
(5) Report the results found in the inspections required in paragraph (e)(1) and (e)(3) of this AD. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 and those following sections) and assigned OMB Control Number 2120–0056.	Within 7 days after the inspections required in paragraph (e)(1) and (e)(3) of this AD.	In addition to Raytheon Aircraft Company, send a completed copy of the Raytheon Aircraft Company Elevator Inspection form, found in Raytheon Aircraft Company Safety Communiqué No. 261, dated August 2005, to Steven E. Potter, FAA, 1801 Airport Road, Wichita, Kansas 67209. Also include in your report TIS since elevator replacement, if elevator has been replaced.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office, FAA. For information on any already approved alternative methods of compliance, contact Steven E. Potter, Aerospace Engineer, Airframe and Services Branch, ACE–118W, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4107.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Raytheon Aircraft Company Safety Communiqué No. 261, dated August 2005. The Director of the **Federal Register** approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201; telephone: (800) 625–7043. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–22332; Directorate Identifier 2005–CE–46–AD.

Issued in Kansas City, Missouri, on September 2, 2005.

Kim Smith,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–17890 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21239; Directorate Identifier 2005–CE–27–AD; Amendment 39–14263; AD 2005–18–22]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 390 Premier 1 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Raytheon Aircraft Company (Raytheon) Premier 1 390 airplanes. This AD requires you to verify minimum clearances to correct chafing conditions in the powerplant left-hand and right-hand engine installations. This AD results from reports of inadequate left-hand and right-hand engine assembly cable, wire, and hose routing clearance. We are issuing this AD to detect and correct chafing conditions in the engine installation, which could result in leaking flammable fluids near an ignition source. This failure could lead to fire damage or loss of airplane control.

DATES: This AD becomes effective on November 14, 2005.

As of November 14, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or 316–676–3140.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–21239; Directorate Identifier 2005–CE–27–AD.

FOR FURTHER INFORMATION CONTACT: James P. Galstad, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4135; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received reports of chafing conditions in the powerplant left-hand and right-hand engine assembly cable, wire, and hose routing clearance. The incidents of chafing have been reported on airplane serial numbers: RB–20, RB–50, RB–61, and RB–101.

Investigation revealed that the areas of concern include control cables, wiring harnesses, fluid and drain hoses, and support structure. Further, FAA determined that the cause of the unsafe condition relates to the design and quality control.

Raytheon developed kits and service information to correct the chafing conditions.

What is the potential impact if FAA took no action? The existence of chafing

conditions in the engine installation could result in leaking flammable fluids near an ignition source. This failure could lead to fire damage or loss of airplane control.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Aircraft Company Model 390 Premier airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 1, 2005 (70 FR 31393). The NPRM proposed to require you to install a kit to correct chafing conditions in the powerplant left-hand and right-hand engine installations.

Comments

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

Comment Issue No. 1: Request To Change the Compliance Time Wording

What is the commenter's concern? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, requests that FAA change the compliance time wording to prevent any misunderstanding and/or non-compliance of the AD requirements. The LBA's request notes, that if none of the inspection events (100-hour or annual inspection) occurs within 30 days after the effective date of the AD, the actions of the AD are not required.

What is FAA's response to the concern? The FAA agrees that the compliance time in the AD could currently be misinterpreted. We are rewording the compliance time to be more specific and to help eliminate any possible confusion.

Comment Issue No. 2: Revision of Raytheon Aircraft Company Service Mandatory Service Bulletin No. SB 71–3685 and New Kits

What is the commenter's concern? Raytheon's comment notes that subsequent to the original release of SB No. 71–3685, several customers discovered that one of the tube assemblies, part number (P/N) 390–910091–0005, provided in the Kit No. 390–9104–0001, interfered with the engine case on their airplanes. Raytheon has corrected the problem with two new kits, which are called out in SB No. 71–3685 Rev. 1, Issued: May 2005, Revised July 2005. The Kit No. 390–9104–0003 is for owners/operators who attempted to comply with the original issuance of the service bulletin and could not. The Kit No. 390–9104–0005 is for owner/operators who have not complied with the original issuance of the service bulletin.

What is FAA's response to the concern? Raytheon revised Mandatory Service Bulletin No. SB 71–3685 to the Revision 1, dated July 2005, level because it was not possible to comply with the Kit requirements as originally specified for some airplanes. The revision references kits and specifies how to comply with the action.

Incorporating the revised service bulletin only makes compliance possible and does not increase the burden originally proposed in the NPRM. Therefore, FAA has determined that the final rule should incorporate Raytheon Mandatory Service Bulletin No. SB 71–3685, Rev. 1, dated July 2005.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains information relating to this subject in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.*

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 74 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to do the installation of the kit(s) to correct chafing conditions in the engine installation:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
16 work hours × $65 = $1,040	$1,775	$2,815	$208,310

The labor and part costs are covered by Raytheon Aircraft Company warranty to the extent stated in the service information.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

Will this AD impact various entities? 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.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "Docket No. FAA–2005–21239; Directorate Identifier 2005–CE–27–AD" in your request.

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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2005–18–22 **Raytheon Aircraft Company:** Amendment 39–14263; Docket No. FAA–2005–21239; Directorate Identifier 2005–CE–27–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on November 14, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model 390 airplanes that:

(1) Incorporate a serial number of RB–1, RB–4 through RB–84, RB–87 through RB–90, RB–92 through RB–96, RB–98 through RB–101, and RB–103 through RB–107; and

(2) Are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of inadequate left-hand and right-hand engine assembly cable, wire, and hose routing clearance. The actions specified in this AD are intended to detect and correct chafing conditions in the engine installation, which could result in leaking flammable fluids near an ignition source. This failure could lead to fire damage or loss of airplane control.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
Verify minimum clearances to correct chafing conditions in the powerplant left-hand and right-hand engine assembly cable, wire, and hose routing by installation of the following: (i) If Kit No. 390–9104–0001 has already been installed and the tube cleared successfully, then no further action is necessary. (ii) If Kit No. 390–9104–0001 has already been installed and clearance with the tube was not obtained, then install Kit No. 390–9104–0003. (iii) If Kit No. 390–9104–0001 has not been installed, then install Kit No. 390–9104–0005.	Within the next 100 hours time-in-service (TIS) or 6 months after November 14, 2005 (the effective date of this AD), whichever occurs first. We established this compliance time to coincide with the next regularly scheduled inspection. You may comply with this AD at any time prior to this time and not have to recomply.	Follow Raytheon Aircraft Company Mandatory Service Bulletin No. SB 71–3685, Issued May 2005, Revised: July 2005.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact James P. Galstad, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4135; facsimile: (316) 946–4107.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Raytheon Aircraft Company Mandatory Service Bulletin No. SB 71–3685, Rev. 1, Issued May 2005, Revised July 2005. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or 316–676–3140. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–21239; Directorate Identifier 2005–CE–27–AD.

Issued in Kansas City, Missouri, on September 2, 2005.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–17889 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20404; Directorate Identifier 2005–NM–018–AD; Amendment 39–14268; AD 2005–19–03]

RIN 2120–AA64

Airworthiness Directives; BAe Systems (Operations) Limited Model ATP Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all BAe Systems (Operations) Limited Model ATP airplanes. That AD currently requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. This new AD requires a revision to the ALS of the Instructions for Continued Airworthiness to incorporate new inspections to detect fatigue cracking of certain significant structural items (SSIs) and to revise life limits for certain equipment and various components. This AD is prompted by a determination that existing inspection techniques are not adequate for certain SSIs and by the revision of certain life limits. We are issuing this AD to detect and correct fatigue cracking of certain structural elements, which could adversely affect the structural integrity of these airplanes.

DATES: Effective September 28, 2005.

We must receive comments on this AD by November 14, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On December 22, 2000, we issued AD 2000–26–10, amendment 39–12060 (66 FR 267, January 3, 2001). That AD is applicable to all BAe Systems (Operations) Limited Model ATP airplanes. That AD requires revising the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. That AD resulted from a revision to the airworthiness limitations of the British Aerospace ATP Aircraft Maintenance Manual, which specifies new inspections and compliance times for inspection and replacement action. The actions specified in that AD are intended to detect and correct fatigue cracking of certain structural elements, which could adversely affect the structural integrity of these airplanes.

Actions Since Existing AD Was Issued

Since we issued AD 2000–26–10, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on all BAe Systems (Operations) Limited Model ATP airplanes. The CAA advises that existing inspection techniques given in Section 05–10–17 of the British Aerospace ATP Aircraft Maintenance Manual (AMM) are not adequate for certain structurally significant items (SSIs) and that certain mandatory life limitations given in Section 05–10–11 of the AMM have been revised. (The AMMs are described under "Relevant Service Information" below.) Inadequate inspection techniques or replacement intervals could result in fatigue cracking of certain structural elements, which could adversely affect the structural integrity of these airplanes.

Relevant Service Information

British Aerospace has issued revisions to Section 05–10–11, "Mandatory Life Limitations (Airframe)" and Section 05–10–17, "Structurally Significant Items (SSI'S)" both dated July 15, 2004; of the British Aerospace ATP AMM, which refer to additional chapters of the AMM. Those revised sections of the AMM include mandatory life limitations for the airframe and power plant/engine; and structural inspections of the fuselage, engine, horizontal stabilizer, and wing bottom surface. The revised section also describes new inspections and compliance times for inspection and replacement actions. Accomplishment of those actions will preclude the onset of fatigue cracking of certain structural elements of the airplane.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA mandated the service information and issued British airworthiness directive G–2004–0020, dated August 25, 2004, to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of This AD

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the CAA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to supersede AD 2000–26–10 and to continue to require a revision to the ALS of the Instructions for Continued Airworthiness to incorporate inspections to detect fatigue cracking of certain SSIs. This new AD revises life limits for certain equipment and various components that are specified in the previously referenced service information.

Clarification of British Airworthiness Directive

Operators should note that British airworthiness directive G–2004–0020 specifies to do the tasks for chapters 27, 32, 52, 53, and 54 in Section 05–10–11 of the British Aerospace ATP AMM. However, there are no tasks for chapter 52 listed in Section 05–10–11. Therefore, this AD requires incorporating the tasks for Chapters 27,

32, 53, and 54 listed in Section 05–10–11.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. Although 10 airplanes were on the U.S. Register at the time of issuance of AD 2000–26–10, all airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, these airplanes are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD would be $65 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Include "Docket No. FAA–2005–20404; Directorate Identifier 2005–NM–018–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

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 the 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 AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–12060 (66 FR 267, January 3, 2001) and by adding the following new airworthiness directive (AD):

2005–19–03 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14268. Docket No. FAA–2005–20404; Directorate Identifier 2005–NM–018–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 28, 2005.

Affected ADs

(b) This AD supersedes AD 2000–26–10, amendment 39–12060.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model ATP airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (i) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Unsafe Condition

(d) This AD was prompted by a determination that existing inspection techniques are not adequate for certain structurally significant items and by the revision of certain life limits. We are issuing this AD to detect and correct fatigue cracking of certain structural elements, which could

adversely affect the structural integrity of these airplanes.

Compliance

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

Restatement of Requirements of AD 2000–26–10

Airworthiness Limitations Revision

(f) Within 30 days after February 7, 2001 (the effective date of AD 2000–26–10), revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness according to a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. One approved method is by incorporating Section 05–00–00, dated August 15, 1997, of the British Aerospace ATP Aircraft Maintenance Manual (AMM), dated October 15, 1999, into the ALS. This section references other chapters of the AMM. The applicable revision level of the referenced chapters is that in effect on February 7, 2001. Doing the revision specified in paragraph (g) of this AD replaces Chapters 27, 32, 53, and 54 listed in Section 05–10–11 and Chapters 52, 53, 54, 55, and 57 listed in Section 05–10–17 that are in effect on February 7, 2001, with Chapters 27, 32, 53, and 54 listed in Section 05–10–11, "Mandatory Life Limitations (Airframe)"; and Chapters 52, 53, 54, 55, and 57 listed in Section 05–10–17, "Structurally Significant Items (SSI'S)"; both dated July 15, 2004; of the British Aerospace ATP AMM.

New Requirements of This AD

New Airworthiness Limitations

(g) Within 30 days after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness according to a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. One approved method is by incorporating the tasks for Chapters 27, 32, 53, and 54 listed in Section 05–10–11, "Mandatory Life Limitations (Airframe)"; and the tasks for Chapters 52, 53, 54, 55, and 57 listed in Section 05–10–17, "Structurally Significant Items (SSI'S)"; both dated July 15, 2004; of the British Aerospace ATP AMM; into the ALS. These chapters replace the corresponding chapters in Section 05–00–00, dated August 15, 1997, of the British Aerospace ATP AMM as specified in paragraph (f) of this AD.

(h) Except as provided by paragraph (i) of this AD: After the actions specified in paragraphs (f) and (g) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraphs (f) and (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(j) British airworthiness directive G–2004–0020, dated August 25, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(k) None.

Issued in Renton, Washington, on September 6, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18059 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21448; Airspace Docket No. 05–AAL–16]

Establishment of Class E Airspace; Golovin, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Golovin, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAPs) and one new departure procedure. This rule results in new Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Golovin, AK.

EFFECTIVE DATE: This final rule is effective September 13, 2005.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, June 24, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Golovin, AK (70 FR 36544). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing two new SIAPs and one new departure procedure for the Golovin Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 02, original; and (2) RNAV (GPS)–A, original. The new departure procedure is the Nome ONE Departure. New Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Golovin Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order. The Notice of Proposed Rulemaking document included an airspace exclusion to the Nome Class E airspace. That exclusion was not neccessary and it is not included in this action.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Golovin, Alaska. This Class E airspace is designated to accommodate aircraft executing two new SIAPs and one new departure procedure and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Golovin Airport, Golovin, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in

Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Golovin, AK [New]

Golovin Airport, AK
(Lat. 64°19′33″ N., Long. 158°44′39″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Golovin Airport, and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of Lat. 64°43′47″ N., Long. 163°15′17″ W. and a 30-mile radius of Lat. 64°17′57″ N., Long. 163°01′41″ W.

* * * * *

Issued in Anchorage, AK, on September 1, 2005.

Joseph Rollins,

Acting Director, Alaska Flight Services Area Office.

[FR Doc. 05–18155 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–21707; Airspace Docket No. 05–ACE–22]

Modification of Class E Airspace; Lincoln, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Friday, July 29, 2005 (70 FR 43741) [FR Doc. 05–21707].

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division. Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 05–21707, published on Friday, July 29, 2005 (70 FR 43741), modified Class E Airspace at Lincoln, NE. The phrase "This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." was incorrectly deleted from the legal description of the Class E2 airspace. This action corrects that error.

■ Accordingly, pursuant to the authority delegated to me, the error in the legal description of the Class E2 airspace area at Lincoln, NE, as published in the **Federal Register** on Friday, July 29, 2005 (70 FR 43741) [FR Doc. 05–21707], is corrected as follows:

PART 71—[AMENDED]

§ 71.1 [Corrected]

On page 43742, Column 3, at the end of the legal description of ACE NE E2 Lincoln, NE, add the phrase "This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory."

Issued in Kansas City, MO, on September 2, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–18157 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21872; Airspace Docket No. 05–ACE–26]

Modification of Class E Airspace; Norfolk, NE; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Friday, July 29, 2005, (70 FR 43745) [FR Doc. 05–21872].

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 05–21872, published on Friday, July 29, 2005, (70 FR 43745) modified Class E Airspace at Norfolk, NE. The name of the airport is misspelled in the legal description of the Class E5 Airspace Area. This action corrects that error.

■ Accordingly, pursuant to the authority delegated to me, the error in the legal description of the Class E5 Airspace Area at Norfolk, NE, as published in the **Federal Register** on Friday, July 29, 2005, (70 FR 43745) [FR Doc. 05–21872] is corrected as follows:

PART 71—[AMENDED]

§ 71.1 [Corrected]

■ On page 43746, Column 3, following ACE NE E5 Norfolk, NE, Replace the

word "Stephan" with the word "Stefan" in the airport name. In the third line of the following legal description replace the word "Stephan" with the word "Stefan" in the airport name.

Dated: Issued in Kansas City, MO, on September 2, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–18158 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21607; Airspace Docket No. 05–ACE–17]

Establishment of Class E5 Airspace; Gardner, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E surface area airspace area extending upward from 700 feet above the surface at Gardner, KS.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft departing from and executing approach procedures to, Gardner Municipal Airport, KS and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: 0901 UTC, October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On Thursday, August 4, 2005 the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Gardner, KS (70 FR 44868). The proposal was to establish a Class E5 airspace area to bring Gardner, KS airspace into compliance with FAA directives. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. No comments objecting to the proposal were received.

The Rule

This notice amends part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area extending upward from 700 feet above the surface at Gardner Municipal Airport, KS. A Class E airspace area overlies Gardner Municipal Airport, KS, however, its purpose and description are relative to Olathe, New Century Aircenter, KS and does not fully enclose the NDB or GPS–D Instrument Approach Procedure to Gardner Municipal Airport, KS. This notice will correct this discrepancy by establishing a Class E airspace area extending upward from 700 feet above the surface within a 6.4 mile-radius of Gardner Municipal Airport, KS excluding that airspace within the Olathe, New Century Aircenter, KS Class D airspace. This will define airspace of appropriate dimensions to protect aircraft departing and executing instrument approach procedures to Gardner Municipal Airport and bring the airspace area into compliance with FAA directives. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Gardner Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9655, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Gardner, KS

Gardner Muncipal Airport, KS
(Lat. 38°48′25″ N., long, 94°57′22″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Gardner Muncipal Airport excluding that airspace within the Olathe, New Century Aircenter, KS Class D airspace area.

* * * * *

Issued in Kansas City. MO, on September 2, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–18159 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2005–21000; Airspace Docket 05–ANM–05]

Establishment of Class E Airspace; Chehalis, WA

AGENCY: Federal Aviation Administrator (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will establish Class E airspace at Chehalis, WA. This additional Class E airspace is necessary to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Chehalis-Centralia Airport. This change will improve the safety of Instrument Flight rules (IFR) aircraft executing the new RNAV GPS SIAP at Chehalis-Centralia Airport, Chelialis, WA.

EFFECTIVE DATE: 0901 UTC, September 28, 2005.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue SW., Renton, WA 98055–4056, telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On May 25, 2005, the FAA proposed to amend Title 14 Code of Federal regulations part 71 (CFR part 71) by establishing Class E airspace at Chehalis, WA, (70 FR 30034). The proposed action would provide additional controlled airspace to accommodate the new RNAV GPS SIAP at the Chehalis-Centralia Airport. Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated august 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Chehalis, WA, by providing additional controlled airspace for aircraft executing the new RNAV GPS SIAP at the Chelialis-Centralia Airport. This additional controlled airspace extending upward from 700 feet or more above the surface is necessary for the containment and safety of IFR aircraft executing this SIAP procedure and transitioning to/from the en route environment.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep the regulations current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11054, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory flexibility Act

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E. O. 10854,24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA E5 Chehalis, WA [New]

Chehalis-Centralia Airport, WA
(Lat. 46°40′37″ N., long. 122°58′58″ W.)

That airspace extending upward from 700 feet above the surface within a 9.0 mile radius of Chehalis-Centralia Airport.

* * * * *

Issued in Seattle, Washington, on August 22, 2005.

R.D. Engelke,

Acting Area Director, Western En Route and Oceanic Operations.

[FR Doc. 05–18146 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21601; Airspace Docket No. 05–AAL–20]

Revision of Class E Airspace; Prospect Creek, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Prospect Creek, AK to provide adequate controlled airspace to contain aircraft executing Special Instrument Approach Procedures (SIAPs). This rule results in revised Class E airspace upward from 700 feet (ft.) above the surface at Prospect Creek, AK.

EFFECTIVE DATE: This Final rule is effective September 13, 2005.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, June 24, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace upward from 700 ft. above the surface at Prospect Creek, AK (70 FR 36543). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing SIAPs at the Prospect Creek Airport. Revised Class E controlled airspace extending upward from 700 ft. above the surface in the Prospect Creek Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order. The Proposed Rulemaking document included an error incorrectly listing the airport coordinates. This Final Rule also corrects the airport coordinates.

The Rule

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Prospect Creek, AK [Revised]

Prospect Creek Airport, AK
(Lat. 66°48′51″ N., long. 150°38′37″ W.)

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of the Prospect Creek Airport, and that airspace extending 4 miles either side of the 279° bearing from the Prospect Creek Airport from the 4.2 mile radius to 8 miles west of the airport.

* * * * *

Issued in Anchorage, AK, on September 1, 2005.

Joseph Rollins,

Acting Director, Alaska Flight Services Area Office.

[FR Doc. 05–18153 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21447; Airspace Docket No. 05–AAL–17]

Revision of Class E Airspace; Cordova, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Cordova, AK to provide adequate controlled airspace to contain aircraft executing new and revised Standard Instrument Approach Procedures (SIAPs). This rule results in a revised Class E surface area and Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Cordova, AK.

EFFECTIVE DATE: This Final rule is effective September 13, 2005.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, June 24, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E surface area and the Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Cordova, AK (70 FR 36540). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing SIAPs at the Cordova Airport. Revised Class E controlled airspace extending upward from the surface, and from 700 ft. and 1,200 ft. above the surface in the Cordova Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9M, *Airspace Designations*

and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace Designated as Surface Areas.

* * * * *

AAL AK E2 Cordova, AK [Revised]

Cordova, Merle K. (Mudhole) Smith Airport, AK
(Lat. 60°29′31″ N., Long. 145°28′40″ W.)
Glacier River Non-Directional Beacon (NDB)
(Lat. 60°29′56″ N., Long. 145°28′28″ W.)

Within a 4.1–mile radius of the Merle K. (Mudhole) Smith Airport and within 2 miles each side of the 115° bearing from the Glacier River NDB extending from the 4.1–mile radius to 6 miles southeast of the airport, and within 2 miles each side of the 124° bearing from the Glacier River NDB extending from the 4.1–mile radius to 10.4 miles southeast of the airport, and within 3.2 miles northwest and 2.1 miles southeast of the 222° bearing from the Glacier River NDB extending from the 4.1–mile radius to 10 miles southwest of the airport, excluding that airspace north of a line from Lat. 60°31′03″ N., Long. 145°20′59″ W. to Lat. 60°32′45″ N., Long. 145°33′43″ W.

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Cordova, AK [Revised]

Cordova, Merle K. (Mudhole) Smith Airport, AK
(Lat. 60°29′31″ N., long. 145°28′40″ W.)
Glacier River NDB
(Lat. 60°29′56″ N., long. 145°28′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Merle K. (Mudhole) Smith Airport, and within 4 miles each side of the 222° bearing from the Glacier River NDB extending from the 6.6-mile radius to 20 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of the airport and within 6 miles each side of the 115° bearing from the Glacier River NDB extending from the 30-mile radius to 45 miles east of the airport, excluding that airspace within Control Area 1487L. and more than 12 miles from the shoreline.

* * * * *

Issued in Anchorage, AK, on September 1, 2005.

Joseph Rollins,

Acting Director, Alaska Flight Services Area Office.

[FR Doc. 05–18154 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 51

RIN 1400–AC11

[Public Notice: 5186]

New Passport Amendment Policy

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the passport regulations to abolish the U.S. passport amendment process, except for the convenience of the U.S. Government, and broadens the reasons for issuing a replacement passport at no additional cost to the applicant. The rule also adds unpaid fees as a ground for invalidating a passport.

DATES: This rule will become effective on September 26, 2005.

FOR FURTHER INFORMATION CONTACT: Sharon Palmer-Royston, Office of Passport Policy, Planning and Advisory Services, Bureau of Consular Affairs, telephone 202–663–2662.

SUPPLEMENTARY INFORMATION:

Analysis of Comments

The proposed rule was published on February 18, 2005. Comments were accepted from the public for 45 days. We received only 2 comments in response to the portion of the proposed rule that we are now publishing in final. Neither comment objected to the proposed change in the amendment process. Rather, both comments asked for greater detail as to how the new procedures will work. The process is discussed below. The comments are available for review at *http://www.travel.state.gov*, under the passport section, or at the State Department reading room.

Rule Change

This rule was originally published in the **Federal Register** on February 18,

2005 (70 FR 8305), as a proposed rule entitled "Electronic Passport" (RIN 1400–AB93) that included changes to the passport regulations needed due to the pending introduction of the electronic passport. This final rule separates the portions of the proposed regulation on passport amendments, replacement passports and unpaid fees from the portions of the proposed regulation that related exclusively to electronic passports. We separated them because a large volume of comments were received with respect to the introduction of the sections of the rule relating exclusively to the electronic passport, which the Department needs time to consider carefully. We do not believe, however, that there is any need to delay making the changes in passport amendment policy and the rules for invalidation of a passport planned in the proposed rule. In addition to deleting the portions of the proposed regulations relating exclusively to the electronic passport, the final rule includes a few minor changes in wording, but does not alter the substance of the proposed rule.

Regulatory Changes

Passport Amendments and Extensions Discontinued

By this rule, the Department discontinues the general practice of amending passports to correct or change data elements relating to the bearer or to the passport's validity period. This will improve document security by presenting all personal information only on one page, the passport data page. Moreover, in the future, the Department plans to issue U.S. passports with an electronic chip as an additional security feature. Once programmed, the chip cannot be edited. In order to protect the security of the electronic passport, the passport data page and the electronic chip would contain the same information.

Under this rule, when important information contained on the data page of a passport, for example, the bearer's name or the passport validity period, is changed, instead of manually amending the passport to reflect the new information, the Department will cancel the passport and issue a replacement. Issuance of a replacement will mean that the data page will reflect the correct personal information of the passport bearer and the correct validity period, and, in the case of an electronic passport, that the information will be identical to the information on the electronic chip. However, the rule reserves the possibility of amending a passport for the convenience of the U.S. Government in a small number of cases where it would be impossible or inadvisable to issue a replacement, such as when a passport must be limited in validity for direct return to the United States.

Application for Replacement Passport

Pursuant to Title 22 of the United States Code, Section 211a *et seq.* and E.O. 11295, 31 FR 10603 (Aug. 5, 1966), the Secretary has broad authority to issue regulations governing the issuance of passports. There is no statutory requirement to permit amendments to passports, as opposed to requiring that a new passport be issued when personal, or other, information changes. The Secretary has in the past exercised regulatory discretion to permit amendments. The current regulations in Section 51.20 of Title 22, Code of Federal Regulations (CFR) requires that an application for a passport or for an amendment of a passport shall be completed upon such forms as prescribed by the Department. An applicant for a passport amendment uses a specified application form. This rule will delete, in the first sentence of section 51.20, the words "an amendment," to reflect the decision to discontinue amendments.

Section 51.64 of Title 22, CFR sets out the requirements for replacement of a passport at no cost. This rule will add new categories of such passports. The Department encourages U.S. citizens to keep their U.S. passports up to date as a document of identity. Doing so will help prevent unexpected problems that may occur when the identity shown on their passport does not match other identity materials. To encourage individuals to maintain passports that accurately reflect their current names and to alleviate some of the cost burden, an individual whose name has changed, as for example, through marriage or by court order, within the first year of validity of a new passport will be able to return the passport, along with a completed application, new photographs and proof of the personal information change for replacement with a full validity passport at no additional cost. This rule will also allow issuance at no cost of a replacement passport, for the balance of its period of validity, of a passport needed by law enforcement or the judiciary for evidentiary purposes.

Nearly all passports applied for abroad, except limited validity emergency passports, are printed in the United States. Applicants for limited validity emergency passports must pay the fees that are charged for a full-validity passport. This amendment provides that those who have been issued a one-year validity passport for emergency travel may apply for a full-validity replacement passport within one year of the issuance of the limited passport for no additional cost.

New Ground for Invalidating a Passport

Under this rule, if full payment of all applicable passport fees is not presented, as for example when a check is returned or a credit card charge is disputed after issuance of a passport, the Department, in addition to taking action to collect the delinquent fees under 22 CFR part 34 and the Federal Claims Collection Act, may send the delinquent bearer a letter to the bearer's last available address notifying him or her that the passport has been invalidated because the applicable fees have not been received. An invalidated passport cannot be used for travel.

Administrative Procedure Act

The Department is publishing this rule as a final rule, after publishing a proposed rule, allowing a 45-day provision for public comments, and consideration of all comments received. The Department provided for a shorter comment period than the 60 days suggested by Section 6(a) of E.O. 12866 because we believed 45 days would provide the public with a meaningful opportunity to comment while advancing important national security and foreign policy goals. In order to protect the security of U.S. borders, it is essential that the Department put the no amendment policy into effect as soon as possible.

Regulatory Flexibility Act/Executive Order 13272: Small Business

These final regulations are hereby certified as not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601–612, and Executive Order 13272, section 3(b).

The Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. 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 adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with

foreign based companies in domestic and export markets.

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure nor will it significantly or uniquely affect small governments.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12866: Regulatory Review

The Department of State has reviewed this final rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of the proposed regulation justify its costs. The Department does not consider the proposed rule to be an economically significant regulatory action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of $100 million or more or to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. However, because the proposed rule from which this final rule is derived does have important policy implications and involves a critical component of upgrading border security for the United States, this final rule has been provided to the Office of Management and Budget (OMB) for review.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

The Paperwork Reduction Act of 1995

In conjunction with the proposed rule, the Department determined that the portion of the proposed rule contained in this final rule contains collection of information requirements for the purposes of the PRA. The Department sought and received emergency six-month approvals from OMB for the use of four information collections. The Department is currently seeking three-year extensions of the OMB emergency approvals. The extensions are the subject of separate **Federal Register** notices and requests for public comment.

Two of the four collections involve existing forms that were already scheduled for PRA renewal in 2005. The Department has revised and updated the instructions associated with existing information collections number 1405–0004 (DS–11, Application for a U.S. Passport) and 1405–0020 (DS–82, Application for a U.S. Passport by Mail). Among other changes, the revisions notify applicants that a passport may be invalidated for lack of payment of the requisite fees.

The Department is also introducing two new collections of information. One of the new collections will introduce a new form, DS–5504 (U.S. Passport Re-Application Form), to permit application for a replacement full-validity passport within one year of passport issuance based on a change of name, incorrect data, or the emergency issuance abroad of a one-year full-fee passport. The other new collection (DS–4085, Application for Additional Visa Pages) will replace existing information collection number 1405–0007, which relates to Form DS–19. Form DS–19 is currently used to apply for amendment of a U.S. passport or request issuance of extra visa pages. Because passport amendments no longer will be made under the proposed rule, Form DS–19 will be discontinued. In its place, Form DS–4085 will be introduced solely to enable holders of a valid U.S. passport to request that extra visa pages be added to the passport.

List of Subjects in 22 CFR Part 51

Administrative practice and procedure, Drug traffic control, Passports and visas.

■ Accordingly, for the reasons set forth in the preamble, 22 CFR Chapter I is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 22 U.S.C. 211a, 213, 2651a, 2671(d)(3), 2714 and 3926; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp., p 570; sec. 236, Public Law 106–113, 113 Stat. 1501A–430; 18 U.S.C. 1621(a)(2).

■ 2. Section 51.4 is amended by revising paragraph (f) and adding paragraph (h)(3) to read as follows:

§ 51.4 Validity of passports.

* * * * *

(f) *Limitation of validity.* The Secretary may limit a passport's validity period to less than the normal validity period. The bearer of a limited passport may apply for a replacement passport, using the proper application, and submitting the limited passport, applicable fees, photos and additional documentation, if required, to support the issuance of a replacement passport.

* * * * *

(h) * * *

(3) The Department has sent a written notice to the bearer at the bearer's last known address that the passport has been invalidated because the Department has not received the applicable fees.

* * * * *

■ 3–4. The first sentence of § 51.20 is revised to read as follows:

§ 51.20 General.

An application for a passport, a replacement passport, extra visa pages, or other passport related service must be completed upon such forms as the Department may prescribe.

* * * * *

■ 5. Section 51.32 is revised to read as follows:

§ 51.32 Passport Amendments.

Except for the convenience of the U.S. Government, no passport will be amended.

■ 6. Section 51.64 is revised to read as follows:

§ 51.64 Replacement Passports.

A passport issuing office may issue a replacement passport for the following reasons without payment of applicable fees:

(a) To correct an error or rectify a mistake of the Department.

(b) When the bearer has changed his or her name or other personal identifier listed on the data page of the passport, and applies for a replacement passport within one year of the date of the passport's original issuance.

(c) When the bearer of an emergency full fee passport issued for a limited validity period applies for a full validity passport within one year of the date of the passport's original issuance.

(d) When a passport is retained by law enforcement or the judiciary for

evidentiary purposes and the bearer is still eligible to have a passport.

■ 7. Section 51.66(a) is revised to read as follows:

§ 51.66 Expedited passport processing.

(a) Within the United States, an applicant for a passport service (including issuance, replacement or the addition of visa pages) may request expedited processing by a Passport Agency. All requests by applicants for in-person services at a Passport Agency shall be considered requests for expedited processing, unless the Department has determined that the applicant is required to apply at a Passport Agency.

* * * * *

■ 8. The title of part 51, subpart E is revised to read as follows:

Subpart E—Limitations on Issuance or Use of Passports

* * * * *

Dated: September 6, 2005.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 05–18108 Filed 9–12–05; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–023A]

RIN 1218–AC08

Updating OSHA Standards Based On National Consensus Standards; General, Incorporation by Reference; Hazardous Materials, Flammable and Combustible Liquids; General Environmental Controls, Temporary Labor Camps; Hand and Portable Powered Tools and Other Hand-Held Equipment, Guarding of Portable Powered Tools; Welding, Cutting and Brazing, Arc Welding and Cutting; Special Industries, Sawmills

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Final rule.

SUMMARY: OSHA is issuing this final rule to delete from OSHA standards three references to national consensus standards and two references to industry standards that are outdated. Deleting these references will not reduce employee protections. By eliminating the outdated references, however, OSHA will clarify employer obligations under the applicable OSHA standards and reduce administrative burdens on employers and OSHA. These revisions are part of OSHA's overall effort to update OSHA standards that reference, or that include language taken directly from, outdated consensus standards.

DATES: This final rule will become effective on November 14, 2005.

ADDRESSES: In accordance with 28 U.S.C. 2112(a), the Agency designates the Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor of Labor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, to receive petitions for review of the final rule.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries contact Mr. Kevin Ropp, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For technical inquiries contact Mr. Lee Smith, Director, Office of Safety Systems, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2255 or fax (202) 693–1663. 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: References to comments in the rulemaking record are found throughout the text of the preamble. Comments are identified by an assigned exhibit number as follows: "Ex. 4–3" means Exhibit 4–3 in Docket S–023A. A list of the exhibits and copies of the exhibits are available in the OSHA Docket Office under Docket S–023A and at OSHA's homepage.

Background

On November 24, 2004, OSHA published a notice in the **Federal Register** announcing its overall project to update OSHA standards that are based on national consensus standards (69 FR 68283). The notice explained the reasons for the project and the regulatory approaches OSHA plans to use to implement the project, including notice and comment rulemaking, direct final rulemaking, and technical amendments. To review the eleven comments received on this notice, most of which were supportive, see Docket S–023 at *http://dockets.osha.gov*. OSHA appreciates these comments and will welcome additional comments as it proceeds with the overall update project.

On the same day, OSHA also published in the **Federal Register** a direct final rule (69 FR 68712) and a companion proposed rule (69 FR 68706) to delete three references to national consensus standards and two references to industry standards that are outdated. OSHA announced that the direct final rule would become effective on February 22, 2005, unless the Agency received a significant adverse comment before the comment period closed.

OSHA received five comments on the direct final rule and companion proposed rule. OSHA considers one of the comments to be significantly adverse. On February 18, 2005, OSHA published a notice withdrawing the direct final rule (70 FR 8291). OSHA is treating the five comments as comments to the proposed rule, and considered all of the comments in publishing this final rule.

Discussion of Changes

OSHA explained in detail its decision to revoke each of the references at issue in the direct final and companion proposed rules published in the **Federal Register** on November 24, 2004 (69 FR 68706, 68712), and OSHA incorporates those discussions in this final rule. The five references are to consensus or industry standards issued over 35 years ago, and in one case over 60 years ago. Some are no longer available to the public through the issuing Standards Development Organization (SDO). Three of the references have been withdrawn by their issuing SDOs and not replaced. In proposing the revocations, OSHA found that the changes would enhance employee safety by eliminating confusion and clarifying employer obligations. OSHA also determined that the revocations would not result in additional costs to employers, and may even produce cost savings.

The Agency carefully considered all comments received. After review of the comments, OSHA continues to find that revoking the five references is appropriate.

29 CFR 1910.106(b)(1)(iii)(a)(2): OSHA is revoking from its standard for flammable and combustible liquids American Petroleum Institute Standard No. 12A, Specification for Oil Storage Tanks with Riveted Shells, Seventh Edition, September 1951 (API 12A). OSHA included API 12A in the standard to provide employers with one

means of complying with the standard's general requirement for atmospheric tanks to be "built in accordance with acceptable good standards of design." 29 CFR 1910.106(b)(1)(iii)(a).

OSHA is revoking the reference for a number of reasons. API 12A is over 50 years old and does not consider recent developments in the construction of atmospheric tanks. The issuing SDO withdrew API 12A in 1974, has not replaced it, has not incorporated its provisions into another consensus standard, and no longer makes the standard available to the public. Under these circumstances, OSHA does not believe it is appropriate to reference the standard as a compliance option. Because OSHA did not require the use of API 12A in the standard, the revocation does not change an employer's responsibility for constructing properly designed atmospheric tanks under 29 CFR 1910.106(b)(1)(iii)(a).

29 CFR 1910.142(c)(4): OSHA is revoking from its temporary labor camps standard a requirement that drinking fountains be constructed in accordance with the American National Standard Institute Standard Specifications for Drinking Fountains, ANSI Z4.2–1942. ANSI Z4.2–1942 contains ten specific recommendations concerning the construction of drinking fountains which are based on the technology and construction practices that existed in 1942. All of these recommendations use advisory "should" language. The issuing SDO withdrew the standard in 1972 and it has not been replaced.

OSHA has determined that the reference to ANSI Z4.2–1942 should be revoked for two reasons. First, because the specific recommendations in ANSI Z4.2–1942 use advisory language, they are unenforceable. *See* 49 FR 5318, February 10, 1984; *cf. Marshall* v. *Pittsburgh-Des Moines Steel Company*, 584 F.2d 638, 643–44 (3d Cir. 1978). Second, referencing recommendations issued over 60 years ago for the construction of drinking fountains does not enhance the safety and health of employees. The technology for constructing drinking fountains has changed significantly since the 1940's. Since 1942, a number of drinking fountain units have become available to employers that, while not strictly manufactured in accordance with ANSI Z4.2–1942, are constructed pursuant to good engineering practices and are safe to use at temporary labor camps. It does not serve employers or employees to reference construction specifications that do not consider this new technology.

29 CFR 1910.243(e)(1)(i): OSHA is revoking from its portable powered tools standard a provision that certain power lawnmowers designed for sale to the general public meet the American National Standard Safety Specifications for Power Lawnmowers, ANSI B71.1–X1968 (ANSI B71.1–1968). OSHA is replacing this provision with a reference to the general machine guarding requirements contained in 29 CFR 1910.212. OSHA is also removing the final two sentences of paragraph 1910.243(e)(1) that describe the types of mowers for which the specifications in ANSI B71.1–1968 do not apply. OSHA is making these changes to simplify and clarify the scope and coverage of 29 CFR 1910.243. Deleting the reference and replacing it with a reference to 29 CFR 1910.212 will both retain the existing degree of employee protection, and remove a continuing source of confusion as to the scope of the referenced standard.

ANSI B71.1–1968 provides safety specifications for certain power lawnmowers "designed for sale to the general public." Lawnmowers designed for commercial use must comply with the guarding requirements of 29 CFR 1910.212(a)(1) and (a)(3)(ii). *See* Memorandum from John Miles to Regional Administrators, "Misapplication of Power Lawnmower Standard 29 CFR 1910.243(e)," 1986. It is difficult for employers to determine which lawnmowers are designed for sale to the general public, and which are designed for commercial use, and the distinction is not particularly relevant to protecting employees from the hazards associated with operating power lawnmowers.

Furthermore, virtually all of the specific provisions contained in ANSI B71.1–1968 are included in the text of 29 CFR 1910.243(e). OSHA considered updating the 1968 ANSI reference to the 1998 version of ANSI B71.1, but determined that doing so would not clarify the standard because the scope of the 1998 version would raise additional issues for compliance that are not encountered under the existing OSHA standard.

29 CFR 1910.254(d)(1): OSHA is revoking from its arc welding and cutting standard a recommendation that employers be acquainted with the American Welding Society's Recommended Safe Practices for Gas-Shielded Arc Welding, A6.1–1966. OSHA is revoking the reference for several reasons. The hazard information included in AWS A6.1–1966 is extremely outdated, particularly compared to the information that employers are already required to provide to employees under OSHA's Hazard Communication Standard, 29 CFR 1910.1200. Second, virtually all of the recommendations contained in AWS A6.1–1966 are covered elsewhere in OSHA's welding standards. For example, paragraph 1910.254(d)(1) also requires employees performing arc welding to be "acquainted with" 1910.252(a), (b), and (c). These three paragraphs specifically address many of the safety-related practices discussed in AWS A6.1–1966. Third, other applicable OSHA standards protect employees performing gas-shielded arc welding from many of the underlying hazards discussed in AWS A6.1–1966. *See, e.g.*, 29 CFR part 1910, subpart Z (Toxic and Hazardous Substances).

29 CFR 1910.265(c)(31)(i): OSHA is revoking a provision from its standard on Sawmills which suggests that employers use "appropriate traffic control devices," as set forth in American National Standard D8.1–1967 for Railroad Highway Grade Crossing Protection (ANSI D8.1–1967). ANSI withdrew the standard in 1981 and did not replace it. OSHA is revoking this reference for two main reasons. First, referencing a withdrawn 37-year-old consensus standard that was intended to address railroad and highway grade crossings—not crossings specifically in sawmills—adds little value to employers and employees in the sawmill industry. Second, the reference uses advisory "should" language and is thus unenforceable. *See* 49 FR 5318, February 10, 1984; *cf. Marshall*, 584 F.2d at 643–644. Removing such provisions clarifies employer obligations and enhances OSHA enforcement capabilities. *See* 47 FR 23477, May 28, 1982; 49 FR 5321, February 10, 1984. Because OSHA is retaining the mandatory provision in paragraph 1910.265(c)(3)(i) that employers plainly post railroad tracks and other hazardous crossings, employees will continue to be alerted to potential hazards at these dangerous areas.

Comments Received

The majority of comments received expressed support for this rulemaking. For example, the National Automobile Dealer's Association (NADA) stated that "without question, OSHA should appropriately update or revoke references to or language from consensus standards that are outdated or no longer relevant." (Ex. 4–3). The International Brotherhood of Teamsters (IBT) stated that it supports OSHA's first rulemaking action associated with the update project, and that "revoking these references will not reduce employee

protections provided by each affected OSHA standard." (Ex. 4–2). Similarly, the National Lumber and Building Material Dealer's Association (NLBMDA) stated that it "supports OSHA's current efforts to update their regulations." (Ex. 4–4).

One commenter recommended that OSHA establish a policy to review and update consensus standards on a regular basis. (Ex. 4–2). As explained in this preamble, this rulemaking is the first step in the Agency's overall effort to deal with the problem of outdated national consensus and industry standards in OSHA's rules. OSHA will continue to explore available strategies and approaches to update its standards.

Two commenters representing small business employers, NADA and NLBMDA, expressed concern about the costs and burdens associated with obtaining updated versions of national consensus and industry standards from the issuing SDOs. (Exs. 4–3, 4–4). One recommended that OSHA make the standards readily available to the regulated community by publishing referenced consensus standards in full in the relevant docket and on the OSHA Web site. (Ex. 4–3).

The Agency recognizes the commenters' concerns regarding the availability and cost of consensus and industry standards. OSHA will continue to explore ways to inform employers and employees of their compliance obligations at little or no cost. OSHA notes that this final rule will not result in any cost to employers because it is deleting references to consensus and industry standards. In addition, all national consensus and industry standards which are incorporated by reference in the OSHA standards are available for public inspection at the OSHA Docket Office, OSHA's regional offices, and the U.S. National Archives and Records Administration.

The IBT encouraged OSHA to ensure that the national consensus and industry standards OSHA considers adopting in its regulations were developed in a fair and participatory manner. (Ex. 4–2). The Agency believes that the rulemaking process will address the IBT's concerns. When OSHA attempts a substantive update to its regulations, it will provide an opportunity for notice and comment. OSHA will only use direct final rulemaking or technical amendments for non-controversial updates, and will rely on notice and comment rulemaking for controversial or potentially controversial updates and those which involve substantive changes. Moreover, if a direct final rule results in significant adverse comment, OSHA will withdraw the direct final rule and proceed with notice and comment rulemaking. Consequently, stakeholders will always have an opportunity to share with OSHA concerns about the standards development process.

OSHA received one comment opposed to the Agency's underlying approach to this rulemaking. The U.S. Chamber of Commerce (Chamber) stated that "because the kind of changes announced by OSHA can affect the compliance options available to employers, they can represent substantive changes with potentially significant impact," and is therefore ordinarily inappropriate for direct final rulemaking. (Ex. 3–1). The Chamber also recommended that OSHA retain the current references at issue in this final rule as compliance options. (Ex. 3–1).

While OSHA appreciates the Chamber's concerns, in this instance OSHA believes that retaining these extremely outdated references as compliance options will only confuse employers and employees. As the NLBMDA said, "Updating or removing references to outdated national consensus standards is the correct course of action to make the regulations more understandable and consistent. The referencing of old or discontinued consensus standards creates confusion, misinterpretation, and ultimately leads to poor compliance." (Ex. 4–4).

The need to remove references to out of date consensus standards is particularly acute with regard to extremely outdated standards, such as API 12A, ANSI Z4.2–1942, and ANSI D8.1–1967. These standards are so outdated that they were withdrawn by their issuing SDOs 20 to 30 years ago and never replaced. Some of the consensus standards revoked in this rule are not even available through the issuing SDO. OSHA does not want to encourage the design or construction of equipment to comply with standards that do not reflect current technology and thus may not set an appropriate level of safety. In future phases of the update project, it may be appropriate to continue to reference older standards for certain maintenance and use specifications. However, OSHA maintains that it will rarely be appropriate to retain as compliance options standards issued 40 or 50 years ago to guide the design and construction of today's equipment.

Furthermore, OSHA does not agree with the Chamber that this action is not appropriate for direct final rulemaking. Several of the standards at issue in this rulemaking are unenforceable because they use advisory "should" language. Some of the standards have been withdrawn by the issuing SDO and not replaced, or are no longer available to the public through the issuing SDO. None of the standards reflect current technology. Deletion of these references neither restricts meaningful compliance options for employers nor reduces employee protections. In such situations, direct final rulemaking is an appropriate course of action for the Agency to pursue to update its standards.

The IBT made a suggestion regarding OSHA's removal of ANSI Z4.2–1942, the standard for drinking fountains, from OSHA's standard for temporary labor camps, 29 CFR 1910.142. (Ex. 4–2). IBT stated that in the absence of an OSHA, industry, or consensus standard that governs the construction of drinking fountains, and to avoid the use of hoses or alternative devices for drinking, it "might be helpful if OSHA would include" in the standard a definition of what constitutes a "drinking fountain."

OSHA appreciates the IBT's suggestion, but believes including a definition of what constitutes a drinking fountain is beyond the scope of this rulemaking. The Agency, however, may re-examine the need to provide definitions of this and other terms in future rulemakings. OSHA reiterates that revoking the reference to ANSI Z4.2–1942 will not adversely affect the safety and health of employees at temporary labor camps. As explained above, ANSI Z4.2–1942 uses advisory "should" language and thus contains no compliance obligations. *See* 49 FR 5318, February 10, 1984; *cf. Marshall*, 584 F.2d at 643–644. Further, referencing a 60-year-old ANSI standard for drinking fountains that reflects outdated engineering practices and technology does not enhance employee safety. Finally, OSHA notes that other provisions in its temporary labor camp standard, including 29 CFR 1910.142(c)(1), (c)(2), and (c)(3), as well as other OSHA standards, offer additional protection for workers in temporary labor camps.

IBT also stated that it supported OSHA's revocation of ANSI B71.1–1968, safety specifications for power lawnmowers, so long as OSHA thoroughly reviewed ANSI B71.1–1998 and determined that it does not contain provisions that would serve to improve the existing OSHA standard, 29 CFR 1910.243. OSHA assures IBT that it has conducted a thorough review of ANSI B71.1–1998, and, for reasons discussed above, determined that referencing it would not improve the existing OSHA standard. 69 FR 68706, 68712.

Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970, 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), 654(b). A safety or health standard is a standard "which 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) if, among other things, a significant risk of material harm exists in the workplace and the proposed standard would substantially reduce or eliminate that workplace risk.

This final rule will not reduce the employee protections put into place by the standards being revised. The intent of this final rule is to revoke references to consensus standards that are outdated, no longer represent the state of the art in workplace safety, and are confusing to employers and employees. It is therefore unnecessary to determine significant risk, or the extent to which the final rule would reduce that risk, as would typically be required by *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980).

Final Economic Analysis and Regulatory Flexibility Act Certification

This rule is not economically significant within the context of Executive Order 12866, or a "major rule" under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act. The rule 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 the Executive Order or relevant statutes.

The rule simply deletes or revises a number of provisions in OSHA standards that are outdated. The Agency concludes that the final rule would not impose any additional costs on these employers. Consequently, the rule requires no final economic analysis. Furthermore, because the rule imposes no costs on employers, OSHA certifies that it would not have a significant impact on a substantial number of small entities. Accordingly, the Agency need not prepare a final regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Paperwork Reduction Act

This rule does not impose or remove any information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–30.

Federalism

OSHA has reviewed this final rule in accordance with the Executive Order on Federalism (E.O. 13132, 64 FR 43255, August 10, 1999), which requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. E.O. 13132 provides for preemption of State law only if there is a clear congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the OSH Act, 29 U.S.C. 651 *et seq.*, expresses Congress' intent to preempt State laws where OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. 29 U.S.C. 667. Occupational safety and health standards developed by such States with State Plans must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, States with State Plans are free to develop and enforce their own requirements for safety and health standards under State law.

This final rule complies with E.O. 13132. As Congress has expressed a clear intent for OSHA standards to preempt State job safety and health rules in areas addressed by OSHA standards in States without OSHA-approved State Plans, this rule limits State policy options in the same manner as all OSHA standards. In States with OSHA-approved State Plans, this action does not significantly limit State policy options.

State Plans

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, the 26 States or U.S. Territories with their own OSHA-approved occupational safety and health plans must revise their standards to reflect the new standard or amendment, or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the new Federal standard or amendment. 29 CFR 1953.5(a). The State standard must be at least as effective as the final Federal rule, must be applicable to both the private and public (State and local government employees) sectors, and must be completed within six months of the publication date of the final Federal rule. When OSHA promulgates a new standard or standards amendment which does not impose additional or more stringent requirements than an existing standard, States are not required to revise their standards, although OSHA may encourage them to do so. The 26 States and territories with OSHA-approved State Plans are: Alaska, Arizona, California, Connecticut (plan covers only State and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey (plan covers only State and local government employees), New York (plan covers only State and local government employees), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands (plan covers only State and local government employees), Washington, and Wyoming.

Unfunded Mandates Reform Act

This final rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.* For the purposes of the UMRA, the Agency certifies that this final rule does not impose any Federal mandate that may result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector, of more than $100 million in any year.

List of Subjects in 29 CFR Part 1910

Consensus standards, Incorporation by reference, Occupational safety and health.

Authority and Signature

This document was prepared under the direction of Mr. Jonathan L. Snare, Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 5–2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC this 31st day of August, 2005.

Jonathan L. Snare,

Deputy Assistant Secretary of Labor.

Amendments to Standards

■ Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended as set forth below:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart A—General

■ 1. The authority citation for subpart A of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Numbers 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable.

Sections 1910.7 and 1910.8 also issued under 29 CFR part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Pub. L. 106–113 (113 Stat. 1501A–222); and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

§ 1910.6 [Amended]

■ 2. Section 1910.6 is amended by removing and reserving paragraphs (e)(31); (e)(35); (e)(48); (f)(1): and (i)(2).

Subpart H—Hazardous Materials

■ 3. The authority citation for subpart H of part 1910 is revised 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, 657); Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 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 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Sections 1910.103, 1910.106 through 1910.111, and 1910.119, 1910.120, and 1910.122 through 126 also issued under 29 CFR part 1911.

Section 1910.119 also issued under section 304, Clean Air Act Amendments of 1990 (Pub. L. 101–549), reprinted at 29 U.S.C. 655 Note.

Section 1910.120 also issued under section 126, Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 Note), and 5 U.S.C. 553.

■ 4. Paragraph (b)(1)(iii)(*a*)(*2*) of § 1910.106 is revised to read as follows:

§ 1910.106 Flammable and combustible liquids.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(*a*) * * *

(*2*) American Petroleum Institute Standards No. 650, Welded Steel Tanks for Oil Storage, Third Edition, 1966.

* * * * *

Subpart J—General Environmental Controls

■ 5. The authority citation for subpart J of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 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 5–2002 (67 FR 65008), as applicable.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

■ 6. Paragraph (c)(4) of § 1910.142 is revised to read as follows:

§ 1910.142 Temporary labor camps.

* * * * *

(c) * * *

(4) Where water under pressure is available, one or more drinking fountains shall be provided for each 100 occupants or fraction thereof. Common drinking cups are prohibited.

* * * * *

Subpart P—Hand and Portable Powered Tools and Other Hand-Held Equipment

■ 7. The authority citation for subpart P of part 1910 is revised 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, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736),–90 (55 FR 9033), or 5–2002 (67 FR 65008), as applicable; 29 CFR part 1911.

Section 1910.243 also issued under 29 CFR part 1910.

■ 8. Paragraph (e)(1)(i) of § 1910.243 is revised to read as follows:

§ 1910.243 Guarding of portable powered tools.

* * * * *

(e) * * *

(1) * * *

(i) Power lawnmowers of the walk-behind, riding-rotary, and reel power lawnmowers shall be guarded in accordance with the machine guarding requirements in 29 CFR 1910.212, General requirements for all machines.

* * * * *

Subpart Q—Welding, Cutting and Brazing

■ 9. The authority citation for subpart Q of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

■ 10. Paragraph (d)(1) of § 1910.254 is revised to read as follows:

§ 1910.254 Arc welding and cutting.

* * * * *

(d) * * *

(1) *General.* Workers assigned to operate or maintain arc welding equipment shall be acquainted with the requirements of this section and with 1910.252 (a), (b), and (c) of this part.

* * * * *

Subpart R—Special Industries

■ 11. The authority citation for subpart R of part 1910 is revised 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, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 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 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

■ 12. Paragraph (c)(31)(i) of § 1910.265 is revised to read as follows:

§ 1910.265 Sawmills.

* * * * *

(c) * * *

(31) * * *

(i) Hazardous crossings. Railroad tracks and other hazardous crossings shall be plainly posted.

* * * * *

[FR Doc. 05–17688 Filed 9–12–05; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[OAR–2003–0200; FRL–7966–2]

RIN 2060–AM98

Revisions to the California State Implementation Plan and Revision to the Definition of Volatile Organic Compounds (VOC)—Removal of VOC Exemptions for California's Aerosol Coating Products Reactivity-based Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing approval of a new consumer products regulation as part of the California State Implementation Plan (SIP) for ozone under the Clean Air Act (CAA) as amended in 1990. This California regulation adopts a new approach to reducing ozone formation from volatile organic compounds (VOC) in aerosol coating products. The EPA is also approving the use of California's Tables of Maximum Incremental Reactivity (MIR) to allow implementation of their rule. This action also revises EPA's definition of VOCs so that compounds which we previously identified as negligibly reactive and exempt from EPA's regulatory definition of VOCs now count towards a product's reactivity-based VOC limit for the purpose of California's aerosol coatings regulation. These revisions were previously proposed in the **Federal Register** on January 7, 2005 (70 FR 1640) and are expected to help in California's efforts to attain the National Ambient Air Quality Standards (NAAQS) for ozone.

DATES: This final rule is effective on October 13, 2005.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR–2003–0200. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Revisions to the California State Implementation Plan Docket, Docket ID No. OAR–2003–0200, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, Rulemaking Office, (AIR–4), Environmental Protection Agency, Region IX, 75 Hawthorne St., San Francisco, CA 94105; telephone number: (415) 947–4122; fax number: (415) 947–3579; e-mail address: *tong.stanley@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action applies to persons that sell, supply, offer for sale, apply, or manufacture for use in California, any aerosol coating, aerosol clear coating and aerosol stain product subject to the limits in California's Aerosol Coating Products regulation. The regulation prohibits the commercial application of non-complying aerosol coating products.

B. Throughout This Document, "We," "Us" and "Our" Refer to EPA

C. Submitted Regulations

On January 7, 2005 (70 FR 1640), EPA proposed to approve the following regulations into the California SIP.

TABLE 1.—SUBMITTED REGULATIONS

Regulation title	Adopted	Submitted
Aerosol Coating Products	5/1/2001	3/13/2002
Tables of Maximum Incremental Reactivities (MIR) Values	5/1/2001	3/13/2002

We proposed to approve these regulations because we determined that they complied with the relevant CAA requirements. We also proposed to change our definition of VOCs so that compounds which we previously identified as negligibly reactive and exempt from EPA's regulatory definition of VOCs will now count towards a product's reactivity-based VOC limit for the purpose of California's aerosol coatings regulation. The January 7, 2005 proposed action contains more information on the California Air Resources Board's (CARB's) regulations and our evaluation.

D. Outline

The information in this preamble is organized as follows:

I. Background Information

A. What Is Photochemical Reactivity?

There are thousands of individual species of VOC chemicals that can combine with nitrogen oxides (NO_X) and the energy from sunlight to form ozone. The impact of a given VOC on formation of ground-level ozone is sometimes referred to as its "reactivity." It is generally understood that not all VOCs are equal in their effects on ground-level ozone formation. Some VOCs react extremely slowly and changes in their emissions have limited effects on ozone pollution episodes. Some VOCs form ozone more quickly, or they may form more ozone than other VOCs. Others not only form ozone themselves, but also enhance ozone formation from other VOCs. By distinguishing between more reactive and less reactive VOCs, however, it should be possible to decrease ozone concentrations further or more efficiently than by controlling all VOCs equally.

Assigning a value to the reactivity of a compound is a complex undertaking. Reactivity is not simply a property of the compound itself; it is a property of both the compound and the environment in which the compound is found. The reactivity of a single compound varies with VOC–NO_X ratios, meteorological conditions, the mix of other VOCs in the atmosphere, and the time interval of interest. Designing an effective regulation that takes account of these interactions is difficult, and implementing and enforcing such a regulation carries the extra burden of characterizing and tracking the full chemical composition of VOC emissions. The January 7, 2005 proposal (70 FR 1640) contains additional background information on photochemical reactivity. Recently, EPA has issued guidance to States regarding the use of VOC reactivity information in the development of ozone control measures. This guidance is published elsewhere in today's **Federal Register.**

B. What Does CARB's Regulation Do?

The CARB has been exploring the use of reactivity-based regulations since the early 1990s as a means of achieving further ozone reductions. For example, in 1991, the CARB incorporated a reactivity scale for weighting vehicle emissions of individual VOC species in their low emitting vehicle and clean fuels regulation. In 2001, the CARB adopted an aerosol coatings regulation [1] that set reactivity-based VOC limits for six general coating categories and 29 speciality coating categories. The reactivity-based limits for the general coatings took effect on June 1, 2002 and the limits for the speciality coatings took effect on January 1, 2003. The CARB had previously controlled VOC emissions from aerosol coatings in California by limiting the mass of VOCs in the product, with limits expressed as maximum allowable percent of mass of VOC. The CARB's new approach incorporates the concept of VOC photochemical reactivity. This concept relies on the fact that the same weight/amount of some VOCs (*e.g.*, xylene) has the potential to form more ozone, or to form ozone more quickly, than the same weight/amount of other VOCs (*e.g.*, propane) once they are emitted into the ambient air under the same conditions. The EPA's action to approve CARB's regulation into the SIP enables CARB to include the ozone reductions achieved by their aerosol coatings regulation into their State SIP plan.

The CARB's aerosol coatings regulation applies to aerosol coatings, aerosol clear coatings and aerosol stains. It applies to any person who sells, supplies, offers for sale, applies or manufactures for use in California any aerosol coating subject to the limits in the regulation. The regulation prohibits the commercial application of non-complying aerosol coating products.

All aerosol coating products covered by the CARB's regulation were required to meet the new reactivity-based limits by January 1, 2003. The regulation contains a sell-through provision whereby products manufactured prior to the effective date of the regulation could be sold, supplied, offered for sale, or applied up to 3 years after that date.

The CARB believes that some VOC mass-based limits in the previous version of their rule presented particularly difficult reformulation challenges for manufacturers of water-based coatings, and the State concluded that it may not be feasible to achieve additional VOC reductions from a traditional VOC mass-based program. The CARB hopes to target VOC emissions reductions to better control a product's contribution to ozone formation by encouraging reductions of higher reactivity VOCs, rather than by treating all VOCs in a product alike through a mass-based rule. The submitted regulation, therefore, consists of reactivity-based limits that replace the existing mass-based VOC limits for aerosol spray coatings.

To discriminate among VOCs, the CARB has used a version of the MIR scale (W. P. L. Carter, "Development of Ozone Reactivity Scales for Volatile Organic Compounds," Journal of the Air and Waste Management Association, 44, p.881–899, July 1994.) The MIR scale is designed using certain assumptions about meteorological and environmental conditions where ozone production is most sensitive to changes in hydrocarbon emissions and, therefore, is intended to represent conditions where VOC emission controls will be most effective. The MIR scale is expressed as grams of ozone formed per gram of organic compound reacted. Each compound is assigned an individual MIR value, which enables the reactivities of different compounds to be compared quantitatively. Individual MIR values now exist for many commonly used compounds, and a list of these individual values comprises a scale. Today's action approves into the SIP, the CARB's reactivity-weighted emission limits and the associated MIR scale.

The EPA believes that reactivity-based approaches such as the one developed by the CARB can be more efficient and effective than traditional approaches that do not distinguish among VOCs based on reactivity. In particular, reactivity-based approaches may be useful in areas where significant VOC emission controls are already in place and further mass-based emissions reductions may be difficult or very expensive to achieve. In such situations, regulations that distinguish between individual VOCs and create an incentive to shift production and use from more reactive VOCs to less reactive VOCs may provide the flexibility necessary to continue progress towards attainment of the ozone NAAQS.

To support the CARB's aerosol coating reactivity-based program, EPA is modifying our regulatory definition of VOC under 40 CFR 51.100(s) so that compounds previously excluded from the definition of VOC will now be counted towards a product's reactivity-based VOC limit for the limited purpose of the CARB's regulation.

[1] *http:www.arb.ca.gov/colsprod/reg/apt.pdf* or Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 8.5, Article 3.

II. Response to Major Comments

In our proposal to approve the CARB's aerosol coatings reactivity-based regulation and associated MIR tables into the SIP, and to change our definition of VOC, EPA indicated that interested parties could request that EPA hold a public hearing on the proposed action. The EPA received no requests for a public hearing.

The EPA also provided for a 60-day public comment period in the proposal. We received six comment letters. One letter was submitted from a regulatory agency and five letters were submitted from industry and trade associations. The major comments fell into 3 categories: (1) Comments supporting the proposed approval, (2) Response to questions posed by EPA in the proposal, and (3) Comments asking EPA to update and expand its reactivity policy. All comment letters are contained in the docket (OAR–2003–0200) for this action. In today's final action, we have summarized the significant comments and provided the Agency's responses.

A. Comments Supporting the Proposed Approval

Comment: All six comment letters supported the approval of the CARB's reactivity-based regulation into the SIP.

One commenter (84–1–2) stated that reactivity-based regulations for consumer products, where technologically feasible, were a more effective form of regulation. Another commenter (87–2–4) stated the approval provided the aerosol coatings industry with a relatively stable and reliable regulatory arena at least in the State of California and further indicated (87–2–5) that the CARB had already taken steps to make sure the reactivity-based regulatory program remained enforceable and scientifically accurate by updating the MIR tables in December 2003.

Response: This final rulemaking approves the CARB's aerosol coatings reactivity-based regulation into the SIP.

B. Response to Questions Posed by EPA in the Proposal

The EPA requested comments on the following areas in the proposed rule: how reactivity-based programs might affect industry compliance (*e.g.*, compliance testing) and recordkeeping costs; and how industry and regulatory agency costs and staff requirements might change with respect to detailed emission inventories, manufacturing or material costs, product quality and price.

Comment: Two commenters (82–2–1) and (85–3–4) stated the MIR concept

allows formulators greater flexibility and cost effectiveness in meeting regulatory requirements, and that the simplicity of determining MIR values for hydrocarbon solvents creates the incentive for the substitution and use of solvents with relatively low contribution to ozone formation in aerosol coating applications.

One commenter (85–2–5) stated that reactivity-based regulations in general do not present significant or insurmountable problems regarding enforceability. This commenter stated that while calculating a product weighted average MIR is arithmetically slightly more complex than simply adding up the percent of each ingredient classified as a VOC, this slight increase in complexity does not deter enforceability determinations, which were primarily based on the product formulations.

The commenter (85–3–3) further stated that there was nothing inherent in reactivity-based regulations that should unreasonably increase industry costs and that in both mass-based and reactivity-based cases, industry needed to keep records and the most significant costs were in the research and development process to develop and assess new product formulation technologies.

Another commenter (87–3–1) stated that quantifying compliance and recordkeeping costs relative to the implementation of a regulation was a difficult task for large, medium and small members of the industry and there were significant obstacles to gathering this type of information. Consequently, they stated they were unable to respond with any accurate data at this time without further clarification on the exact level of data needs.

Response: From the industry and trade associations responses, EPA concludes that in general, industry compliance and recordkeeping costs are not expected to be significantly different between mass-based and reactivity-based regulations and that generally, expenditures for formulation and research and development efforts exceed expenditures for compliance determination.

The EPA's concern in posing this question was whether reactivity-based programs resulted in a significant increase in compliance determination costs. This does not appear to be the case for industry, however, we are unsure of the potential impact on regulatory agencies since we did not receive any replies from regulatory agencies on this question. We believe that because reactivity-based programs rely on identifying and quantifying all the individual VOC ingredients in a coating to determine compliance, it appears reasonable to conclude that they can be more complex and costly than the traditional "bake and weigh" method employed in EPA Method 24 to determine compliance with a mass-based VOC limit. We recognize that some regulatory agencies such as the CARB have extensive laboratory capabilities and capable staff to conduct the required analysis using gas chromatography, however other States and local regulatory agencies may not have these capabilities and may need to investigate acquiring these resources and skills before developing their own reactivity-based regulations to ensure their programs are enforceable and have the opportunity to succeed.

C. Comments Asking EPA To Update and Expand Its Reactivity Policy

Comment: One commenter (83–3–2) believed EPA should encourage other States to evaluate opportunities to incorporate reactivity-based approaches into their VOC emissions and ozone control regulatory programs, and should not limit the use of photochemical reactivity to situations where further mass-based limits are difficult to achieve. The commenter further urged EPA to state clearly that the technical support provided by California would not necessarily represent what would be required in each case to support a reactivity-based approach.

Another commenter (85–2–4) stated that scientific studies provide a clear picture that both VOC mass and reactivity should be considered in ozone control strategies. This commenter also indicated that while reactivity reductions may not be appropriate for many consumer products or some other sources of VOC emissions, for some sources, reactivity reductions will represent the most cost-effective way to reduce ozone formation. The commenter (85–3–5) further stated that EPA should update and broaden its policies regarding reactivity and ozone attainment and (85–4–1) urged EPA to initiate a scientific-based policy review of its ozone attainment strategies to assure that the latest scientific studies are incorporated to encourage the most effective, and cost-effective control strategies.

Another commenter (87–3–2) stated that it was important that the Federal agency charged with stewardship over environmental issues be receptive to reactivity-based regulations. They further stated that many of the consumer products that could be addressed in this rulemaking have been regulated several times already and that further efforts to lower the mass-based VOC limits could be impossible without seriously altering the performance characteristics of the product or eliminating it from the marketplace altogether.

Response: Recently, EPA has issued interim guidance to States, which is published elsewhere in today's **Federal Register** encouraging them to consider recent scientific information on VOC reactivity in the development of ozone control measures. This interim guidance summarizes recent scientific findings, provides examples of innovative applications of reactivity information in the development of VOC control measures, and clarifies the relationship between innovative reactivity-based policies and EPA's current definition of VOC at 40 CFR 51.100(s). The EPA will continue to work with the CARB and other interested parties through the Reactivity Research Working Group (RRWG) (*http://www.cgenv.com/Narsto/reactinfo.html*) to improve the scientific foundation of VOC reactivity-based regulations. The EPA will update its guidance to States as new information becomes available.

III. Final Action

By this final rulemaking, EPA is approving: the CARB's aerosol coatings reactivity-based regulation and associated MIR tables into the SIP; the use of the CARB Method 310 to determine compliance with the CARB's reactivity-based regulation, granting SIP credit for the equivalent mass-based reductions achieved by the CARB's regulation, and modifying our regulatory definition of VOC at 40 CFR 51.100(s) to support the CARB's regulation.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

For the change in definition of VOCs, EPA has determined that this final rulemaking is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to the OMB review. For the approval of the CARB's rule into the SIP, the OMB has exempted this regulatory action from Executive Order 12866 review.

B. Paperwork Reduction Act

For the change in the definition of VOCs, this action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The change in the definition of VOCs only reinstates, for the purposes of determining compliance with California's aerosol coatings rule, compounds which were previously exempted from the definition of VOC. The change in the definition of VOCs does not impose any information collection requirements.

For the approval of the CARB's regulation into the SIP, this final rulemaking does not contain any information collection requirements that would require any person to provide information to EPA, however the CARB's regulation contain requirements for the aerosol coating industry to provide information to the CARB.

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 number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final action will not impose any requirements on small entities.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply act on requirements that the State is already imposing.

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 the private sector, of $100 million or more in any 1 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 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.

For the change in the definition of VOCs, today's rulemaking contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or Tribal governments or the private sector.

For the approval of the CARB's regulation into the SIP, EPA has determined that the approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments in accordance with section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rulemaking does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's final rulemaking does not impose any new mandates on State or local governments. The change to the definition of VOCs merely assists the CARB in implementing its aerosol coatings reactivity regulation. The approval of this regulation into the SIP acts on a State regulation implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have Tribal implications, as specified in Executive Order 13175. The change to the definition of VOCs merely assists the CARB in implementing its aerosol coatings reactivity regulation and does not impose any direct compliance costs. The approval of the CARB's regulation into the SIP acts on a State regulation and does not alter the relationship between the Federal government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this final action is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, we have reason to believe that ozone has a disproportionate effect on active children who play outdoors. (See 62 FR 38856 and 38859; July 18, 1997). However, we do not expect today's approval of the CARB's regulation into the SIP to result in an adverse impact, as it is intended to at least achieve the same ozone reductions as the mass-based limits they supplant. Also, we do not expect today's change to the definition of VOC to result in any adverse impact, because it increases the number of compounds subject to regulation as VOCs for the purpose of California's aerosol coatings reactivity-based regulation.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

For the change in definition of VOCs, this final rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards. For the approval of the CARB's regulation into the SIP, the State regulation references standard test methods and makes modifications to methods adopted by the American Society for Testing and Materials (ASTM) D3074–94, D3063–94, and D2879–97 to support the regulatory objectives. These ASTM methods can be obtained through the ASTM Web site at: *http://www.astm.org.*

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective 30 days after publication in the **Federal Register**.

K. Petitions for Judicial Review

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 November 14, 2005. 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

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compound.

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 2, 2005.

Stephen L. Johnson,

Administrator.

■ Parts 51 and 52, Chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for Part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Section 51.100 is amended by adding paragraph (s)(6) to read as follows:

§ 51.100 Definitions.

* * * * *

(s) * * *

(6) For the purposes of determining compliance with California's aerosol coatings reactivity-based regulation, (as described in the California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 3), any organic compound in the volatile portion of an aerosol coating is counted towards that product's reactivity-based limit. Therefore, the compounds identified in paragraph (s) of this section as negligibly reactive and excluded from EPA's definition of VOCs are to be counted towards a product's reactivity limit for the purposes of determining compliance with California's aerosol coatings reactivity-based regulation.

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PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(338) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(338) New and amended regulations for the following agency were submitted on March 13, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board.

(*1*) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Consumer Products, Article 3, Aerosol Coating Products, Sections 94520 to 94528, and Subchapter 8.6, Maximum Incremental Reactivity, Article 1, Tables of Maximum Incremental Reactivity (MIR) Values, Sections 94700 to 94701, both adopted on May 1, 2001.

* * * * *

[FR Doc. 05–18016 Filed 9–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–319–0488c; FRL–7966–5]

Interim Final Determination To Stay and/or Defer Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern San Joaquin Valley Unified Air Pollution Control District Rule 4623—Storage of Organic Liquids.

DATES: This interim final determination is effective on September 13, 2005. However, comments will be accepted until October 13, 2005.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted rule revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted rule revisions by appointment at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On January 22, 2004 (69 **Federal Register** (FR) 3012), we published a limited approval and limited disapproval of SJVUAPCD Rule 4623 as adopted locally on December 20, 2001 and submitted by the State on March 15, 2002. We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after February 23, 2004 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On May 19, 2005, SJVUAPCD adopted revisions to Rule 4623 that were intended to correct the deficiencies identified in our limited disapproval action. On July 15, 2005, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our January 22, 2004 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our January 22, 2004 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised SJVUAPCD Rule 4623, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with SJVUAPCD Rule 4623 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's

limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

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.

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action 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.*).

This rule 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 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 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 rule 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.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 13, 2005. 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 rule 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 November 14, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 19, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 05–18020 Filed 9–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–319–0488a; FRL–7966–4]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from facilities storing and processing organic liquids such as crude oil and petroleum by-products. We are approving SJVUAPCD Rule 4623, a rule regulating these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on November 14, 2005 without further notice, unless EPA receives adverse comments by October 13, 2005. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and,

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal.

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4623	Storage of Organic Liquids	05/19/05	07/15/05

On August 18, 2005, EPA found this rule submittal met the completeness criteria in 40 CFR Part 51 Appendix V. These criteria must be met before formal EPA review may begin.

B. Are There Other Versions of This Rule?

On January 22, 2004, EPA gave a limited approval and limited disapproval and incorporated into the SIP a prior version of Rule 4623 (see 69 **Federal Register** (FR) 3012.) This version of Rule 4623 was adopted by the SJVUAPCD Governing Board on December 20, 2001. CARB has made no intervening submittals of Rule 4623 to EPA.

C. What Is the Purpose of the Submitted Rule Revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. SJVUAPCD Rule 4623—Storage of Organic Liquids is designed to reduce VOC emissions at industrial sites engaged in storing any organic liquids with a vapor pressure greater than 0.5 pounds per square inch atmospheric. VOCs are emitted from containment vessels such as tanks and transfer lines due to the vapor pressure of the processed crude oil and organic liquids. Tanks and systems of tanks must have a vapor recovery system that recovers at least 95% of VOC vapors by weight or combusts excess vapors. Also, Rule 4623 sets specific requirements for vapor loss control devices, closure devices, external floating roofs, internal floating roofs, tank degassing and cleaning, and tank inspections. Our Technical Support Document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 4623 must fulfill RACT.

We used the following guidance and policy documents to evaluate consistently specific enforceability and RACT requirements:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987;

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook);

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook);

4. "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks," EPA–450/2–78–047, USEPA, December 1978; and

5. "Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks, " EPA–450/2–77–036, USEPA, December 1977.

B. Does the Rule Meet the Evaluation Criteria?

We believe SJVUAPCD Rule 4623 is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. In our January 22, 2004 action, EPA identified two deficiencies as providing the basis for our limited disapproval of the Rule 4623. The first deficiency identified two problems within Section 5.6.1. The second deficiency concerned Section 7.1 having a missing compliance date and conflicting dates in its last sentence. SJVUAPCD has remedied these deficiencies. Section 5.6.1 has been amended to clarify the requirements for vapor recovery systems and where test methods in Section 6.4.6 apply. The deficiency within Section 7.1 is remedied by removal of the section and its expired compliance dates. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule

The TSD describes an additional rule revision that does not affect EPA's current action but is recommended for

the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving SJVUAPCD Rule 4623 because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by October 13, 2005, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 14, 2005. This approval action will incorporate this rule into the federally enforceable SIP. Also, our final approval of Rule 4623 will remove any federal sanctions associated with our January 22, 2004 limited disapproval action.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 19, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(337) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(337) New and amended regulations for the following APCDs were submitted on July 15, 2005, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4623, adopted on April 11, 1991 and amended on May 19, 2005.

* * * * *

[FR Doc. 05–18019 Filed 9–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2005–IA–0005; FRL–7967–5]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the state of Iowa for the purpose of establishing guidelines to identify stationary sources of air pollution potentially subject to Best Available Retrofit Technology (BART) emission control requirements. Owners and operators of stationary sources meeting the eligibility criteria will be required to submit source identification and emission unit description information to the state by September 1, 2005.

BART-eligibility information is to be submitted on Iowa Department of Natural Resources (IDNR) form 542–8125 that lists facility information and emission unit identification and description. Annual emission totals in tons-per-year (potential) for PM_{10}, NO_X, SO_2 and VOCs are also required.

DATES: This direct final rule will be effective November 14, 2005, without further notice, unless EPA receives adverse comment by October 13, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07–OAR–2005–IA–0005, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/*. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search"; then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *Hamilton.heather@epa.gov*.

4. Mail: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. Hand Delivery or Courier: Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to RME ID No. R07–OAR–2005–IA–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME website and the Federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. 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 RME 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 a.m. to 4:30 p.m., 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: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be

addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

EPA is approving a SIP revision submitted by the state of Iowa for the purpose of adding requirements for stationary sources of air pollution to submit information to determine Best Available Retrofit Technology (BART) eligibility. Federal BART guidelines provide criteria for determining which sources are eligible for BART controls and include a mechanism by which individual sources may be exempted from BART on a case-by-case basis. Under the state rule owners and operators of stationary sources of air pollution which have the potential to emit 250 tons or more of any visibility-impairing air pollutant from emissions units that were placed in service between August 7, 1962, and August 7, 1977, and whose operations fall within one or more of the 26 "stationary source categories" listed in the state rules are required to complete and submit a BART Eligibility Certification Form #542–8125. This form lists facility information and emission unit identification and description. Annual emission totals in tons-per-year (potential) for PM_{10}, NO_X, SO_2 and VOCs which are considered visibility-impairing air pollutants are required.

Although the state rule does not clearly address sources which were in operation prior to August 1962 but were reconstructed between 1962 and 1977, IDNR has stated that the rule requires any source which underwent "start up" between those years to file a BART-eligibility form. IDNR defines start up as beginning or resuming operation of a source for any purpose, including resuming operation after reconstruction. In addition, IDNR independently requires all of its major sources (as identified in its Title V rules, including sources having a potential to emit at least 100 tons per year or more of a visibility-impairing pollutant) to submit forms to determine BART eligibility. Therefore, EPA believes that this rule, in conjunction with other state rules, should enable Iowa to identify all BART-eligible sources. By its approval of this rule, EPA is not making a determination that Iowa has identified all sources which might be BART-eligible under Federal requirements. EPA will make this determination in conjunction with its action on Iowa's regional haze plan when that plan is submitted in the future.

The completed form is due to the Department of Natural Resources, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, by September 1, 2005.

Information from Form #542–8125 will be reviewed by the state of Iowa and the owners and operators will be notified of BART-eligibility status. Facilities that are BART-eligible may be required to submit further engineering analyses as the state deems necessary.

The addition of special requirements for visibility protection will be located in Chapter 22, 567–22.9 of the Iowa Administrative Code.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

EPA is approving a SIP revision submitted by the state of Iowa for the purpose of adding requirements for stationary sources of air pollution to submit information to determine Best Available Retrofit Technology (BART) eligibility. This revision was adopted by the Environmental Protection Commission on February 21, 2005, and it became state effective on April 20, 2005.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of

Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 30, 2005.

William Rice,

Acting Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

■ 2. In § 52.820(c) the table for Chapter 22 is amended by adding a new entry in numerical order for 567–22.9 to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources, Environmental Protection Commission [567]				
Chapter 22—Controlling Pollution				
567–22.9	Special Requirements for Visibility Protection ..	04/20/05	09/13/05 [insert FR page number where document begins]	

* * * * *

[FR Doc. 05–18012 Filed 9–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY69–280, FRL–7968–1]

Approval and Promulgation of Implementation Plans; New York; Revised Motor Vehicle Emissions Budgets for 1990 and 2007 using MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the New York State Implementation Plan (SIP) for the attainment and maintenance of the 1-hour national ambient air quality standard (NAAQS) for ozone. Specifically, EPA is approving New York's revised 1990 and 2007 motor vehicle emission budgets recalculated using MOBILE6 and modified date for submittal of the State's mid-course review. The intended effect of this action is to approve a SIP revision that will help the State continue to plan for attainment of the 1-hour NAAQS for ozone in its portion of the New York-Northern New Jersey-Long Island nonattainment area (New York Metropolitan NAA).

EFFECTIVE DATE: This rule will be effective October 13, 2005.

ADDRESSES: Copies of the state submittals are available at the following

addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

New York State Department of Environmental Conservation, Office of Air and Waste Management, 14th Floor, 625 Broadway, Albany, New York 12233–1010.

FOR FURTHER INFORMATION CONTACT: David Risley, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3741.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

On October 28, 2003 EPA published a notice of proposed rulemaking (68 FR 61379) regarding a SIP revision submitted by the State of New York for the attainment and maintenance of the 1-hour NAAQS for ozone. That notice proposed to approve: Revised 1990 and 2007 motor vehicle emission budgets recalculated using MOBILE6; and a modified date for submittal of the State's mid-course review. The intended effect was to propose to approve a SIP revision that will help the State continue to plan for attainment of the 1-hour NAAQS for ozone in its portion of the New York Metropolitan NAA.

The proposed SIP revision was initially submitted to EPA on January 29, 2003 and later supplemented by a June 2, 2003 submission. A detailed description of New York's submittal and EPA's rationale for the proposed action were presented in the October 28, 2003 notice of proposed rulemaking and will not be restated here.

II. Comments

EPA received only one set of comments on the proposed approval, from the New York State Department of Environmental Conservation, in a letter dated January 18, 2005. The comments contained revised 2007 motor vehicle emissions budgets resulting from updated planning assumptions including changes to vehicle registration data and diesel fraction data. The data revisions decrease estimated volatile organic compound (VOC) emissions by 2.7 tons per year in 2007, a decrease of nearly 2 percent of the total on-road VOC emission inventory. Additionally, the data revisions increase estimated oxides of nitrogen (NO_X) emissions by 3.4 tons per year in 2007, an increase of nearly 1.4 percent of the total on-road NO_X emission inventory. These revisions to the 2007 VOC and NO_X motor vehicle emissions budgets are relatively small and do not change the results of the State's conclusion that the budgets as revised using MOBILE6 continue to be consistent with the State's 1-hour ozone attainment demonstration. The method used to demonstrate this consistency is described further below, and in more detail in the October 28, 2003 notice of proposed rulemaking.

III. What Are the Details of EPA's Specific Actions?

A Motor Vehicle Emissions Budgets Revised With MOBILE6

New York's revised budgets contained in the January 29, 2003 submittal and subsequently updated by New York's June 29, 2003 addendum and the State's January 28, 2005 comment letter, are summarized in Table 1 below. EPA has found that New York's revised MOBILE6 budgets are consistent with its 1-hour ozone Attainment Demonstration. EPA has articulated its policy regarding the use of MOBILE6 for SIP development in its "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity" [1] and "Clarification of Policy Guidance for MOBILE6 in Mid-course Review Areas." [2] New York included in the January 29, 2003 submittal a relative reduction comparison to show that its 1-Hour Ozone Attainment Demonstration SIP continues to demonstrate attainment using revised MOBILE6 budgets for the New York Metropolitan NAA. This relative reduction comparison was subsequently updated in New York's June 29, 2003 addendum and again in its comments of January 18, 2005, see Table 2. New York's attainment demonstration used photochemical grid modeling supplemented with a weight of evidence analysis. Consistent with EPA policy, as detailed in the aforementioned guidance documents, the State's methodology for the relative reduction comparison consisted of comparing the new MOBILE6 budgets with the previously approved, (67 FR 5170, February 4, 2002) MOBILE5 budgets for the New York Metropolitan NAA to determine if attainment will still be predicted by the 2007 attainment year. Specifically, the State calculated the percent reduction from the 1990 base year to the 2007 attainment year for NO_X and VOC MOBILE5-based budgets. These percent reductions were then compared to the percent reductions between the revised MOBILE6-based 1990 base year and 2007 attainment year budgets.

TABLE 1.—NEW YORK METROPOLITAN NAA MOTOR VEHICLE EMISSIONS BUDGETS, REVISED WITH MOBILE6

	NO_X	VOC
1990	512	596
2007	233.4	179.3

TABLE 2.—RELATIVE REDUCTION COMPARISON BETWEEN MOBILE5-BASED BUDGETS AND MOBILE6-BASED BUDGETS FROM BASE YEAR TO ATTAINMENT YEAR

	NO_X (percent)	VOC (percent)
MOBILE5	44.8	66.7
MOBILE6	54.4	69.9

As shown in Table 2, New York's relative reduction comparison shows that for the New York Metropolitan NAA the percent reductions in VOC and NO_X budgets obtained through the use of MOBILE6 are greater than the percent reductions calculated with MOBILE5-based budgets. As such, New York's MOBILE6 SIP revision satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-Hour Ozone NAAQS by the attainment date of 2007 for the New York Metropolitan NAA, *i.e.* the SIP continues to demonstrate its purpose.

B. Are New York's Motor Vehicle Emissions Budgets Approvable?

EPA's October 28, 2003 notice of proposed rulemaking (68 FR 61379) determined that New York's revised

[1] Memorandum, "Policy Guidance on the Use of MOBILE6 for SIP development and Transportation Conformity," issued January 18, 2002. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

[2] Memorandum, "Clarification of Policy Guidance for MOBILE6 SIPs in Mid-course Review Areas," issued February 12, 2003. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

motor vehicle emission budgets, developed using appropriate methodology and supporting the SIP in demonstrating its purpose, were approvable. EPA posted the notice on EPA's conformity Web site on July 1, 2003 beginning the required 30-day comment period. EPA received no comments. Table 1 summarizes New York's revised budgets contained in the January 29, 2003 submittal and subsequently updated by New York's June 29, 2003 addendum and the State's January 28, 2005 comment letter. EPA is taking action to find these budgets adequate and concurrently approve these budgets. The revised 2007 attainment budget will apply for the New York Metropolitan Transportation Council's transportation conformity purposes.

C. Modified Date for Submittal of the Mid-Course Review

As described in EPA's October 28, 2003 proposal, New York requested to revise the date by which it would submit a required mid-course review of the SIP's ability to meet attainment on-time. In order to be consistent with surrounding states and to include the benefit of the regional NO_X program in its mid-course review, New York revised its commitment to perform a mid-course review to December 31, 2004 which is consistent with EPA guidance. New York has performed the mid-course review and has submitted it to EPA for review.

III. Conclusions

EPA is taking final action to approve New York's January 29, 2003 SIP revision. This submittal revises New York's 1990 and 2007 motor vehicle emission budgets using MOBILE6 and modifies the planned date to complete the State's mid-course review to December 31, 2004. In accordance with the parallel processing procedures, EPA has evaluated New York's final SIP revision submitted on January 29, 2003 and supplemental information submitted on June 29, 2003 and New York's January 18, 2005 comment letter and finds that no substantial changes were made from the proposed SIP revision submitted on January 29, 2003. New York has demonstrated that its revised 1-Hour Ozone Attainment Demonstration SIP for the New York Metropolitan NAA continues to demonstrate attainment with the revised MOBILE6 inventories.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 11, 2005.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

■ 2. Section 52.1683 is amended by removing and reserving paragraphs (h)(3) and (i)(4), removing paragraphs (i)(6)(v) and (i)(6)(vi) and adding paragraph (j) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(j)(1) The 1990 and 2007 conformity emission budgets for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area contained in New York's January 29, 2003 SIP revision, amended by New York's June 29, 2003 submittal and January 18, 2005 comment letter.

(2) The revised commitment to perform a mid-course review and submit the results by December 31, 2004 included in the January 29, 2003 SIP revision is approved.

[FR Doc. 05–18094 Filed 9–12–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0205; FRL–7725–7]

Cyfluthrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cyfluthrin in or on almond hulls, cucurbit vegetable crop group 9, fruiting vegetable group 8; grass forage; grass hay; grape; grape, raisin; leafy Brassica greens, subgroup 5B; leafy vegetable group, except Brassica, group 4; pistachio; pome fruit group 11; stone fruit group 12; tuberous and corm vegetable subgroup 1C; peanut; peanut, hay; pea and bean, dried shelled, except soybean, subgroup 6C; tree nuts, Crop Group 14; turnip greens; wheat forage; wheat hay; and wheat straw. Bayer CropScience and the Interregional Research Project Number 4 (IR–4) requested the tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 13, 2005. Objections and requests for hearings must be received on or before November 14, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP–2005–0205.All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* 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 EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9369; e-mail address: *odiott.olga@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), 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 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. 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 and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/),* you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/.* To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/.*

II. Background and Statutory Findings

In the **Federal Register** of January 28, 2004 (69 FR 4143) (FRL–7339–6), 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 petitions (PP 1F6290, 2F6445, and 2F6479) by Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709; and (PP 1E6318, 3E6776, and 3E6583) by the Interregional Research Project Number 4 (IR-4), Technology Centre and Rutgers State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–390. The petitions requested that 40 CFR 180.436 be amended by establishing tolerances for residues of the insecticide cyfluthrin, cyano (4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate, in or on almond hulls at 1.0 parts per million (ppm); pistachio at 0.01 ppm; and tree nuts, crop group 14 at 0.01 ppm (PP 1F6290); cucurbit vegetable crop group at 0.10 ppm; fruiting vegetable group at 0.5 ppm; leafy Brassica greens subgroup at 7.0 ppm; leafy vegetable group at 6.0 ppm; pome fruit group at 0.10 ppm; pome fruit wet pomace at 0.30 ppm; stone fruit group at 0.30 ppm; wheat forage, wheat hay and wheat straw at 5.0 ppm; and wheat shorts at 3.5 ppm (PP 2F6445); grape at 0.8 ppm; grape, raisin at 3.5 ppm; peanut at 0.01 ppm; and peanut, hay at 6.0 ppm (PP 2F6479); tuberous and corm vegetable subgroup at 0.01 ppm (PP 1E6318); turnip greens at 7 ppm (PP 3E6583); and grass forage at 6 ppm; grass hay at 8 ppm; and pea and bean, dried shelled, except soybean, subgroup 6C at 0.15 ppm (PP 3E6776). That notice included a summary of the petition prepared by Bayer Crop Science, the registrant. The registrant has submitted a request to voluntarily

cancel uses of cyfluthrin on stored grains effective December 31, 2004.

Based on EPA's review, the petitions were revised by the petitioners as follows: i. by increasing proposed tolerances for grapes to 1.0 ppm and the proposed tolerances for wheat hay and straw to 6.0 ppm; ii. by increasing the proposed pome fruit crop group tolerance to 0.5 ppm to harmonize with the Codex apple MRL and deleting the proposed tolerance on pome fruit wet pomace since expected residues are below the pome fruit tolerance of 0.5 ppm; iii. by decreasing proposed tolerances for almond hulls to 0.5 ppm; iv. by removing tolerances for peanut oil since residues will be lower than residues in peanuts; v. by removing tolerances in prume since maximum expected residues are below the proposed tolerance for the stone fruit crop group; and vi. by withdrawing the proposed tolerance for wheat shorts since it is already covered under wheat milled by products.

Although EPA requested a number of changes to the initial petitions, the nature of the changes (changes in tolerance levels) are not considered significant. Therefore, EPA is issuing this as a final action. EPA is also removing the existing tolerance for potato, since a tolerance is being established on the entire tuberous and corm vegetable subgroup; removing time-limited tolerances established for grape and grape, raisin at 1.0 and 1.5 ppm, respectively, in connection with Section 18 emergency exemptions since they are no longer needed; and establishing tolerances with regional registrations for grass forage and hay.

One comment was received in response to the notice of filing. The comment is described and discussed in Unit V. Comments.

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. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances in the **Federal Register** November 26, 1997 (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

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. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for the cyfluthrin tolerances described in Unit II. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its 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. The nature of the toxic effects caused by cyfluthrin and its enriched isomer, beta-cyfluthrin] as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed are discussed in the **Federal Register** of September 27, 2002 (67 FR 60976) (FRL–7199–8).

Cyfluthrin is a type II pyrethroid (i.e., it has a cyano group at the carbon position of the alcohol moiety and it is more effective when the ambient temperature is raised). Beta-cyfluthrin is an enriched isomer of cyfluthrin. Bridging data on beta-cyfluthrin were submitted so that the toxicity of beta-cyfluthrin could be compared with that of cyfluthrin and the databases could be combined to form one complete database for both chemicals. The scientific quality of the data is relatively high, and the toxicity profiles of both cyfluthrin and beta-cyfluthrin can be characterized for all effects, including potential developmental, reproductive and neurotoxic effects. A beta-cyfluthrin developmental neurotoxicity study has been submitted and a preliminary review indicates that effects are seen only at doses higher than those chosen for risk assessment purposes.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect 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. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: "Traditional UFs" the "special FQPA safety factor;" and the "default FQPA safety factor." By the term "traditional UF," EPA is referring to those additional UFs used prior to FQPA passage to account for database deficiencies. These traditional UFs have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term "special FQPA safety factor" refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The "default FQPA safety factor" is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional UF or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional UFs deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and

10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for cyfluthrin used for human risk assessment is shown in following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CYFLUTHRIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (general population including infants and children)	NOAEL = 2.0 mg/kg/day UF = 100 Acute RfD = 0.02 mg/kg/day	Special FQPA SF = 1 aPAD = acute RfD = 0.02 mg/kg/day	Acute mammalian neurotoxicity (beta-cyfluthrin) LOAEL = 10 mg/kg/day based on clinical signs, changes in FOB parameters and decreases in motor activity.
Chronic dietary (all populations)	NOAEL = 2.4 mg/kg/day UF = 100 Chronic RfD = 0.024 mg/kg/day	Special FQPA SF = 1 cPAD = chronic RfD = 0.024 mg/kg/day	53–week chronic toxicity feeding - dog (cyfluthrin) LOAEL = 10.64 mg/kg/day based on clinical signs, gait abnormalities, and abnormal postural reactions.
Incidental oral short term, and intermediate-term (1 to 30 days and 1 to 6 months)(residential)	NOAEL = 2.36/2.5 mg/kg/day	Special FQPA SF = 1 LOC for MOE = 100	90–day dog feeding study (beta-cyfluthrin) LOAEL = 13.9/15.4 mg/kg/day for males/females, respectively based on gait abnormalities, increased incidence of vomiting, and suggestive decreased body weight gain.
Short-term and intermediate-term dermal (1 to 30 days and 1 to 6 months) (residential)	oral study NOAEL = 2.36/2.5 mg/kg/day (dermal absortion rate = 5%	LOC for MOE = 100	90–day dog feeding study (beta- cyfluthrin) LOAEL = 13.9/15.4 mg/kg/day for males/females, respectively, based on gait abnormalities, increased incidence of vomiting, and suggestive decreased body weight gain.
Long-term dermal (several months to lifetime) (residential)	Oral study NOAEL = 2.4 mg/kg/day (dermal absorption rate = 5% when appropriate)	LOC for MOE = 100	53–week chronic toxicity feeding - dog (cyfluthrin) LOAEL = 10.64 mg/kg/day based on clinical signs, gait abnormalities, and abnormal postural reactions.
Short-term inhalation (1 to 30 days) (residential)	inhalation study NOAEL = 0.00026 mg/L (0.07 mg/kg/day) (inhalation absorption rate = 100%)	LOC for MOE= 100	28–day inhalation study - rat (beta-cyfluthrin) LOAEL = 0.0027 mg/L (0.73 mg/kg/day) based on decreases in body weight in both sexes and decreased urinary pH in males.
Intermediate and long-term inhalation (1 to 6 months and <6 months) (residential)	inhalation study NOAEL = 0.00009 mg/L (0.02 mg/kg/day) (inhalation absorption rate = 100%)	LOC for MOE = 100	13–week inhalation study - rat (cyfluthrin) LOAEL = 0.00071 mg/L (0.16 mg/kg/day) based on decreases in body weight and body weight gain in males and clinical signs in females.
Cancer (oral, dermal, inhalation)	Classification: "Not Likely to be Carcinogenic to Humans"		

C. Exposure Assessment

The residue included in the risk assessment and tolerance expression for plants and animals is cyfluthrin *per se*. Parent cyfluthrin is also the residue of concern in the drinking water assessment.

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.436) for the residues of cyfluthrin, in or on a variety of raw agricultural commodities. Tolerances have been established on plant commodities ranging from 0.01 ppm for corn grain and potatoes to 300 ppm for aspirated grain fractions and on animal commodities ranging from 0.01 ppm for poultry commodities to 15 ppm for milk fat. In addition, a tolerance of 0.05 ppm is established for cyfluthrin in animal feeds and processed foods as a

result of its use in food, and feed-handling establishments.

Although the uses on stored grain have been voluntarily cancelled by the registrant established tolerances reflecting these uses are to remain in 40 CFR § 180.436(a)(1) to allow for clearance of the remaining product and treated stored grain from the channels of trade. Although the Agency did not specifically include potential cyfluthrin residues in stored grains in the dietary exposure assessments, the Agency concludes that these assessments do not underestimate dietary exposure and risk because:

- About 90% of the stored grain usage was for treatment of stored wheat grain, so potential exposure from cyfluthrin use on stored grains would come from wheat;
- Residue monitoring data in wheat flour indicate very low or non-detectable residues from cyfluthrin use on stored grain;
- The current dietary exposure estimates from the remaining existing and the newly proposed uses includes a new foliar use on wheat. The wheat field trial data used to estimate dietary exposure reflect maximum rates and minimum pre-harvest intervals (PHI's), and these residues were significantly higher than monitoring data residues for wheat. Monitoring data residues in wheat flour from cyfluthrin use on stored grain were so low that they would not increase dietary exposure estimates if they had been included in the assessment;
- Exposure from residues in wheat (based on the high end foliar use residues) was not significant for any of the population subgroups, including infants and children; and
- Residues in stored grains were not a major component of secondary residue estimates in livestock commodities, and concomitant dietary exposure from consumption of animal commodities such as meat and milk.

Risk assessments were conducted by EPA to assess dietary exposures from cyfluthrin in food as follows:

i. *Acute exposure.* Acute dietary 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.

In conducting the acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM™/FCID), which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996, and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Percent crop treated (PCT) values for crops with established tolerances, for crops with proposed tolerances, anticipated residues in animal commodities, and processing factors (including washing and peeling factors). Crop field trial data were used for proposed commodities and Pesticide Data Program (PDP) monitoring data were used for registered commodities.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the DEEM™ software with the FCID, which incorporates food consumption data as reported by respondents in the USDA 1994–1996, and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Average PCT values for crops with established tolerances, projected PCT estimates for crops with proposed tolerances, anticipated residues in animal commodities, and processing factors (including washing and peeling factors). Crop field trial data were used for proposed commodities, and PDP monitoring data were used for registered commodities.

iii. Anticipated residue and PCT information. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5–years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-Ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such Data Call-Ins will be required to be submitted no later than 5–years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows. Average and maximum values for PCT data were used in the chronic and acute analyses, respectively, for the following commodities with established tolerances: Alfalfa (1 chronic, 2.5 acute), broccoli (3 chronic, 5 acute) cabbage (8 chronic, 12 acute), cantaloupes (2 chronic, 5 acute), carrots (1 chronic, 5 acute), cauliflower (1 chronic, 2.5 acute), corn (5 chronic, 10 acute), cotton (10 chronic, 15 acute), garlic (1 chronic, 2.5 acute), grapefruit (1 chronic, 2.5 acute), green beans (1 chronic, 2.5 acute), lemons (5 chronic, 10 acute), lettuce (5 chronic, 10 acute), mustard greens (1 chronic, 2.5 acute), onions (1 chronic, 2.5 acute), oranges (15 chronic, 20 acute), peas (1 chronic, 2.5 acute), peppers (10 chronic, 15 acute), potatoes (25 chronic, 35 acute), pumpkins (1 chronic, 5 acute), sorghum (1 chronic, 2.5 acute), soybeans (1 chronic, 2.5 acute), squash (1 chronic, 2.5 acute), sugarcane (5 chronic, 8 acute), sunflowers (3 chronic, 5 acute), sweet corn (5 chronic, 8 acute), tangerines (5 chronic, 8 acute), tomatoes (5 chronic, 8 acute), and watermelons (5 chronic, 8 acute).

Projected PCT estimates were used for commodities with proposed tolerances as follows: Apples 73%, grapes 23%, peaches 39%, pears 59%, plums 28%, spinach 15%, winter wheat 4%, and collards greens 15%.

The Agency believes that the three conditions listed in Unit III.C.1.iii have been met. With respect to Condition 1, PCT estimates are derived from available federal, state, and private market survey data. For existing crop sites on pesticide registrations ("existing use"), EPA uses an average PCT for chronic dietary exposure estimates. The average PCT figure is derived by combining available federal, state, and private market survey data on the existing use, averaging by year, averaging across all years, and rounding

up to the nearest multiple of five except for those situations in which the average PCT is less than one. In those cases < 1% is used as the average and < 2.5% is used as the maximum. EPA uses a maximum PCT for acute dietary exposure estimates. The maximum PCT figure is the single maximum value reported overall from available federal, state, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five. However, in cases where the rounded average PCT and the maximum PCT were initially identical at 5%, the maximum was further adjusted upward to 8%. In most cases, EPA uses available data from United States Department of Agriculture /National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent 6 years. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation

The Agency projects PCT for a new pesticide use by assuming that the PCT for the pesticide's initial five years will not exceed the average PCT of the dominant pesticide (the one with the largest PCT) within its chemical type over three latest available years. For apples, grapes, peaches, pears, plums, and winter wheat the chemical type within which cyfluthrin was compared consisted of all other insecticides. For spinach and collards the corresponding chemical type consisted of all other synthetic pyrethroids with which cyfluthrin was price competitive (which excluded permethrin for spinach). The PCTs included in the average may be each for the same pesticide or for different pesticides since the same or different pesticides may dominate for each year selected. Typically, EPA uses USDA/NASS as the source for raw PCT data because it is non-proprietary and directly available without computation. The assumption was made that cyfluthrin would entirely replace the current market leader among all insecticides for each crop. This assumption is a conservative one because it is not likely that cyfluthrin will entirely replace the market leader for each commodity. For spinach and collard greens, the Agency looked at all the competing pyrethroids only (as opposed to all insecticides) and assumed that cyfluthrin would compete with pyrethroids that are priced competitively with cyfluthrin. The assumption was made that cyfluthrin would entirely replace the current market leader among all competitive pyrethroids for spinach and collards. The value of 15% used for spinach and collard greens is very consistent with the PCT values determined for the registered commodities. These are considered to be conservative estimates of the percent crop treated that cyfluthrin will obtain.

This method of projecting PCT for a new pesticide, with or without regard to specific pest(s), produces an upper-end projection that is unlikely, in most cases, to be exceeded in actuality because the dominant pesticide is well-established and accepted by farmers. Factors that bear on whether a projection based on the dominant pesticide could be exceeded are whether the new pesticide is more efficacious or controls a broader spectrum of pests than the dominant pesticide within its similar type, whether it is more cost-effective than the dominant pesticide, and whether it is likely to be readily accepted by growers and experts. These factors have been considered for cyfluthrin, and they indicate that it is unlikely that actual PCT for cyfluthrin will exceed the PCT for the dominant pesticide in the next five years.

As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which cyfluthrin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for cyfluthrin 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 physical characteristics of cyfluthrin.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. Both FIRST and PRZM/EXAMS incorporate an index reservoir environment, and both models include a percent crop (PC) area factor as an adjustment to account for the maximum PC coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to cyfluthrin they are further discussed in the aggregate risk sections in Unit III.E.

Based on the FIRST and SCI-GROW models, the EECs of cyfluthrin for acute exposures are estimated to be 3.4 ppb for surface water and 0.0016 ppb for ground water. The EECs for chronic exposures are estimated to be 0.082 ppb for surface water and 0.0016 ppb for ground 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).

Cyfluthrin is currently registered for use on a variety of indoor (e.g. total release fogger and crack and crevice spray) and outdoor (e.g. spray fogger) applications. Residential exposure for adults was assessed via the inhalation and dermal routes, while exposure for infants and children was assessed via inhalation, dermal, and oral (hand-to-mouth) routes. Outdoor handler inhalation and dermal exposure were assessed. Residential applicator for indoor total release fogger was not assessed quantitatively, because indoor inhalation exposure to a homeowner would likely be less than inhalation exposure to a homeowner that would result from outdoor lawn treatments.

Residential post-application inhalation exposure following treatments to lawns was estimated using time weight averages from an imidacloprid study (Eberhart and Ellisor, 1994). In the study, air concentration measurements were taken in the vicinity of the volunteer subjects performing the Jazzercize routines. These data served as appropriate surrogate data for cyfluthrin since the vapor pressure of cyfluthrin (3.3×10^{-8} torr) is similar to that of imidacloprid (6.9×10^{-9} torr).

Residential MOEs were assessed for indoor and outdoor uses for application and post-application exposure. This is considered a conservative assessment assuming the lawn and carpet uses happen on the same day. All residential cyfluthrin MOEs calculated were well above the target MOEs (100 for inhalation, oral, and dermal exposures) and therefore, do not exceed the Agency's level of concern.

4. Cumulative effects from substances with a common mechanism of toxicity. Section 408(b)(2)(D)(v) of the 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."

Cyfluthrin is a member of the pyrethroid class of pesticides. EPA is not currently following a cumulative risk approach based on a common mechanism of toxicity for the pyrethroids. Although all pyrethroids alter nerve function by modifying the normal biochemistry and physiology of nerve membrane sodium channels, available data show that there are multiple types of sodium channels and it is currently unknown whether the pyrethroids as a class have similar effects on all channels or whether modifications of different types of sodium channels would have a cumulative effect. Nor do we have a clear understanding of effects on key downstream neuronal function, e.g., nerve excitability, or how these key events interact to produce their compound specific patterns of neurotoxicity. Without such understanding, there is no basis to make a common mechanism of toxicity finding. There is ongoing research by the EPA's Office of Research and Development and pyrethroid registrants to evaluate the differential biochemical and physiological actions of pyrethroids in mammals. This research is expected to be completed by 2007. When available, the Agency will consider this research and make a determination of common mechanism as a basis for assessing cumulative risk. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism on 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 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 data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. 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 safety factor value based on the use of traditional uncertainty factors and/or FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased susceptibility of rats or rabbits to *in utero* exposure in developmental oral studies; however, there was some indication of increased susceptibility in developmental inhalation studies. A clear NOAEL was established for the fetal effects in every case. No residual uncertainties were identified.

The data also demonstrated increased susceptibility of rats and mice to postnatal exposure to cyfluthrin. A clear NOAEL was established for the offspring effects in every case. No residual uncertainties were identified.

3. *Conclusion.* EPA determined that the FQPA SF to protect infants and children should be removed. The recommendation is based on the following:

- The toxicology databases for cyfluthrin and beta-cyfluthrin together are considered adequate for selecting toxicity endpoints for risk assessment. The toxicity profiles of both cyfluthrin and beta-cyfluthrin can be characterized for all effects, including potential developmental, reproductive and neurotoxic effects. Exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.
- There is no evidence of increased susceptibility of rats or rabbits to *in utero* exposure in developmental oral studies, and the degree of concern for the effects observed in the inhalation developmental studies is considered low since a clear NOAEL was established for the fetal effects in every case.
- The NOAEL used for short-term inhalation exposure scenarios is protective of the effects seen in the developmental studies via the inhalation route.
- The degree of concern for the effects observed in the reproductive studies was considered low since a clear NOAEL was established for the offspring effects in every case.
- The NOAEL used to establish the cRfD for all populations is protective of the effects seen in the young in the reproduction studies.
- A beta-cyfluthrin developmental neurotoxicity study has been submitted and a preliminary review indicates that effects are seen only at doses higher than those chosen for risk assessment purposes.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average

food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/ 70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to cyfluthrin will occupy 42% of the aPAD for the U.S. population, 34% of the aPAD for females 13–years and older, 85% of the aPAD for all infants < 1 year old, and 81% of the aPAD for children 3-5 years old, the children population at greatest exposure. In addition, there is potential for acute dietary exposure to cyfluthrin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO CYFLUTHRIN

Population Subgroup	aPAD (mg/kg/ day)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.02	42	3.4	0.0 016	400
All infants (<1 year old)	0.02	85	3.4	0.0016	30
Children (1–2 years old)	0.02	81	3.4	0.0 016	40
Females (13–49 years old)	0.02	34	3.4	0.0 016	400

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to cyfluthrin from food will utilize 1.5% of the cPAD for the U.S. population, 2.4% of the cPAD for all infants <1 year old, the infant subpopulations at greatest exposure, and 5.7% of the cPAD for children 1–2 years old, the children subpopulation at greatest exposure. The registered residential termiticide uses do constitute a chronic inhalation exposure scenario, however, the vapor pressure of cyfluthrin is so low (3.3×10^{-8} torr) that such exposures are anticipated to be negligible. In addition, there is potential for chronic dietary exposure to cyfluthrin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO CYFLUTHRIN

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.024	1.5	0.082	0.0016	840
All infants (<1 year old)	0.024	2.4	0.082	0.0016	230
Children (1–2 years old)	0.024	5.7	0.082	0.0016	230
Females (13–49 years old)	0.024	1.0	0.082	0.0016	720

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Cyfluthrin is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for cyfluthrin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs =/>500. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of cyfluthrin in ground water and surface water. After calculating DWLOCs and comparing them to-the EECs for surface water and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO CYFLUTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Adult male	500	100	0.082	0.0016	630
Adult female	500	100	0.082	0.0016	540
Child	500	100	0.082	0.0016	180
Infant	550	100	0.082	0.0016	200

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs =/ > 250. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of cyfluthrin in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO CYFLUTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
Adult male	250	100	0.082	0.0016	490
Adult female	250	100	0.082	0.0016	420
Child	300	100	0.082	0.0016	160
Infant	290	100	0.082	0.0016	160

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, and to infants and children from aggregate exposure to cyfluthrin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (GC/electron capture detection (ECD) methods) is available in PAM Vol. II to enforce the tolerances. GC/ECD enforcement method 85823, and Bayer's GC/MS method 108139–1, with modifications, were used to analyze samples in the current crop field trials and processing studies. Each method was adequately validated using fortified control samples analyzed in conjunction with the field trial or processing study samples.

B. International Residue Limits

A tolerance of 0.5 ppm is recommended for the pome fruit crop group to harmonize with the Codex apple MRL.

V. Comments

In response to the notice of filing one communication was received from a private citizen objecting to the establishment of the proposed tolerances. The comment contained general and unsubstantiated objections to the use of pesticides on food , the use of animal testing to determine the safety of pesticides, and EPA's risk assessment and safety finding methodologies. The Agency understands the commentor's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, under the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute.

The Agency disagrees with the commenter's objections to animal testing. Since humans and animals have complex organ systems and mechanisms for the distribution of chemicals in the body, as well as processes for eliminating toxic substances from their systems, EPA relies on laboratory animals such as rats and mice to mimic the complexity of human and higher-order animal physiological responses when exposed to a pesticide. EPA is committed, however, to reducing the use of animals whenever possible. EPA-required studies include animals only when the requirements of sound toxicological science make the use of an animal absolutely necessary. The Agency's goal is to be able to predict the potential of pesticides to cause harmful effects to humans and wildlife by using fewer laboratory animals as models and have been accepting data from alternative (to animals) test methods for several years. As progress is made on finding or developing non-animal test models that reliably predict the potential for harm to humans or the environment, EPA expects that it will need fewer animal studies to make safety determinations.

VI. Conclusion

Therefore, tolerances are established for residues of cyfluthrin as requested in the revised petitions.

VII. Objections and Hearing Requests

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. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0205 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 November 14, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0205, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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 due to its lack of significance, 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). 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.*, or 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). 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); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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). 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. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not

alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.""Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule 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. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of 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: August 22, 2005.

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 180.436 is amended by removing the commodity potato from the table in paragraph (a); by alphabetically adding new commodities to the table in paragraph (a); and by adding paragraph (c) to read as follows:

§ 180.436 Cyfluthrin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond, hulls	0.5
Brassica, leafy greens, subgroup 5B	7.0
Fruit, pome, group 11	0.5
Fruit, stone, group 12	0.3
Grape	1.0
Grape, raisin	3.5
Nut, tree, group 14	0.01
Pea and bean, dried shelled, except soybean, subgroup 6C	0.15
Peanut	0.01
Peanut, hay	6.0
Pistachio	0.01
Turnips, greens	7.0
Vegetable, cucurbit, group 9	0.1
Vegetable, fruiting, group 8	0.5
Vegetable, leafy greens, except Brassica, group 4	6.0
Vegetable, tuberous and corm, subgroup 1C	0.01
Wheat, forage	5.0
Wheat, hay	6.0
Wheat, straw	6.0

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of cyfluthrin in or on the following raw agricultural commodities:

Commodity	Parts per million
Grass, forage	6.0
Grass, hay	8.0

* * * * *

[FR Doc. 05–17823 Filed 9–12–05; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

45 CFR Part 61

RIN 0906–AA46

Health Care Fraud and Abuse Data Collection Program: Reporting of Final Adverse Actions; Correction

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Correction amendment.

SUMMARY: This document corrects the final regulations establishing the Healthcare Integrity and Protection Data Bank (HIPDB), the national health care fraud and abuse data collection program for the reporting and disclosing of certain adverse actions taken against health care providers, suppliers and practitioners and for maintaining a data base of final adverse actions taken against health care providers, suppliers and practitioners. In the implementing HIPDB regulations published in the **Federal Register** on October 26, 1999 (64 FR 57740), an inadvertent error appeared in the regulations text concerning the definition of the term

"any other negative action or finding." As a result, we are correcting the definition of the term to assure the technical correctness of these regulations.

EFFECTIVE DATE: September 13, 2005.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, OIG Regulations Officer, Office of External Affairs, (202) 619–0089.

SUPPLEMENTARY INFORMATION: On October 26, 1999, the HHS Office of Inspector General (OIG) issued final regulations (64 FR 57740) that established a national health care fraud and abuse data collection program—the Healthcare Integrity and Protection Data Bank (HIPDB)—for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers and practitioners, and for maintaining a data base of final adverse actions taken against health care providers, suppliers and practitioners. The final rule established a new 45 CFR part 61 to implement the requirements for reporting of specific data elements to, and procedures for obtaining information from, the HIPDB. In that final rule, an inadvertent error appeared in § 61.3—the definitions section of the regulations—and is now being corrected.

Specifically, § 61.3 expanded on previous regulatory definitions and provided additional examples of the scope of various terms set forth in the statute. On page 57755 of the preamble, summarizing the various revisions being made to the final rule, we indicated that with respect to the definition for the term "any other negative action or finding" there are certain kinds of actions or findings that would not meet the intent of the statute and *not* be reportable. We cited, as an example, administrative actions, such as limited training permits, limited licenses for telemedicine, fines or citations that do not restrict a practitioner's practice, or personnel actions for tardiness, that were *not* within the range of actions intended by the statute. As a result, we agreed to add a clarifying phrase to this term. The revised definition would exclude administrative fines or citations, corrective action plans and other personnel actions, unless they are (1) connected to the billing, provision or delivery of health care services, and (2) taken in conjunction with other licensure or certification actions such as revocation, suspension, censure, reprimand, probation, or surrender. However, we inadvertently omitted this clarifying language to the regulations text of the rule itself. Therefore, to be consistent with the intended clarification and the overall intent of the final rulemaking, we proposed correcting this inadvertent error in the definition of the term "any other negative action or finding" that appeared on page 57759 in the October 26, 1999 final regulations to include this additional clarifying language.

Proposed Correction Notice and Response to Comments

On June 24, 2005, OIG published a proposed notice (70 FR 36554) setting forth the intended correction to the definition of the term "any other negative action or finding" in 45 CFR 61.3, and soliciting public comments regarding our intent to clarify the existing definition of the term in accordance with the earlier final rulemaking.

As a result of that proposed correction amendment, OIG received two comments. While one commenter fully supported our decision to include the clarifying language to ensure technical correctness of the regulations, a second commenter mistakenly interpreted the clarifying language as narrowing the regulatory exceptions and was concerned that the amendatory language would result in States having to report a large number of relatively minor corrective action plan actions that could unfairly prejudice the party about whom or which the report was made. In response to the second commenter's concern, we reiterate that a corrective action plan independent of an adverse licensing action is *not* reportable. Only corrective action plans submitted in conjunction with a specific adverse licensing action would be required to be reported on a single form report. (The HIPDB report form includes a narrative description section that is to be used by the reporting entity to describe the details of the action. This section of the report requires the reporter to provide details about why the action was taken, as well as other pertinent details, which may include a corrective action plan or other remedial steps such as citations or personnel actions.) This clarifying language does not result in any additional reporting requirements on behalf of the reporting entity.

List of Subjects in 45 CFR Part 61

Billing and transportation services, Durable medical equipment suppliers and manufacturers, Health care insurers, Health maintenance organizations, Health professions, Home health care agencies, Hospitals, Penalties, Pharmaceutical suppliers and manufacturers, Privacy, Reporting and recordkeeping requirements, Skilled nursing facilities.

■ Accordingly, 45 CFR part 61 is amended by making the following correcting amendment:

PART 61—HEALTHCARE INTEGRITY AND PROTECTION DATA BANK FOR FINAL ADVERSE INFORMATION ON HEALTH CARE PROVIDERS, SUPPLIERS AND PRACTITIONERS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 1320a–7e.

■ 2. Section 61.3 is amended by republishing the introductory text, and by revising the definition for the term *"Any other negative action or finding"* to read as follows:

§ 61.3 Definitions.

The following definitions apply to this part:

* * * * *

Any other negative action or finding by a Federal or State licensing agency means any action or finding that under the State's law is publicly available information, and rendered by a licensing or certification authority, including but not limited to, limitations on the scope of practice, liquidations, injunctions and forfeitures. This definition also includes final adverse actions rendered by a Federal or State licensing or certification authority, such as exclusions, revocations or suspension of license or certification that occur in conjunction with settlements in which no finding of liability has been made (although such a settlement itself is not reportable under the statute). This definition excludes administrative fines or citations and corrective action plans and other personnel actions, unless they are:

(1) Connected to the delivery of health care services, and

(2) Taken in conjunction with other licensure or certification actions such as revocation, suspension, censure, reprimand, probation or surrender.

* * * * *

Dated: September 2, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–17915 Filed 9–12–05; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 211, 212, and 252

[DFARS Case 2004–D011]

Defense Federal Acquisition Regulation Supplement; Radio Frequency Identification

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy pertaining to package marking with passive radio frequency identification (RFID) tags. The rule requires contractors to affix passive RFID tags at the case and palletized unit load levels when shipping packaged operational rations, clothing, individual equipment, tools, personal demand items, or weapon system repair parts, to the Defense Distribution Depot in Susquehanna, PA, or the Defense Distribution Depot in San Joaquin, CA.

EFFECTIVE DATE: November 14, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350. Please cite DFARS Case 2004–D011.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule contains requirements for contractors to affix passive RFID tags at the case and palletized unit load levels. The rule requires that specified commodities delivered to specified DoD locations be tagged with a readable passive RFID tag. The data encoding schemes that contractors may write to the tags are identified in the contract clause and are also located at *http://www.dodrfid.org/tagdata.htm*. In addition, contractors must send an advance shipment notice in accordance with the procedures at *http://www.dodrfid.org/asn.htm*, to provide the association between the unique identification encoded on the passive tag(s) and the product information at the applicable case and palletized unit load levels.

DoD published a proposed rule at 70 FR 20726 on April 21, 2005, and a correction to that rule at 70 FR 21729 on April 27, 2005. Thirty-three sources submitted comments on the proposed rule. As a result of these comments, the final rule contains additional changes that clarify the shipment locations, the definitions of "exterior container" and "palletized unit load," and the requirements for ensuring that data encoded on each RFID tag are unique. An analysis of the comments is provided below.

1. *Comment:* Electronic submission of the advance shipment notice (ASN) SHALL be via Wide Area Work Flow (WAWF) per the DoD Suppliers Passive Information Guide, Version 7.0. Other means of ASN is not acceptable. We have been harping our contractors to get on board with WAWF. Version 3.0.7 contains a tab for RFID data entry.

DoD Response: The current system for ASN submittal is WAWF.

2. *Comment:* Classes of supply do NOT address raw materials, *i.e.* steel rods/bars/non-machined casings, etc., that are packed into shipping containers. Reusable containers, *i.e.*, Hardigg Containers, are not addressed. What do contractors do when they have a contract for raw steel bars or containers that are packed in wood boxes or fiberboard containers for shipment?

DoD Response: Classes of supply definitions are normally used in support of warfighter requirements, since these are the types of materiel items normally ordered, stocked, and issued from DoD wholesale supply activities to support warfighter needs. If there is a future requirement for the tagging of raw materials for shipment to DoD industrial activities, these requirements will be identified in future DoD policy and DFARS issuances. Reusable containers such as Hardigg containers are individual items when requisitioned—as such they can be tagged if these items are components of DoD material such as tool sets. As the technology matures and the DoD implementation progresses, future DoD issuances may contain a requirement for tagging at individual item level.

3. *Comment:* The DFARS states contractors MAY only need to change their printer because MSL software is available that will print the MSL with embedded RFID. This is fine for a shipping container or palletized unit load, but what about the exterior containers on the pallet? They need the passive tag, as well as the pallet.

DoD Response: The exterior containers do have to be affixed with passive RFID tags, but an MSL may or may not be required and should be affixed per the instructions contained in MIL–STD–129. A supplier could use the same printer that prints their MSL tags to meet this requirement or affix a blank label or an RFID tag itself.

4. *Comment:* Small businesses will go out of business. There are many contractors, "10 percenters" as we call them, which work out of their homes. The cost of implementing RFID will put them out. Material costs to the Government will skyrocket. How are we addressing small businesses?

DoD Response: DoD is implementing this through new contracts thus allowing for the supplier to include the cost of compliance in the contract, recognizing there may be a temporary cost burden until contract payment. With respect to training, DoD has partnered with the Procurement Technical Assistance Centers (PTAC) to provide training to DoD small businesses. There are a variety of compliance options, which range in cost. You may also use a 3rd party provider to meet the requirement. Please reference the Web site, *http://www.dodrfid.org*, for more information.

5. *Comment:* Need to point out that to use EPC data construct will require the contractor to pay a royalty/membership fee to EPC, whereas using DoD data construct is free.

DoD Response: Noted.

6. *Comment:* Contractors electing to use a packaging house still need an interrogator to verify to the QAR the data is present. In addition, contractors using a packaging house shall inform the packager of the data to be encoded in the tags.

DoD Response: Suppliers can outsource the function of tag verification to the tag manufacturer; however, the requirement in the contract is still with the supplier. Suppliers who purchase pre-encoded tags do need to know the hexadecimal representation of the RFID tag number in order to transmit it to WAWF. This information will most often need to be printed in human-readable format on the tag or can be captured through an RFID reader or bar code scanner (if a bar code is present).

7. *Comment:* Is the area of safety and homeland security addressed regarding the use of RFID tags?

DoD Response: The passive RFID technology that DoD is acquiring is commercially available technology and requires FCC approval for production, sale, and use in the United States when used in accordance with manufacturer's instructions. The DoD plans to conduct appropriate testing to ensure that the technology is safe for use around munitions and fuel prior to use around these materials. The DoD is working closely with the DHS to ensure that the technology and standards are compatible and adaptable.

8. *Comment:* Can the labels be tracked by the enemy or an outside concerned source?

DoD Response: Any commercially available EPC compatible reader can read the current version of the encoding on the current passive EPC compatible RFID tag. It is important to note that the only information on the tag is a purely binary serialization of the tag that has no intelligence. The intelligence (data) relating to the contents of a shipment is in the DoD logistics information systems behind the DoD firewall. As RFID security risks are identified, DoD will continue to review these issues from both an information assurance and operational security standpoint.

9. *Comment:* Has there been a cost study done on the implementation of this requirement? And if so who bares the cost? Future contract winners, Government, etc?

DoD Response: The DoD has completed a regulatory flexibility analysis that is available for review at *http://www.dodrfid.org/regflex.htm.* DoD is implementing this requirement in new contracts according to the Supplier Implementation Guide. This will allow suppliers to negotiate the cost of compliance into the new contract.

10. *Comment:* Would it not be better to limit the use to only commercial application items?

DoD Response: One of the DoD goals in adopting this technology is to achieve a higher level of interoperability with our commercial partners in the supply chain. This technology is simply a faster, better way to acquire data for logistics and financial systems. RFID will be a benefit for all items DoD manages, and the utilization of RFID will facilitate accurate, hands-free data capture, in support of business processes in an integrated DoD supply chain enterprise as an integral part of a comprehensive suite of Automatic Identification Technology (AIT).

11. *Comment:* I find some of your definitions to be confusing.

DoD Response: Noted. Please see comments 12–17 for further clarification of your questions.

12. *Comment:* Delete the term "Case" and substitute "Exterior Pack: Package or container containing a single item or a number of unit packs or intermediate packs ready for shipment and storage."

DoD Response: The term "Case" is used to provide a common term of reference for both commercial and DoD activities.

13. *Comment:* You can delete "Exterior container" if you use the STANAG 4279 definition of: "Exterior Pack: Package or container containing a single item or a number of unit packs or intermediate packs ready for shipment and storage." This is also referred to as the NATO Glossary of Packaging Terms and Definitions, AAP–23 (Edition 2).

DoD Response: The definition used in the DFARS rule is as extracted verbatim from MIL–STD–129.

14. *Comment:* If not, I think you need to change the last sentence of the Exterior Container definition to read: "An exterior container may or may not be used as a shipping container." This is the correct term used in MIL–STD–129.

DoD Response: The DFARS rule definition has been changed to read as defined in MIL–STD–129.

15. *Comment:* Delete the last sentence of the definition of Palletized Unit Load: "A palletized load is not considered to be a shipping container." The respondent does not see any reason for this statement and it is not part of the definition.

DoD Response: The definition used in the DFARS rule is as extracted verbatim from MIL–STD–129.

16. *Comment:* The shipping container is separately defined and for all practical purposes is the same thing as the exterior container. I think you confuse things by saying it is defined as an exterior container. The STANAG defines "Shipping container/A container which meets minimum carrier regulations and is of sufficient strength by reason of material, design, and construction to be shipped safely without further packing." I think this is the term you are looking for and would delete case and exterior pack/exterior container because it is too confusing.

DoD Response: The definition used in the DFARS rule is as extracted verbatim from MIL–STD–129.

17. *Comment:* As I understand what you are looking for you want the following: a. One passive RFID tag on either the palletized unit load or on the shipping container b. on all shipments to Susquehanna, PA and/or San Joaquin, CA. The way you have it written it could be for depot storage or for export shipment out of the CCP or for local consumption in a depot repair program. If that is the intent, I think you should also include Red River Army Depot (RRAD) because TACOM has many items that we also ship to RRAD as one of our three primary depots for storage. However, if the intent was to speed customer delivery times in the E2E distribution thru the Container Consolidation Point, then I think you need to be clearer in your identification of the "ship to" address.

DoD Response: The initial intent was to have selected classes/types of material tagged for shipment to the major DLA receiving points at San Joaquin and Susquehanna, since these two locations receive the majority of the material inbound to the DLA. As the phased DoD implementation plan for passive RFID continues, we will expand both the types of material as well as the specific DoD receiving activities for RFID tagged material—to include industrial/depot activities, like Red River Army Depot. The specific "ship to" addresses have been posted to the Web site, *http://www.dodrfid.org.*

18. *Comment:* A respondent suggested the use of an RFID application to track warranty and other product information pertaining to purchases made by DoD.

DoD Response: The current focus of DoD's RFID program is on the use of RFID within the supply chain. Future uses of this technology will continue to be explored.

19. *Comment:* During an RFID brief, a question arose. Some defense contractors "ship in place" meaning their invoice is paid but the material remains at their facility until the customer requests it. Since the invoice is signed by an authorized Government Representative, *i.e.* QAR, the material becomes Government property. When the customer requests the material, a DD Form 1149 is processed and material shipped to the using activity. Question: At what point will RFID tags be placed on the shipping containers and/or pallets? Transmission of the data via WAWF will do no good as the material has not left the facility and contractors expect to be paid. Will the DFARS address "Ship In Place" shipments?

DoD Response: In this situation, WAWF will allow for two transactions. The initial WAWF transaction for "in-place" receipt/acceptance of the material (invoice signature by the QAR) and subsequent payment via DFAS will not require the specific RFID information. The appropriate RFID tag should be encoded and placed on the shipment (case and/or palletized unit load) when the shipment is prepared for movement to the ultimate consignee. When the material is shipped to a DoD activity, the RFID tag is put on the second transaction (Advance Shipment Notice) to facilitate receipt and input to WAWF and to close out documents in the appropriate system. These specifics should be detailed in the supplier contract.

20. *Comment:* Seeking clarification of the following: Page 20728 of the **Federal Register**/Vol. 70, No. 76/Thursday, April 21, 2005/Proposed Rules PART 252.211–7XXX in middle of the right hand column on this page the last sentence under "Exterior container". It states, "An exterior container may not be used as a shipping container." Please advise what is the intent of this

sentence. If a wood crate happens to be the exterior container and it holds both unit and intermediate containers, why can it not be classified as an exterior container?

DoD Response: The DFARS rule will be clarified and the sentence will be changed to read "An exterior container may or may not be used as a shipping container," as per MIL–STD–129.

21. *Comment:* Seeking clarification of the following: Page 20728 of the **Federal Register**/Vol. 70, No. 76/Thursday, April 21, 2005/Proposed Rules PART 252.211–7XXX. In the next paragraph, "Palletized unit load" states, "A palletized load is not considered to be a shipping container". Why is it not to be considered a shipping container? I realize it may not be enclosed, and not possibly suitable for stacking, however it is still the "container" on which the items are being shipped.

DoD Response: The definition used in the DFARS rule is as extracted verbatim from MIL–STD–129. A palletized unit load can be shipped as is, but is not considered a "shipping container." in accordance with definitions in MIL–STD–129. Palletized unit load has its own definition.

22. *Comment:* Seeking clarification of the following: Page 20728 of the **Federal Register**/Vol. 70, No. 76/Thursday, April 21, 2005/Proposed Rules PART 252.211–7XXX. The next paragraph starting with, "Passive RFID tag" indicates that (1) EPC Class 0 passive RFID tags that meet the EPCglobal Class 0 specification are acceptable. I understood that an amendment was being issued that no Class 0 passive RFID tags were going to be acceptable for military shipments. Please advise.

DoD Response: DoD allows the use of either EPC-compliant Class 0 or Class 1 passive RFID tags.

23. *Comment:* Seeking clarification of the following: Page 20729 of the **Federal Register**/Vol. 70, No. 76/Thursday, April 21, 2005/Proposed Rules, second column, eighth line down, the word "paragraph" should have the actual paragraph reference placed beside it. Clarification of these concerns would be appreciated.

DoD Response: This reference will be inserted upon completion of the final rule.

24. *Comment:* The contract clause (252.211–7XXX) requires in para. (c)(2) that each tag is readable * * * Please clarify what this means because there are conflicting understanding being presented to the vendors. Some government presenters are saying that most small businesses will only need to use approved labels to place on containers to comply. Others are saying that this requires a business to invest in expensive systems to meet this requirement (min. cost is $25,000). This is a significant issue for small business. If the latter is what is meant then not only the DoD, but Federal Agencies will lose most of the small businesses because this is a sizable investment for limited application and another reason not to do business with the Government.

DoD Response: The tag has to be readable by an RFID reader at the point it is shipped to the DoD. This does not require a $25,000 investment. A supplier can buy an RFID reader, for approximately $2,000, which verifies that the tag can be read. If a supplier is using an RFID-enabled printer, the printer will verify that the tag can be read. If a supplier buys pre-encoded tags and has no way to verify the tag readability at the point of shipment, they need to work with the tag manufacturer to ensure that the tags can be read. As for investments for small business, the DoD will negotiate these costs with suppliers at the time of contract.

25. *Comment:* Also, reference is made to two consolidation points that require RFID tags. Are these locations also known as Tobyhanna, PA, and Tracey, CA? If so, then this needs to be clarified because many government vendors do not associate the two as being the same.

DoD Response: The Defense Distribution Center Susquehanna, PA (DDSP) is not the same as Tobyhanna. The Defense Distribution Center San Joaquin, CA (DDJC) is located in Tracy, CA, but there are several facilities in Tracy. The specific shipping locations for this requirement are identified at the Web site, *http://www.dodrfid.org.*

26. *Comment:* A respondent commented on the potential use of "The AIM RFID Mark™!" on material that is tagged with an RFID tag to provide a visual indicator of RFID enabled labels.

DoD Response: The current version of the MIL–STD–129 does not require that the RFID tag be integrated with either a commercial or Military Shipping Label (MSL), but indicates in paragraph 4.9.2 that: "The passive RFID tag may be integrated with the military or commercial shipping label (RFID-enabled address label) or they may be placed in separate locations on the shipment." As the DoD RFID initiative progresses and additional suppliers ship tagged material to the DoD receiving points, the Department will work with organizations such as EPCglobal and AIM to determine the most suitable marking requirement to indicate RFID enabled labels—this requirement will then be included in a future update of the MIL–STD–129.

27. *Comment:* A respondent commented on the process of reconditioning shipping containers and reusing them within the supply chain before the shipping container is sent for recycling as scrap. There is a concern that RFID tags attached to these containers would not survive the reconditioning process and may litter the drum lines, conveyers, furnaces, paint booths, and wash basins. They could also end up in wastewater discharged to public sewer systems, or in solid waste streams sent to a municipal landfill.

DoD Response: The DoD makes every effort to ensure that materials and appropriate types of packaging are reconditioned and re-used when and where possible prior to recycling and disposal of these materials and packaging when they are no longer economical to recondition or repair for continued use. The DFARS rule does not require RFID tagging on the types of commodities and materials that would normally be shipped or delivered in fiber/plastic/metal drums or intermediate bulk containers (IBCs). As the DoD RFID initiative expands to potentially include these types of materials and associated shipping containers, future updates to the DFARS may include requirements such as appropriate directions for reconditioning, re-use, recycling, and disposal of packaging and containers.

28. *Comment:* There appears to be a major conflict between DoD's proposed use of the advance shipping notice and how the Defense Commissary Agency (DeCA) mandates the use of the Advance Shipping Notice. Currently DeCA requires all shipments under a Frequent Delivery Contract to have an ASN provided with specific data fields which is used as a receiving document. The DeCA ASN does not require nor accept a price because the third party doing the delivery each day does not have access to the price the supplier is charging. It appears DoD and DeCA are using two different types of contracts to obtain supplies. DoD is basing their RFID program on supporting a supply depot with a price that calls for a specific number of units to be delivered at a specific time. DeCA has a multiple delivery order with the quantities based on customer demand with deliveries to be made daily. The regulation and DoD standard for RFID require an ASN to be sent to DoD. Right now an ASN is sent to DeCA that serves a multiple of functions and gives the user all the information they need to receive the product and reconcile the delivery. The DoD RFID initiative is adding unnecessary workload to industry

because they are also asking for an ASN (with different information) that doesn't tie into DeCA's system. This means two ASN's would have to be sent, which seems an unnecessary burden on industry and was not included in the DoD's calculations to determine the cost to small business. The way the regulation is written it will be almost impossible to do business with DeCA and still meet the DoD requirements. It is estimated that it will increase the cost of goods to DeCA in the range of 15–18% providing we can have more time to implement RFID. If we are held to the DoD January 2007 mandate, we expect prices would increase in the 25–30% range because we would be using a third party to do the RFID tags. We believe that brand name items are quite different than the "specification" products being purchased for the depots. We feel RFID tags for brand name items for military resale should not be given an exemption until 2010 when RFID tags should be commonplace. It doesn't make a lot of sense why DeCA's customers, who are the ones paying for the items, should be forced to pay for technology that is still in the very early stages of development.

DoD Response: The requirements for DeCA's internal implementation are currently under review and are not within the scope of the current DFARS rule.

29. *Comment:* Thank you for the opportunity to comment upon the DEPARTMENT OF DEFENSE Defense Federal Acquisition Regulation Supplement; Radio Frequency Identification. There are a number of general and specific comments regarding the attached.

DoD Response: See comment numbers 30–38 for clarification.

30. *Comment:* It would be useful to clarify the chronological sequence of the several E publications on RFID published by the DoD. The attachment forwarded under cover of the Reference does not appear to note or recognize previous publications. In particular, the defining document must remain The Under Secretary of Defense's Memorandum dated 30 Jul 2004 and the associated Business Rule of the same date. These increasingly are difficult to align and reconcile with the DoD RFID Home Page and the Supplier Implementation Plan and the Suppliers' Passive RFID Info Guide of Aug 31 2004.

DoD Response: Documents located at *http://www.dodrfid.org* are supplemental to and supportive of the DoD RFID policy released on 30 Jul 2004.

31. *Comment:* There is a need to clarify the linkage between the DFARS and the DoD policy. There needs to be a clearly articulated account of how amendment of the former document will be transferred to the latter.

DoD Response: The DFARS rule will serve as the standard contract language for incorporating passive RFID requirements in accordance with the DoD RFID policy.

32. *Comment:* To provide transparency, it is requested that a reference document of those companies that contributed to the document and whether their representations have been actioned or not is required. There is a concern that many RR comments of the related issue of UID DFAR and UID Policy have been received or actioned by the appropriate desk officers for staffing comments. The proposed schedule of staffing events would also be helpful to keep all respondents aware of the forthcoming critical milestones.

DoD Response: All comments submitted in response to this DFARS rule are taken into careful consideration, actioned and responded to appropriately by the appropriate offices. All comments and Departmental responses will be included with the final publication of the DFARS rule in the **Federal Register**.

33. *Comment:* It is suggested that palletized loads should be differentiated between air pallets and surface palletized loads, terms used by the military customer.

DoD Response: An "air pallet" is normally referred to as a "463L" or "463L System" pallet and does not require the application of a passive RFID tag. 463L pallets require the use of active RFID tags per the DoD RFID Policy " the use of which is not the subject of this DFARS rule. "Surface palletized loads" that you note are in fact covered by the MIL–STD–129 definition for palletized unit load as identified in the current rule as: "Palletized unit load means a MIL–STD–129 defined quantity of items, packed or unpacked, arranged on a pallet in a specified manner and secured, strapped, or fastened on the pallet so that the whole palletized load is handled as a single unit. A palletized load is not considered to be a shipping container."

34. *Comment:* Please confirm within the DFARS that the financial thresholds are in place or are not applicable, as seen with DoD UID policy.

DoD Response: The UID Financial thresholds are not applicable to the RFID policy. Therefore, this DFARS rule is purposefully silent on this issue to avoid confusion.

35. *Comment:* It is requested that a clause is inserted that reads: "DoD recognizes and accepts that Suppliers' RFID Implementation Costs will be regarded as allowable costs under the FAR".

DoD Response: No blanket statement will be added. These costs must be individually negotiated with the contracting officers to ensure only minimum costs needed to comply are allowable under the contract.

36. *Comment:* MIL–STD–129 is referred to several times throughout the DFARS. Given the amount of amendments, for clarity, the latest version should be included as a reference at the outset of the document.

DoD Response: The MIL–STD–129 is referenced elsewhere in the DFARS for the marking and labeling of shipments to and within the DoD. The current version of the MIL–STD–129 is available at *www.dodrfid.org.*

37. *Comment:* Class IX definition has been altered and omits Weapon Systems? Is this correct as the previous definition of Weapons Systems and Repair parts and Components was more complete and informative. It should also be confirmed that complete assemblies and the breakdown modules and spare parts are included in this category.

DoD Response: The following definition used in the rule is a verbatim extract from the DoD 4140.1–R DoD Supply Chain Materiel Management Regulation of May 23, 2003.

"Class IX. Repair parts and components including kits, assemblies and subassemblies, reparable and consumable items required for maintenance support of all equipment, excluding medical-peculiar repair parts."

This definition includes complete assemblies (less major end items), breakdown modules, and spares.

38. *Comment:* The increase in RFID shipping destinations should be highlighted in that by 2006 there are 34 locations and by 1 Jan 2007 to all DoD locations.

DoD Response: The Supplier Implementation Plan for 2006 and 2007 are not within the scope of the current DFARS rule.

39. *Comment:* The respondent commented on the small number of examples that were referenced in the Regulatory Flexibility Analysis concerning the impact of RFID tags on the recycling industry as well as the fact there will be an impact on the recycling community whether or not DoD is involved.

DoD Response: As noted in the comment, at the time of publication of the Regulatory Flexibility Analysis, there was little discussion and testing being done in the recycling industry

concerning the impact of RFID. The document provided what little information was available. As the recycling community completes testing and publishes reports, DoD will review those publications and work to take the concerns into consideration as RFID technology expands within DoD. Additionally, it is important to note for the pallet industry that the RFID tags will be placed on the shrink wrap surrounding the palletized unit load and not attached directly to the pallet.

40. *Comment:* A respondent suggested that DoD make small businesses aware of its service to offer recycled RFID tags, which sell at a lower cost. The respondent also recommends that requirements be incorporated into the DFARS so that companies can reprogram salvaged RFID tags.

DoD Response: The DoD has not yet developed tag recycling plans or a validated procedure for offering recycled tags for purchase through the excess property disposal process.

41. *Comment:* A respondent has concerns over the ability of Materials Recovery Facilities to create a product to the specifications of the customer as the number of RFID tags increases. The respondent urges careful consideration of the results of a study being conducted in the paper industry.

DoD Response: The DoD will continue to monitor industry testing of recycling processes containing RFID tags or tag fragments. As the results of these tests become known, DoD RFID policy will be amended as required.

42. *Comment:* I believe the impact analysis completed by the Department of Defense understates the cost to industry to implement RFID. It appears the analysis only focused on shipments to DoD distribution centers and virtually ignored shipments made to the Defense Commissary Agency. Based on an average case cost of $25, industry's annual cost for implementing RFID for DeCA could be in excess of $100,000,000 for RFID tags alone. The indications are the cost for application and administration could equal the cost of the tag which could mean an annual reoccurring cost of $200,000,000 per year to meet DoD's RFID mandate. We have been to a meeting held by DoD about RFID and there is a lot of expense setting up an RFID program. I realize DoD is pushing us to use third party providers to meet their deadlines but that just increases the cost for RFID even more and creates a substantial hardship on small business. Most of the small business people who I have talked with don't have any idea about the RFID mandate and don't have any plans to implement RFID technology into their business until things become settled down and costs are more reasonable. The analysis done by DoD doesn't really address this issue and seemed to ignore the entire issue of how much it really costs to implement RFID for a small business. We all recognize RFID is going to become part of the normal business process just as UPC's and scanable bar codes did in years past. The problem is the Department of Defense is mandating technology that is still being developed and is going to take time to implement. If the mandate for RFID applies for every item DoD purchases, DoD's orders will have to be treated differently. This means DoD is going to pay a much higher price than anyone else. As a taxpayer, that does not make a lot of sense for brand name items sold to the commissary, especially since the cost is going to be passed on to our military people which means they will have to spend more money for food. Instead of mandating specific dates for brand name items that are sold commercially, why don't you revise the FAR to defer the implementation of RFID technology for brand name items until it is a common industry practice. Based on how long it took for UPC's and bar codes to be implemented, it might be quite a few more years before RFID is part of the common landscape. Establishing a mandate for brand name items just doesn't make sense. No other retailer, including Wal-Mart, has established a hard and fast mandate date for 100% compliance from every supplier. It seems to me you need to look at mainstreaming with the rest of industry so you don't have to pay a premium to get something we will be doing in time.

DoD Response: DoD is aware of the concerns of shipment requirements for DeCA and is currently reviewing the internal implementation plan for DeCA. In the regulatory flexibility analysis (*www.dodrfid.org/regflex.htm*), DoD provided several options as well as estimated costs for small businesses to comply with the RFID policy. Additionally, DoD has been working with the Procurement Technical Assistance Centers (PTAC) to educate them on RFID technology and the RFID policy so that small businesses may seek assistance from them with regard to the RFID policy and compliance.

43. *Comment:* DoD wants to mandate RFID and the use of advance shipping notices. While this might make sense for "spec" items going to distribution centers, it doesn't make any sense for the products we sell to the commissary system. Why in the world does DoD want to include these type of products as part of their RFID mandate? Does it make good business sense when the majority of retailers who are buying the same item are just now beginning to test RFID technology and it will be many, many years before they are even thinking about getting the key suppliers on the program. Products purchased for resale should be excluded from DoD's RFID mandate. We already are sending ASN's to the commissaries with more information than what DoD wants, the commissary system doesn't have anything in place right now to use the technology even if we put tags on the cases, and the military families are going to be paying a much higher price just so every item will have an RFID tag. Some of the items we sell to the commissary are sold as eaches, *e.g.*, soft drinks and snacks. Based on the RFID mandate, each of these items would require an RFID tag which would be more than the cost of the product. Considering the fact the item is consumed within hours after purchase, if not on the way home, what is the benefit? More importantly, what person is going buy our products if the price everywhere else is half the price (because they don't have an RFID tag). I would like to suggest the following changes be considered: (1) Items purchased by the commissary and exchanges should be excluded from the RFID mandate in the FAR as you did for other types of products. (2) At the very minimum the date for implementing RFID technology for the commissary and exchanges should be consistent with all the other retailers which could be 2010 or beyond. (3) You revision the current provision so the contracting officer can exclude items based on the cost of the product. A 100% mandate for all items is going to be difficult. (4) If RFID is mandated for the commissary and exchanges, the advance shipping notice requirement be revised to allow the commissary and exchange to receive the ASN directly instead of going to DoD's network and the map for the ASN be determined by the commissary and exchange service.

DoD Response: The requirements for DeCA's internal implementation are currently under review and are not within the scope of the current DFARS rule.

44. *Comment:* Recommend the following clarifications on the case and pallet definitions: Case: A single package or container that contains a predetermined quantity of a specific item or multiple items associated with an order packaged together. The RFID tag applied to the single unit will associate the EPC code to the list of items inside the case. Pallet: A carrier, skid or other portable platform that contains multiple cases that is distributed as a unit. The

RFID tag affixed to the pallet will associate the EPC code to the case RFID tags contained on the palletized unit.

DoD Response: The definition used in the DFARS rule is as extracted verbatim from MIL–STD–129.

45. *Comment:* The respondent expressed concern over the ability to meet the requirements of the ASN. Specifically the fact that the current system running within their company does not account for all of the data in the ASN nor is all of the ASN data RFID tag data, additionally the WAWF requires reporting of items at the catalog part number level where they may pick at the pickable level. Requests clarification to allow data submitted at the pickable level.

DoD Response: The benefit of an ASN lies in the positioning of shipment data into a receiving information system prior to the actual arrival of the corresponding shipment—thus providing the receiving organization with "actionable information" to make delivery changes or other key business decisions. The data contained on the ASN is necessary for processing in the DoD enterprise. Each catalog number (read as CLIN) will likely have more than one RFID tag associated with it and the quantity may differ from the order quantity. This is perfectly allowable for a CLIN to have multiple RFID tags within WAWF. The mapping calls for the tag to associate with that portion of the CLIN quantity shipped in the carton. For additional information and instruction of how to construct this transaction, visit *https://wawf.eb.mil* and contact DISA Customer Service.

46. *Comment:* The respondent comments that DoD orders are not received via EDI, which would make sending an EDI MIRR to DoD much easier. The respondent suggests converting order to EDI submissions only.

DoD Response: This rule does not identify the method for order transmission.

47. *Comment:* The respondent noted that in WAWF today an entire ASN MIRR will be rejected if any required field value is not what is expected. This rejection may prevent the ASN from being received prior to the receipt of material. The respondent suggests rejecting only the affected lines.

DoD Response: We acknowledge that this scenario could occur and we will work with the WAWF personnel to examine this issue.

48. *Comment:* The respondent commented that in some contracts DoD specifies the line numbers for vendor products, which in the creation of the ASN could be a problem because those numbers are not the same as the vendors''. The respondent suggests the use of common line numbers that are designated by the vendor.

DoD Response: This is outside of the scope of the DoD RFID DFARS rule. However, CLINS are normally designated by the contracting agency at the time of contracting.

49. *Comment:* The respondent brings attention to the fact that not all pharmaceuticals are distributed directly from a manufacturer to the DoD; distribution may occur through a pharmaceutical distribution entity. With the addition of RFID technology, there may be a change in the distribution, forcing manufacturers to become enabled to send an ASN. It is suggested that more time is needed to research and clearly understand the content of the ASN requirements.

DoD Response: Pharmaceutical materials are not within the scope of this DFARS rule—thus providing more time to research and understand the ASN requirements.

50. *Comment:* The respondent commented that there is still a need to study the long-term effects of RF, specifically on medical products. The respondent proposes more guidance on the effects on medical products, environment, and other areas that use this technology, including the handling of this material in the supply chain.

DoD Response: Medical products are not within the scope of this DFARS rule. The DoD is working closely with and intends to follow the lead of the Food & Drug Administration (FDA) on the use of RFID on pharmaceutical items—particularly biologics and medical items.

51. *Comment:* The respondent recommended providing guidance on the ability and method to recycle RFID tags.

DoD Response: The DoD would handle packaging and pallet material containing RFID tags using similar procedures as are currently used. Additional analysis is continuing in order to review the impacts of RFID tag materials in the various recycling waste streams.

52. *Comment:* Readability distance may vary based on equipment used, type of material and other factors that affect RF. MIL–STD–129 has defined requirements for the placement of tags on the pallet and case. This requirement may not be met for certain types of materials, liquids, metals, etc. We recommend the DoD make allowances for tag placement that best suits the material being tagged. MIL–STD–129 also states a requirement for the tag to be readable at the time of shipment. Guidance is needed if the tag is damaged in transit or just simply not readable at the time of receipt.

DoD Response: As the implementation of the DoD RFID program continues, the need for inclusion of these requirements in the MIL–STD–129 will be reviewed.

53. *Comment:* The destruction of the RFID label after product delivery is a concern. Clear guidance has not been given on killing tags to ensure they do not resurface or are used to transport material other than the intended product. There needs to be assurance for when shipping materials are recycled or discarded, that previously assigned RFID information not be mistakenly re-used to identify another shipment of configuration of materials. An understanding of the DoD approach to handling passive RFID tags would be needed to assure systems support the intended post-use handling of the tags.

DoD Response: As the implementation of the DoD RFID program continues, additional procedures will be reviewed to preclude re-use of RFID tags and the potential for mis-labeling or false identification of materials.

54. *Comment:* It is not clearly outlined if (or which) pharmaceutical drug product(s) may require UID numbers affixed to the unit containers (bottles of tablets, solution, capsules, etc). The addition of an RFID tag on a small bottle containing serialized identifier would be difficult at a local distribution center and may need consideration at the manufacturer.

DoD Response: The requirement for RFID tagging of UID item packaging is a future requirement and not included in the scope of this DFARS rule.

55. *Comment:* Clear understanding of pharmaceutical product flow from the product manufacturer, to an authorized pharmaceutical distribution center, and finally to a DoD depot or warehouse must be considered in order to manage the impact of RFID tagging of cases and pallets when product is not directly shipped to DoD and manufacturers regarding RFID tagging needs. The responsibility of providing ASN's and case/pallet RFID tags would reside with the pharmaceutical distribution entity. Original packaging of cases and pallets from the manufacturer may change at the DC since these deliveries are not dedicated for DoD orders but are stocking orders for multiple customers.

DoD Response: Noted. The responsibility for providing case and pallet RFID tags in addition to the correct ASN resides with the contract holder.

56. *Comment:* Very limited guidance has been made available regarding the impact analysis requirements for pharmaceutical and medical materials (products). It is currently understood from FDA guidance that biological pharmaceutical materials are not to be included in RFID pilot studies until further regulatory review is completed and further guidance is provided. Would the DoD guidance provide similar concerns?

DoD Response: Pharmaceuticals are not included within the scope of the current DFARS rule. However, DoD is working closely with the FDA on the future use of RFID on pharmaceutical items—particularly biologics and medical items.

57. *Comment:* A respondent commented on the need for DoD to only adopt a RFID-use mandate if RFID technologies will not have a negative impact on recycling for any container, package, or pallet producer or any industry utilizing recycled containers or pallets to produce other products. Additionally, this respondent urges the Department to carefully analyze the use of RFID tags for each type of container under consideration.

DoD Response: As the DoD RFID effort progresses, the Department will remain cognizant of this and other industry association's concerns surrounding the use of RFID on particular materials used in shipping items throughout the supply chain. Additional analysis is continuing in order to review the impacts of RFID tag materials in the various recycling waste streams.

58. *Comment:* The 30 Jul 2004 OUSD(AT&L) memo "Radio Frequency Identification (RFID) Policy", discussed over-arching DoD-wide implementation of RFID into the supply chain system. When the proposed rule was published in April, it confused program managers and contracting functionals because the proposed DFARS changes only covered limited types of commodities being shipped to only two depots. We thought the DFARS proposed rule would take into account the more expansive application of RFID within DoD as expressed in the various RFID policy memos. We can only assume the proposed rule represents just the first phase of RFID application, and subsequent DFARS changes will expand RFID application.

DoD Response: This DFARS rule covers the commodities and locations for 2005, additional DFARS updates/rules will be used to provide the locations and commodities for 2006 and 2007.

59. *Comment:* The respondent has followed the development and testing of RFID tags for the typical "supermarket" food products. It would seem to them, and they believe this is a view shared by most in the wholesale food industry, that feasibility and affordability of RFID tags for the food industry is at least 3 years down the road. Even Wal Mart seems to have backed down with their RFID initiative. It is important to recognize that profit margins in the food business are measured in pennies. This is a factor that puts great emphasis on the cost of RFID tags. RFID makes a great deal of sense for highly sensitive or costly items that the DoD or other government agencies are attempting to control. It would seem that tracking cases of peas, corn, cereal, etc., would be rather low on the priority list vs. other costly or sensitive items. The respondent strongly recommends consideration that application of RFID tags to food related products be deferred until technological challenges are resolved and the cost of RFID tags become reasonable. Implementing requirements to support RFID tags at these early stages might result in limitations or elimination of the ability of small business to sell to the government—a result that would be contrary to federal procurement guidelines or could result in the need for notable cost increases for the food products supplied to the various government agencies.

DoD Response: Consumer products and typical "supermarket" food products are not included within the scope of the current DFARS rule. The DoD is reviewing future requirements for consumer products and typical "supermarket" food products for phasing into the DoD RFID implementation.

60. *Comment:* The respondent recommends that DoD reexamine its use of the Ship Notice/Manifest (ASC X12 856 Transaction Set). There are numerous inconsistencies between the use within DoD and the primary users of EPC. A. Background: In addition, contractors must send an advance shipment notice in accordance with the procedures at *http://www.dodrfid.org/asn.htm*, to provide the association between the unique identification encoded on the passive tag(s) and the product information at the applicable case and palletized unit load levels. B. Regulatory Flexibility Act: ¶ 2 "The proposed rule will also require contractors to provide an electronic advance shipment notice in accordance with the procedures at *http://www.dodrfid.org/asn.htm*, to associate RFID tag data with the corresponding shipment. 252.211–7XXX Radio Frequency Identification. As prescribed in 211.275–3, use the following clause: Radio Frequency Identification (XXX 2005)(e) Receiving report. The Contractor shall electronically submit advance shipment notice(s) with the RFID tag identification (specified in paragraph (d) of this clause) in advance of the shipment in accordance with the procedures at *http://www.dodrfid.org/asn.htm*. The specifics for the Advance Shipment Notice (this terminology is incorrect). The correct title for the X12 856 transaction set is "Ship Notice/Manifest." The specific reference from the Web page about is *856_Pack_Update_WAWF_4010_EDI_Detail.doc*, Version 3.0.7, March 2005. Contemporary versions of X12 (5020) and many previous versions declared REF01 (Data element 128) as having a minimum size of two characters and a maximum size of 3. As far back as X12 (4010) we find the value "TPN" to indicate "transponder number." Wal-Mart Implementation Guidelines for EDI state, "Future documents that will support EPC information • 856—Ship Notice." The 856 transaction set has two primary schemes, one which employs the CLD/REF loop (Loop ID—CLD) and the other employs a Marks and Numbers segment (MAN). The retail segment (the model for EPC) employs the MAN segments. Organizations shipping to retail distributors and sales points will need to employ a different scheme for DoD than for retailers. DoD is "way ahead of the curve" with regard to EPC implementation and then tying that implementation to EDI. There are numerous issues that are currently unresolved (as mentioned above) and DoD must be prepared to re-implement its EPC/EDI usage once the details have been sorted out by industry. Does DoD intend only to permit Version 4010 of the ASC X12 standards? Will future implementations require Small to Medium Enterprises (SMEs) to then redesign their systems? A Ship Notice/Manifest transaction provides no benefit for the SME. DoD should identify the frequency of anticipated changes in these rules.

DoD Response: DoD follows Federal Implementation Conventions for all X12 transaction sets. In some cases, that may result in a different transaction set than the commercial transaction set, however we will continue to use the Federal Implementation Conventions for X12 transaction sets.

61. *Comment:* Additional—The requirement of EPC tags in general and Class 0 and 1, specifically. The DoD requirement for Generation 2 passive RFID tags preceded the submission by

EPCglobal of the Generation 2 specification to ISO for standardization. In the interest of RFID harmonization with international allies, tag compliance with JTC1 ISO/IEC 18000–6c should supersede Generation 2 compliance once ISO 18000–6c is issued. 252.211–7XXX Radio Frequency Identification. As prescribed in 211.275–3, use the following clause: Radio Frequency Identification (XXX 2005) 2(d) Data syntax and standards. The Contractor shall use one or more of the following data constructs, depending upon the type of passive RFID tag being used in accordance with the tag construct details located at *http://www.dodrfid.org/tagdata.htm* (version in effect as of the date of the solicitation): 2(a) Definitions Passive RFID tag means a tag that reflects energy from the reader/interrogator or that receives and temporarily stores a small amount of energy from the reader/interrogator signal in order to generate the tag response. Acceptable tags are—(1) EPC Class 0 passive RFID tags that meet the EPCglobal Class 0 specification; (2) EPC Class 1 passive RFID tags that meet the EPCglobal Class 1 specification; and (3) EPC UHF Generation 2 passive RFID tags that meet the EPCglobal UHF Generation 2 specification. It is not believed that the tags being sold to DoD meet the requirements of the EPC Class 0 or Class 1 specifications and that it is a serious error to say that they do. The only EPC tag having a viable specification is that of UHF Generation 2. Properly, DoD should be referencing ISO standards, in the case of RFID ISO/IEC 18000; and for passive technology operating in the 860–960 MHz range: ISO/IEC 18000, Part 6c. Such reference would be internationally viable, would include the UHF Gen2 standard currently referenced and would provide room for growth. Not referencing ISO standards is a serious mistake. If ISO standards are not going to be referenced, only UHFGen2 tags should be called out.

DoD Response: The DoD opted to embrace EPC specifications for Class 0 and Class 1 readers and tags in order to quickly adopt technology that enhances interoperability with our industry supplier base. At this time, DoD only accepts EPC compliant Class 0 and Class 1 tags. As the UHF Gen 2 specification is ratified and becomes part of the appropriate ISO standard, the DoD policy documentation will be updated to reflect this new standard.

62. *Comment:* The definitions of "palletized unit load" and "shipping containers" as indicated in the section 252.211–7XXX are acceptable according to the practices in handling corrugated and solid board containers.

DoD Response: Noted.

63. *Comment:* Assessing the possible impact, if any, on the environment and materials recycling, including corrugated containers. The Fibre Box Association (FBA) has considered for some time the potential impact of the passive RFID tags and antenna in the recycling stream that would impact the manufacturing location where the recovered corrugated material is processed, as well as the characteristics in the product itself containing a high percentage of recycled fiber content. As RFID tags come into widespread use, either from DoD requirements or other commercial and industrial organizations, an increasing number of these devices will enter the recycling stream. Corrugated containers are recovered and recycled at a level above 70%, the highest recycling rate for a defined article and very much in competition with aluminum cans for the top spot. Two systems were assessed for environmental and product safety considerations based on FBA's research of leading innovators and other analyses, identifying potential front-runners in the long term. The current RFID construction essentially consists of a small integrated circuit and an antenna that is either in foil form (copper) or printed with conductive silver ink. Thus the antennae are potential sources of metals that could be mobilized during the re-pulping, fiber treatment and manufacturing processes at the recycling mill. The impacts could be in different solid and aqueous releases from the mill, as well as the presence of these metals in the product itself. The FBA commissioned the technical arm of the forest and paper industry, the National Council for Air and Stream Improvement (NCASI), to perform a study to assess the potential impact of these two forerunner RFID antennas in the recycling stream. In the case of the foil antenna, the results of the study indicate the tag maintains its integrity in the re-pulping process due to the fact that this type of RFID tag is typically enclosed in a plastic laminate, which is then adhered to the container. The hydrapulper cleaning system separates these tags out at a 99%+ level. Such complete separation prevents any mobilization of the copper metal and allows the tags to be easily and safely disposed. The printed silver ink antenna is a more complex situation because it indeed mobilizes. In order to accurately ascertain the partition of silver among the different vectors—solid waste, effluent discharges and the product itself—a detailed trial was conducted in a pilot paper machine and fiber cleaning system at Western Michigan University in Kalamazoo, Michigan. This study and the subsequent analysis of samples collected from the different vectors, as well as testing for movement potential of silver from the corrugated packaging into food, has been recently completed. The study results indicate the following:

- The silver had a high tendency to remain in the fiber substrate of the paperboard.
- Silver extractions of the finished pilot plant paperboard samples revealed a high resistance of the silver to movement outside the substrate.
- Silver concentration in effluent, solid waste and product streams are well below the identified regulatory thresholds.

DoD Response: DoD appreciates this valuable information with regard to the studies completed on recycling RFID tags on corrugated containers. DoD will continue to solicit and accept all research, studies, and analyses that document the impact of RFID tags to our environment and recycling industries worldwide.

64. *Comment*: It is the recommendation of the AIM RFID Experts Group (REG) that the definitions employed for common industry terms follow the definitions internationally accepted for those terms. There is incompatibility between the definition in the DFARS Case 2004–D011, MIL–STD–129P, and the intended use of RFID within DoD. What follows are the terms and definitions employed by the documents in question. 211.275–2 Policy. Radio frequency identification (RFID), in the form of a passive RFID tag, is required for individual cases and palletized unit loads. Palletized unit load means a MIL–STD–129 defined quantity of items, packed or unpacked, arranged on a pallet in a specified manner and secured, strapped, or fastened on the pallet so that the whole palletized load is handled as a single unit. A palletized load is not considered to be a shipping container. [DFARS Case 2004–D011, "As prescribed in 211.275–3, use the following clause:"] Case: It is either an exterior container within a palletized unit load or it is an individual shipping container. [MIL–STD–129P c3, definition 3.3.1] Palletized unit load: A quantity of items, packed or unpacked, arranged on a pallet in a specified manner and secured, strapped, or fastened on the pallet so that the whole palletized load is handled as a single unit. A palletized or skidded load is not considered to be a shipping container. A loaded 463L System pallet is not considered to be a palletized unit load. Refer to the

Defense Transportation Regulation, DoD 4500.9–R, Part II, Chapter 203 for marking of 463L System pallets. [MIL–STD–129P c3, definition 3.27] International standards: International standards exists for these and constituent terms. DoD claims to use commercial standards. The most pervasive commercial standards are those of ISO. The DFARS case (and MIL–STD–129) need to reference the terms as employed in ISO standards. Pallet: Rigid horizontal platform of minimum height, compatible with handling by pallet trucks and/or forklift trucks and other appropriate handling equipment, used as a base for assembling, stacking, storing, handling, transporting, or display of goods and loads [ISO DIS 455, Pallets for materials handling—Vocabulary, definition 2.1]; packaging (product) product made of any material of any nature to be used for the containment, protection, handling, delivery storage, transport and presentation of goods, from raw material to processed goods, from the producer to the user or consumer, including processor, assembler or other intermediary [ISO DIS 21067, Packaging—Vocabulary, definition 2.1.1]; transport packaging: Packaging (2.1.1) designed to contain one or more articles or packages or bulk material for the purposes of transport, handling and/or distribution [ISO DIS 21067, Packaging—Vocabulary, definition 2.2.4]; unit load/unitized load: Single item or assembly of items designed to enable these to be handled as a single entity [ISO DIS 21067, Packaging—Vocabulary, definition 2.3.18]; box: Packaging with rectangular or polygonal sides usually completely enclosing the contents. Note: The sides may contain apertures for handling or ventilation. [ISO DIS 21067, Packaging—Vocabulary, definition 2.3.7]; case: non-specific term for a transport packaging, often used to refer to a box [ISO DIS 21067, Packaging—Vocabulary, definition 2.3.9].

DoD Response: These recommendations will be reviewed for possible inclusion in a future update to the MIL–STD–129. The definitions will remain consistent with MIL–STD–129.

65. *Comment*: Evidence: The environmental impact of utilizing Passive RFID tags to track and identify DoD material is being assessed in the same order that RFID tags will appear in significant quantities on DoD material. Since the DoD Passive RFID Mandate (as well as private sector mandates) is first targeted to unit loads/pallets and cases, data accumulation and studies that need to occur have first focused on carton board and corrugate. 4.1 Corrugate Evidence: Foil antenna made of Aluminum or Copper, irrespective of being on plastic substrate, will not taint the corrugate/carton board recycle stream. Because these tags remain intact, they are removed with staples, etc., in the first filtration after repulping with no carry over. The addition of RFID tags to the first repulping filtrate does not significantly alter the percentage constituent makeup of the first repulping filtrate, (10%). Present waste disposal for the first repulping filtrate is deemed acceptable in the future for the first repulping filtrate with RFID tags. Printed silver based antennas are undergoing pilot testing to insure no negative environmental impact occurs. There is some concern that residual silver may pass through. The underlying reason is that printed antennas do not have the same structural integrity to remain intact to allow simple filtration to be the means of removal. Since a significant portion of RFID tags are foil/plastic substrate based, the most conservative approach would be for DoD to utilize foil/plastic substrate based tags until completion of the printed antenna pilot tests. 4.2 Pallet Evidence: No studies have been initiated for environmental impact on pallets because a general assessment indicates no need due to the following: Pallets are either reused repeatedly for many turns with no subsequent environmental impact; Tags on pallets are reused or manually removed allowing the tags to be separated before disposal; Pallets are repaired and reused with no subsequent environmental impact from tags; Pallets are disposed of via grinding where antenna metal would constitute .4ppm. Final uses of ground pallets are fuel, mulch, and filler for plastic; Total pallet tags will be fewer than case tags by factors between 20 and 100.

DoD Response: DoD appreciates this valuable information and analysis concerning the recycling impacts of RFID tags on packaging materials. DoD will continue to solicit and accept all research, studies, and analyses that document the impact of RFID tags to our environment and recycling industries worldwide. As a note, the tags placed on pallets will be placed on the shrink wrap not directly applied to the pallet itself.

66. *Comment*: Reference AIM REF Term of Reference 5R (RFID and recycling); 5. Mitigating Action Plans: For Use Cases and waste streams that are several years from having large number of RFID tags involved, assessments are in different stages of completion. However, all should be finalized before RFID becomes significant in each area. As well there are initiatives under way that take the introduction of RFID well beyond minimizing impact on existing processes to more net positive impacts. Both are outlined below: 5.1 Printed Silver Based Tags on Corrugate: The impact of introducing large numbers of printed silver based RFID tags into the corrugate/carton board recycle stream is in the final stages of study by the Fibre Box Association (FBA) and Confederation of European Paper Industries (CEPI), the U.S. and European trade associations respectively for the corrugate/carton board/paper sector. As well, several suppliers of silver based printing inks have studies underway. All those doing studies, ink suppliers, FBA, and CEPI plan to submit study results to OMB as soon as complete in the near future. 5.2 Existing Waste Streams: Impact data is not yet available for plastics, glass or metal. However, the same successful approach that is in final stages of completion for corrugate will be undertaken. The following have been engaged to provide guidelines for RFID use to minimize environmental impact:

Waste stream trade association guideline	Completion
Plastics Society of Plastic Engineers (SPE).	1st Qtr 07.
Society of Plastics Industry (SPI).	
Glass Packaging Institute (GPI)	1st Qtr 07.
Steel TBD	4th Qtr 07.
Aluminum TBD	4th Qtr 07.

5.3 Reusable Assets: An EPC Global Work Group led by CHEP (a global pallet pool owner) is defining tag and data needs to ensure Reusable Assets are tagged with long life tags for both the Asset GRAI and the contents' EPC. Target completion for a standard is November 2005. 5.4 Tag Reuse: A mechanism to minimize the impact or RFID tags is Reuse. At least one commercial activity is underway to pilot and validate the technical and economic viability of Tag Reuse. ASADA will be running a pilot in conjunction with a recycle corrugate mill to validate the economics. Key to tag reuse is the tag issuing entity must use password alterable EPC numbering so the tag can be reused. Assuming technical and economic viability is validated in the pilot, tag reuse will be in place by Q2'06. 5.5 Recycle Process ID: AIM will petition ISO to reserve 8 bits in RFID tag protocols to carry EPA recognized processes for recycling. The ISO submission will be August 1, 2005. 5.6 Constituent Reduction: Constituent/Metal Antenna, Silicon IC, Substrate, Adhesives) Reduction for Passive RFID

Tags is the primary R&D focus of all RFID Tag Suppliers. The underlying economic requirement for massive adoption of RFID in the private sector is tag cost reduction. Tag cost is based almost entirely on constituent cost with the cost of the main tag constituents essentially being equivalent. Therefore, tag constituent contents will drop proportionally with price, *i.e.*, proportional in the drop from mid twenty cents to sub ten cents, over the next 5 years. Discussion: Given the above evidence and action plans to create additional evidence, the net environmental result of mandated RFID adoption is presented below against the long established strategy of environmental responsibility—Recycle, Reuse, Reduce: Recycle: Existing waste stream recycling at a minimum will be unaffected. More likely waste stream recycling will have significantly improved efficiency because mixed stream solid waste separation will become automated. Valuable components of RFID tags will be retrieved; Reuse: More reusable assets such as totes and pallets will be used because their location and renting partner will be real-time; Re-shipper corrugate cases will be utilized more; An infrastructure will be established to reuse hardened RFID tags; Reduce: Natural economic forces will significantly reduce RFID tag constituent content.

DoD Response: DoD appreciates this valuable information and analysis provided concerning the recycling impacts of RFID tags on packaging materials. DoD will continue to solicit and accept all research, studies, and analyses that document the impact of RFID tags to our environment and recycling industries worldwide.

67. *Comment*: (Item 1): Paragraph (b)(1)(ii) of the proposed clause 252.211–7XXX currently references shipment receiving sites Susquehanna PA and San Joaquin CA. Recommendation: We suggest removing reference in the clause to specific DLA receiving facilities, to point back to the contract for delivery site instruction. Please revise clause language to read: "(ii) Are being shipped as defined within section D (Delivery) or as defined elsewhere within the contract."

DoD Response: The two specific sites are provided as guidance so that contracting officers will know what locations to include in section D of contracts.

68. *Comment*: (Item 2): Regarding the meaning of Unique as defined in the proposed clause 252.211–7XXX, we recommend adding the words "and all" as underlined below to ensure that the meaning of the word unique is not misunderstood. (c) The Contractor shall ensure that—(1) The data encoded on each passive RFID tag are unique (*i.e.*, the binary number is never repeated on any *and all* contracts) and conforms to the requirements in paragraph (d) of this clause;

DoD Response: Agree. This change has been made in the final rule.

69. *Comment*: (Item 3): Subparagraph (e) of the proposed clause 252.211–7 XXX, "Receiving report" provides a URL connection for instructions on Advance ship notification. Data found within URL Web sites are subject to random modification and change. Recommendation: We recommend the URL reference be replaced with either a reference to the ASN process found within MIL–STD–129 or as delineated within the contract.

DoD Response: While the content posted to the URL (*http://www.dodrfid.org/asn.htm*) is subject to modification, the version of the information posted to the URL in effect at the date of solicitation is binding.

70. *Comment*: Supplemental recommendation: Often the prime contractor will ship on multiple contracts adding to the level of complexity. It would be beneficial to add language to the proposed clause to encourage the use of the Single Process Initiative (SPI) where practicable.

DoD Response: Noted.

71. *Comment*: The respondent commented on the use of RFID tags in recycled materials and referred the reader to comments submitted by the Fibre Box Association with regard to a study being completed on RFID tags in recycling.

DoD Response: Noted.

72. *Comment*: The respondent expressed concern over the potential adverse impacts that RFID tags may have on their manufacturing processes when scrap material that has been manufactured into raw material are utilized to make new basic materials. The respondent recommends using a technique, in the future, for product design that takes recycling into account as the product is developed. Additionally, the respondent urges DoD to reconsider the timing of the policy until additional data can be derived relative to the impact of tags on the recycling supply chain.

DoD Response: It has been noted in comments from other industry associations that have commissioned studies on RFID tags (with both copper and silver antennas) that foil antennas can be sorted out at a 99%+ level, and printed silver ink antenna had a high resistance to move outside the substrate and the silver remains in the fiber substrate of the paperboard, additionally, the silver concentrate in the solid waste and product streams are well below regulatory thresholds. The DoD will continue to monitor industry testing of recycling processes containing RFID tags or tag fragments. As the results of these tests become known, DoD RFID policy will be amended as required.

73. *Comment*: Reaching End-to-End supply chain visibility. End-to-End visibility is achieved through system integration across the supply chain—RFID merely simplifies asset identification.

Recommendation: Harmonizing current disparate information systems could greatly improve supply chain visibility using today's bar codes.

DoD Response: Noted. The DoD is using barcode technology and RFID technology as well as other complementary AIT in addition to systems integration efforts to achieve End-to-End supply chain visibility.

74. *Comment*: Accuracy of the cost burden estimate

The IBM/AT Kearney study, "A Balanced Perspective: EPC/RFID Implementation in the CPG Industry" demonstrates most CPG categories have a negative 10-year Net Present Value Business Case.

IBM/ATK study shows product category dynamics significantly influences Return On Investment.

Costs to CPG manufacturers for RFID Implementation far exceed the initial DoD estimates.

Manufacturers receive virtually no benefits from RFID unless real-time product movement is shared by the DoD.

Recommendation: Pursue RFID programs on product categories with sufficient ROI to justify the extensive additional costs.

DoD Response: Our in-depth analysis indicates that CPG items are not typically shipped to DDSP and DDJC and therefore are not included within the scope of the current DFARS rule. The DoD is reviewing future requirements for specific classes of supplies and commodities to phase into the DoD RFID implementation.

75. *Comment*: Technology Issues.

Tag read rates on many CPG products remains low, both in test labs and in pilots.

Tag quality is uneven, resulting in additional costs to manufacturers.

Tag Application devices do not, for high volume manufacturers, operate at manufacturing line speeds, resulting in inefficiencies.

Recommendation: Pursue case-level RFID program on mission critical products.

DoD Response: Our in-depth analysis indicates that CPG items are not typically shipped to DDSP and DDJC and therefore are not included within the scope of the current DFARS rule. The DoD is reviewing future requirements for specific classes of supplies and commodities to phase into the DoD RFID implementation. The tag quality issue is being addressed by various organizations. There is no current standard for tag quality and this issue is being addressed by various industry organizations. The DoD will monitor any issue recommendations or resolutions for possible inclusion in future updates.

76. *Comment:* Tag location.

RFID technical limitations may render tag unreadable based on DoD specs.

Recommendation: Remove restriction on tag placement for CPG companies and allow placement based on maximum tag read rates.

DoD Response: Our in-depth analysis indicates that CPG items are not typically shipped to DDSP and DDJC and therefore are not included within the scope of the current DFARS rule. The MIL-STD–129 contains recommended tag placement location, but can be adjusted to get maximum tag read rates.

77. *Comment:* Advanced Ship Notification.

ASNs, when used properly, can provide many of the same benefits as RFID.

Recommendation: Aggressively pursue pallet level ASN implementations within the DoD supply chain.

DoD Response: The pallet is in the ASN, just not the only thing in the ASN. The benefit of an ASN lies in the positioning of shipment data into a receiving information system prior to the actual arrival of the corresponding shipment—thus providing the receiving organization with "actionable information" to make delivery changes or other key business decisions. RFID is a technology that improves the ability of users in supply chains to rapidly identify, record, and process items, shipments, or both. The use of an ASN with RFID technology facilitates the positioning of shipment data into a receiving information system and allows the immediate "hands off" receipt, via RFID, of that item into inventory upon the arrival of the actual shipment—thus speeding up product availability for the customer as well as invoice close-out and payment.

78. *Comment:* We believe that the DoD should consider a more targeted approach on high value categories that can generate a positive ROI, and avoid low cost/low value CPG products. *Recommendation:* Pursue case-level RFID tagging for mission critical products (*i.e.*, CPG products not included) that current technology limitations can support. Continue to evaluate pallet-level RFID programs for CPG products and pursue implementation when and if RFID technology and costs warrant. Look at ways to leverage existing technologies like bar codes and ASNs on lower cost CPG products.

DoD Response: Our in-depth analysis indicates that CPG items are not typically shipped to DDSP and DDJC and therefore are not included within the scope of the current DFARS rule. The DoD implementation is already pursuing case and pallet level tagging for mission critical products and is reviewing future requirements for specific classes of supplies and commodities to phase into the DoD RFID implementation.

79. *Comment:* Initial Regulatory Flexibility Analysis of Passive RFID Version 1.2, March 2005—Specific Comments.

We have reviewed the DoD's Initial Regulatory Flexibility Analysis of Passive RFID and would like to highlight a number of items for consideration: Section 1.5: The repeated references to a "nested" parent child relationship with EPC case tags and pallet tags is not a capability that exists broadly today amongst CPG manufacturers. All of the limited customer pilots at this point do not require the case level EPC serial numbers to be sent with the ASN.

DoD Response: Our in-depth analysis indicates that CPG items are not typically shipped to DDSP and DDJC and therefore are not included within the scope of the current DFARS rule. The current ASN structure for suppliers allows for a "nested" parent-child relationship between the pallet and case tags. See comments 81–87 for further clarification. The benefit of an ASN lies in the positioning of shipment data into a receiving information system prior to the actual arrival of the corresponding shipment—thus providing the receiving organization with "actionable information" to make delivery changes or other key business decisions. RFID is a technology that improves the ability of users in supply chains to rapidly identify, record, and process items, shipments, or both. The use of an ASN with RFID technology facilitates the positioning of shipment data into a receiving information system and allows the immediate "hands off" receipt, via RFID, of that item into inventory upon the arrival of the actual shipment—thus speeding up product availability for the customer as well as invoice close-out and payment.

80. *Comment:* Section 3.2: The reference to the requirement of linear bar codes to access external databases is also a requirement with the current 96 bit passive RFID tags being used in the CPG industry. To obtain any details on the serialization on the tag would require querying an external database.

DoD Response: Noted.

81. *Comment:* Section 3.3: We agree that the two most logical choices to enable enhanced visibility in the DoD supply chain are bar codes and passive RFID tags. The idea that no human intervention is required on RFID tags is not correct for RF unfriendly products. Many food products in the CPG industry contain metals, liquids, and metalized films which prohibit these cases from being read in a typical pallet configuration. Since the capability does not broadly exist to send the serialization as part of an ASN, pallets would need to be broken down and cases passed individually in front of a reader in order to get 100% case level reads.

DoD Response: The inability to achieve 100% case level read rates does not relieve a shipper of the requirement to send the appropriate ASN with the tag serialization as part of the ASN. The nested parent child relationship between pallet and case tags inherent in the ASN will negate the need to obtain 100% case level tag reads.

82. *Comment:* Section 3.3.1: EPCglobal sees both bar codes and RFID technologies co-existing for years. This supports a more targeted approach of using bar codes on low-value products and RFID on high-value and high-importance items.

DoD Response: The DoD concurs with the EPCglobal outlook and plans to continue the use of both linear bar codes and two dimensional symbology in the suite of applicable supply chain technologies.

83. *Comment:* Section 4.4: Passive RFID is still unproven in harsh environments, specifically where refrigeration and freezing are involved due to condensation. Additionally, although referenced in this document, dynamic multi-block read and write capability is not available in the current 96 bit tags. The specifications are also moving to "locked" tags which secure the data written by manufacturers.

DoD Response: Our in-depth analysis indicates that CPG items are not

typically shipped to DDSP and DDJC and therefore are not included within the scope of the current DFARS rule. The DoD is reviewing future requirements for specific classes of supplies and commodities to phase into the DoD RFID implementation.

84. *Comment:* Section 5.1: Adoption rates are much slower that originally estimated, highlighted by the information shared earlier from the AMR Research report.

DoD Response: The Regulatory Flexibility Analysis has been updated to include the most recent adoption rates from the most recent 2005 AMR report.

85. *Comment:* Cost & Benefit Analysis—True Impact To Suppliers Section 6.4: There are a number of items in the benefit and cost analysis that do not accurately reflect the true cost impact to suppliers of meeting the proposed DoD RFID tagging requirements. Industry data concurs that there will be incremental costs of managing separate inventories of tagged and non-tagged products. Depending on the levels of automation, these costs can range from $0.75 to $2.00 per case in a postproduction "slap and ship" environment. Additionally, many of the research and development (RFID labs), infrastructure, software, middleware, material handling equipment, etc. are not included in the economics. The economic examples listed around a $4,000 printer and a $0.50 tag are highly simplistic and do not reflect the true costs of an enterprise implementation of RFID. Individual company business cases show these costs can be as high as tens of millions of dollars, not to mention reoccurring tag costs.

DoD Response: Noted. Those costs included in the cost analysis were not intended to reflect the true cost of an enterprise implementation of RFID. These costs were provided as examples of how a business, particularly a small or medium sized business, can comply with the RFID policy without spending millions of dollars.

86. *Comment:* Company background: SUPERVALU is the nation's largest publicly held food wholesaler in the United States. We are a Fortune 500 company which had last year sales of $19.5 billion as both a grocery retailer and wholesaler. SUPERVALU has been following both Wal-Mart's and DoD's RFID initiatives. Publicly we are opposed to the mandate to DeCA to implement RFID by January 1, 2007 for several reasons: 1. RFID is still not a proven technology ready for a production roll out across the grocery industry. Most food manufacturers and grocery companies involved are only in pilot mode and are running into many challenges today.

2. Currently RFID does not work well on "mixed" pallets (*e.g.*, 70–120 cases on a pallet that may represent 50–120 different products) that a DeCA commissary (or grocery) receives from their distributors due to the high error rate for mixed pallets. While Wal-Mart is often cited for mandating RFID requirements, Wal-Mart is using RFID on full pallets of one product not multiple, different products.

3. Error rates on "mixed" pallets are even higher when foil and liquids are on the same pallet as they obscure the RFID signal.

4. There is no, or little, ROI at this point in time given the cost of the EPC tags compared to the average case value especially with such a high error rate. An investment in RFID hardware today is considered "throw away" as the technology is still maturing. For example, frequent changes are necessary to resolve many of the readability issues that are occurring in today's pilots.

5. Finally, attaching RFID tags for groceries going to a commissary is not the intent of "End to End Warfighter Support Initiative" (*i.e.* implementing RFID to speed products and supplies to the "war fighters" in combat zones).

We also have concerns over who should tag the product when a distributor supplies the product to DeCA. Will manufacturers have to incur the expense of having to tag products going to a distributor, when only a small percentage of the items would be shipped to DeCA? On the other hand if manufacturers refuse to tag the product, will the distributor be required to add the tags? If so, who will pay this expense?

Recommendation: Due to the technology infancy of RFID, the high cost of implementing RFID for low value goods (*e.g.* groceries), and that adding RFID tags for grocery products going to a commissary have no impact on the End-to End Warfighter Support Initiative, that in January 2007, DoD review RFID technology to:

1. Determine if it is mature enough and being used in the grocery industry.

2. If there is a ROI on implementing RFID down to the case level.

3. And if technology is mature, to establish an implementation date, or if technology is not mature to establish another review date both preferably 18–24 months out.

DoD Response: Our in-depth analysis indicates that CPG items are not typically shipped to DDSP and DDJC and therefore are not included within the scope of the current DFARS rule. The DoD is reviewing future requirements for specific classes of supplies and commodities to phase into the DoD RFID implementation.

87. *Comment:* Hewlett-Packard (HP) finds that the Advance Shipment Notice (ASN) information requirements in the current state have seriously significant impact. There are two interconnected areas of concern: (a) Lack of industry standards: Current standards for ASN messaging have not yet caught up to include RFID standard information sets. HP understands that ANSI standards, designed to include extensions for EPC data, are underway but have not yet been proposed nor approved. Using requirements unique to DoD, or immature requirements that must soon be changed, causes unreasonable investment to be made by suppliers wishing to conform to the requirements. (b) Multiple implementations: Due to the large and diverse nature of HP products, geographies and organizations, multiple implementations would be required. This multiplies the investment burden. This is, of course, at HP's discretion—however, the combination of multiple implementations due to evolving standards (a) makes the investment burden excessively large. Recommendation: Have ASN notifications be optional until industry standards can be completed and folded in to the DoD requirements.

DoD Response: The Department intends to maintain the requirement for ASNs as a mandatory component of the DFARS rule. RFID is a technology that improves the ability of users in supply chains to rapidly identify, record, and process items, shipments, or both. The use of an ASN with RFID technology facilitates the positioning of shipment data into a receiving information system and allows the immediate "hands off" receipt, via RFID, of that item into inventory upon the arrival of the actual shipment—thus speeding up product availability for the customer as well as invoice close-out and payment.

88. *Comment:* The respondent finds that the implied label placement specifications for case labels are overly restrictive, and may have seriously significant impact. As stated, the DoD specification requires: "The passive RFID tag should be placed on the identification-marked side and right of center on a vertical face * * *." Product cases are often heavily printed, and have limited, designated areas for labels. The respondent intends to use integrated address/RFID labels, and has only moderate concern about the restrictions for location of labels on the vertical surface of the case. The respondent has serious concerns about

the designation of "side" versus "end" of cases. The respondent's standard product design currently has address placement on the "end" of cases. Changing address label placement in product design is impractical and costly. RFID readers and antennae can be placed appropriately to handle either location.

Recommendation: Allow either side or end placement of address labels, without qualification.

DoD Response: The MIL-STD–129 contains recommended tag placement location, but can be adjusted to get maximum tag read rates.

89. *Comment:* The respondent recognizes the likelihood of forklift mounted RFID readers in the near future. Industry standards have not yet addressed the issue of pallet tag location, however it seems likely that the combination of partial pallets and the mechanical characteristics of forklifts will likely influence industry standards to have a lower end range, such as 40 cm above the floor.

Recommendation: Modify lower end range of pallet tag location specification to 40 cm.

DoD Response: The MIL-STD–129 contains recommended tag placement location, but can be adjusted to get maximum tag read rates.

90. *Comment:* The respondent is concerned about the effects that future RFID tag technology might have in the processes of recovering different paper grades for recycling, when the paper products are affixed with RFID tags. The respondent recommends a collaborative effort with DoD to avoid incorrectly applying data from one segment of the recycling industry to recycled paperboard.

DoD Response: Noted. We have added additional information from other segments of the recycling industry to the Regulatory Flexibility Analysis to give a more balanced view of the industry as a whole. We look forward to continued work with industry associations as the RFID effort moves forward.

91. *Comment:* The respondent presented its opposition on requiring contractors to affix RFID tags at the case and palletized unit load levels when shipping certain purchased supplies and equipment until further information presents itself; outlining the full economic and environmental impacts of RFID tags on the recycling industry. The respondent recommends that DoD proceed cautiously. The RFID tags may have the potential to contaminate large quantities of currently recyclable material due to its heavy metals content. Moreover, small chips or pieces of metal slipping through the screening process during the cleaning and screening process could be a potential problem for paperboard packaging that comes into contact with food or pharmaceuticals. Metals are prohibited in paperboard that will come into contact with food or pharmaceuticals. Additional concerns are that metals in the RFID tags that would be contaminants in the steelmaking process, such as copper, could end up going up the stack as air emissions or stay in the product. The metals constituents of the RFID tags will be contaminants for PET, HDPE, and especially glass when concentrated. The DoD should either fund studies or seek partnerships with other federal agencies with knowledge of the recycling industry to determine the financial impacts of this decision on the recycling industry and whether making this policy change would make sense from an environmental standpoint before making any final decision.

DoD Response: It has been noted in comments from other industry associations that have commissioned studies on RFID tags (with both copper and silver antennas) that foil antennas can be sorted out at a 99%+ level, and printed silver ink antenna had a high resistance to move outside the substrate and the silver remains in the fiber substrate of the paperboard, additionally, the silver concentrate in the solid waste and product streams are well below regulatory thresholds. The DoD will continue to monitor industry testing of recycling processes containing RFID tags or tag fragments. As the results of these tests become known, DoD RFID Policy will be amended as required.

92. *Comment:* The respondent commented on the current RFID environment, technology and the work being done to ensure interoperability.

DoD Response: Noted.

93. *Comment:* The respondent commented on preliminary results from a study completed on the recycling of RFID tags which are attached to corrugated products. This study included crystalline connected copper and aluminum as well as printed antennae. The study indicated that existing process technologies in paper and board mills are capable of satisfactorily dealing with the crystalline connected antennae. More research is needed to determine if process changes are required for printed antennae

DoD Response: DoD appreciates this valuable input. DoD will continue to solicit and accept all research, studies, and analyses that document the impact of RFID tags to our environment and recycling industries worldwide.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule may have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* DoD has prepared a final regulatory flexibility analysis, available at *http://www.dodrfid.org/regflex.htm*. The analysis is summarized as follows:

This rule adds requirements for DoD contractors supplying materiel to the Department to affix passive RFID tags at the case and palletized unit load levels for specified commodities delivered to specified DoD locations. To create an automated and sophisticated end-to-end supply chain, DoD is dependent upon initiating the technology at the point of origin, the DoD commercial suppliers. Without the assistance of the DoD supplier base to begin populating the DoD supply chain with passive RFID tags, a fully integrated, highly visible, automated end-to-end supply chain is untenable. DoD contractors are presently required to print and affix military shipping labels to packages delivered to DoD. Options to comply with the requirements of the rule can be as simple as replacing existing military shipping label printers with RFID-enabled printers. This will allow DoD contractors to print military shipping labels with embedded RFID tags. The regulatory flexibility analysis also details other options and approximate costs to comply. The rule also requires contractors to provide an electronic advance shipment notice in accordance with the procedures at *http://www.dodrfid.org/asn.htm*, to associate RFID tag data with the corresponding shipment. The objective of the rule is to improve visibility of DoD assets in the supply chain, increase accuracy of shipments and receipts, and reduce the number of logistic "touch points" in order to decrease the amount of time it takes to deliver material to the warfighter. The rule does not duplicate, overlap, or conflict with any other Federal rules. DoD considered all public comments in developing the final rule.

C. Paperwork Reduction Act

This final rule contains a new information collection requirement. The Office of Management and Budget has approved the information collection for use through September 30, 2008, under Control Number 0704–0434.

List of Subjects in 48 CFR Parts 211, 212, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 211, 212, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 211, 212, and 252 continues to read as follows:

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

PART 211—DESCRIBING AGENCY NEEDS

■ 2. Sections 211.275 through 211.275–3 are added to read as follows:

211.275 Radio frequency identification.

211.275–1 Definitions.

Bulk commodities, case, palletized unit load, passive RFID tag, and radio frequency identification are defined in the clause at 252.211–7006, Radio Frequency Identification.

211.275–2 Policy.

Radio frequency identification (RFID), in the form of a passive RFID tag, is required for individual cases and palletized unit loads that—

(a) Contain items in any of the following classes of supply, as defined in DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation, AP1.1.11, except that bulk commodities are excluded from this requirement:

(1) Subclass of Class I—Packaged operational rations.

(2) Class II—Clothing, individual equipment, tentage, organizational tool kits, hand tools, and administrative and housekeeping supplies and equipment.

(3) Class VI—Personal demand items (non-military sales items).

(4) Class IX—Repair parts and components including kits, assemblies and subassemblies, reparable and consumable items required for maintenance support of all equipment, excluding medical-peculiar repair parts; and

(b) Will be shipped to one of the following locations:

(1) Defense Distribution Depot, Susquehanna, PA: DoDAAC W25G1U or SW3124.

(2) Defense Distribution Depot, San Joaquin, CA: DoDAAC W62G2T or SW3224.

211.275–3 Contract clause.

Use the clause at 252.211–7006, Radio Frequency Identification, in solicitations and contracts that will require shipment of items meeting the criteria at 211.275–2.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Section 212.301 is amended by removing paragraph (3) introductory text and paragraphs (3)(i) through (iii) and adding paragraph (f)(ix) at the end of the section to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(ix) Use the clause at 252.211–7006, Radio Frequency Identification, as prescribed in 211.275–3.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.211–7006 is added to read as follows:

252.211–7006 Radio Frequency Identification.

As prescribed in 211.275–3, use the following clause:

Radio Frequency Identification (Nov 2005)

(a) *Definitions.* As used in this clause—

Advance shipment notice means an electronic notification used to list the contents of a shipment of goods as well as additional information relating to the shipment, such as order information, product description, physical characteristics, type of packaging, marking, carrier information, and configuration of goods within the transportation equipment.

Bulk commodities means the following commodities, when shipped in rail tank cars, tanker trucks, trailers, other bulk wheeled conveyances, or pipelines:

(1) Sand.

(2) Gravel.

(3) Bulk liquids (water, chemicals, or petroleum products).

(4) Ready-mix concrete or similar construction materials.

(5) Coal or combustibles such as firewood.

(6) Agricultural products such as seeds, grains, or animal feed.

Case means either a MIL–STD–129 defined exterior container within a palletized unit load or a MIL–STD–129 defined individual shipping container.

Electronic Product Code™ (EPC) means an identification scheme for universally identifying physical objects via RFID tags and other means. The standardized EPC data consists of an EPC (or EPC identifier) that uniquely identifies an individual object, as well as an optional filter value when judged to be necessary to enable effective and efficient reading of the EPC tags. In addition to this standardized data, certain classes of EPC tags will allow user-defined data. The EPC tag data standards will define the length and position of this data, without defining its content.

EPCglobal™ means a joint venture between EAN International and the Uniform Code Council to establish and support the EPC network as the global standard for immediate, automatic, and accurate identification of any item in the supply chain of any company, in any industry, anywhere in the world.

Exterior container means a MIL–STD–129 defined container, bundle, or assembly that is sufficient by reason of material, design, and construction to protect unit packs and intermediate containers and their contents during shipment and storage. It can be a unit pack or a container with a combination of unit packs or intermediate containers. An exterior container may or may not be used as a shipping container.

Palletized unit load means a MIL–STD–129 defined quantity of items, packed or unpacked, arranged on a pallet in a specified manner and secured, strapped, or fastened on the pallet so that the whole palletized load is handled as a single unit. A palletized or skidded load is not considered to be a shipping container. A loaded 463L System pallet is not considered to be a palletized unit load. Refer to the Defense Transportation Regulation, DoD 4500.9–R, Part II, Chapter 203, for marking of 463L System pallets.

Passive RFID tag means a tag that reflects energy from the reader/interrogator or that receives and temporarily stores a small amount of energy from the reader/interrogator signal in order to generate the tag response. Acceptable tags are—

(1) EPC Class 0 passive RFID tags that meet the EPCglobal Class 0 specification; and

(2) EPC Class 1 passive RFID tags that meet the EPCglobal Class 1 specification.

Radio Frequency Identification (RFID) means an automatic identification and data capture technology comprising one or more reader/interrogators and one or more radio frequency transponders in which data transfer is achieved by means of suitably modulated inductive or radiating electromagnetic carriers.

Shipping container means a MIL–STD–129 defined exterior container that meets carrier regulations and is of sufficient strength, by reason of material, design, and construction, to be shipped safely without further packing (*e.g.*, wooden boxes or crates, fiber and metal drums, and corrugated and solid fiberboard boxes).

(b)(1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall affix passive RFID tags, at the case and palletized unit load packaging levels, for shipments of items that—

(i) Are in any of the following classes of supply, as defined in DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation, AP1.1.11:

(A) Subclass of Class I—Packaged operational rations.

(B) Class II—Clothing, individual equipment, tentage, organizational tool kits, hand tools, and administrative and housekeeping supplies and equipment.

(C) Class VI—Personal demand items (non-military sales items).

(D) Class IX—Repair parts and components including kits, assemblies and subassemblies,

reparable and consumable items required for maintenance support of all equipment, excluding medical-peculiar repair parts; and

(ii) Are being shipped to—

(A) Defense Distribution Depot, Susquehanna, PA: DoDAAC W25G1U or SW3124; or

(B) Defense Distribution Depot, San Joaquin, CA: DoDAAC W62G2T or SW3224.

(2) Bulk commodities are excluded from the requirements of paragraph (b)(1) of this clause.

(c) The Contractor shall ensure that—

(1) The data encoded on each passive RFID tag are unique (*i.e.*, the binary number is never repeated on any and all contracts) and conforms to the requirements in paragraph (d) of this clause;

(2) Each passive tag is readable at the time of shipment in accordance with MIL–STD–129 (Section 4.9.1.1) readability performance requirements; and

(3) The passive tag is affixed at the appropriate location on the specific level of packaging, in accordance with MIL–STD–129 (Section 4.9.2) tag placement specifications.

(d) *Data syntax and standards.* The Contractor shall use one or more of the following data constructs to write the RFID tag identification to the passive tag, depending upon the type of passive RFID tag being used in accordance with the tag construct details located at *http://www.dodrfid.org/tagdata.htm* (version in effect as of the date of the solicitation):

(1) Class 0, 64 Bit Tag—EPCglobal Serialized Global Trade Item Number (SGTIN), Global Returnable Asset Identifier (GRAI), Global Individual Asset Identifier (GIAI), or Serialized Shipment Container Code (SSCC).

(2) Class 0, 64 Bit Tag—DoD Tag Construct.

(3) Class 1, 64 Bit Tag—EPCglobal SGTIN, GRAI, GIAI, or SSCC.

(4) Class 1, 64 Bit Tag—DoD Tag Construct.

(5) Class 0, 96 Bit Tag—EPCglobal SGTIN, GRAI, GIAI, or SSCC.

(6) Class 0, 96 Bit Tag—DoD Tag Construct.

(7) Class 1, 96 Bit Tag—EPCglobal SGTIN, GRAI, GIAI, or SSCC.

(8) Class 1, 96 Bit Tag—DoD Tag Construct.

(e) *Receiving report.* The Contractor shall electronically submit advance shipment notice(s) with the RFID tag identification (specified in paragraph (d) of this clause) in advance of the shipment in accordance with the procedures at *http://www.dodrfid.org/asn.htm*.

(End of Clause)

[FR Doc. 05–18025 Filed 9–12–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050708184–5235–02; I.D. 070105B]

RIN 0648–AT50

Fisheries of the Northeastern United States; Atlantic Bluefish and Summer Flounder Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations implementing the Fishery Management Plan (FMP) for the Atlantic bluefish fishery and the FMP for the summer flounder, scup, and black sea bass fisheries. This rule makes administrative changes that will allow NMFS to consider and process state commercial quota transfer requests that address late-season circumstances that necessitate a state quota transfer. The intent of this action is solely to provide the flexibility to address unpredictable late-season events (such as severe weather or port obstruction) that may result in safety concerns in the commercial bluefish and summer flounder fisheries.

DATES: Effective October 13, 2005.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279.

SUPPLEMENTARY INFORMATION:

Background

The bluefish and summer flounder fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. Regulations implementing the Atlantic Bluefish FMP appear at 50 CFR part 648, subparts A and J. Regulations implementing the summer flounder portion of the Summer Flounder, Scup, and Black Sea Bass FMP appear at 50 CFR part 648, subparts A and G.

NMFS published a proposed rule to amend the regulations regarding state commercial bluefish and summer flounder quota transfers on July 26, 2005 (70 FR 43111). A complete discussion of the development of this regulatory amendment appeared in the preamble of the proposed rule and is not repeated here.

The current regulations, found at §§ 648.160 and 648.100, respectively, outline a process by which a state may request written approval from the Regional Administrator to transfer all or part of its annual commercial bluefish or summer flounder quota to one or more other states. Currently, NMFS maintains a policy of considering only quota transfer requests submitted by December 15 of each year in order to ensure that a notice announcing the quota transfer could be filed with the Office of the **Federal Register** by the end of the year for which the request is made. However, the Council is concerned that unforeseen circumstances, such as severe weather or physical obstruction, may prevent vessels from returning safely to their intended port of landing, and that this situation has arisen and may continue to arise during the second half of December in any given year. End-of-year transfers of quota allow vessels to land in another state without causing overharvest of that state's fishing year quota, provided that both states agree to the transfer. NMFS agrees that this administrative change in the regulations will facilitate the consideration and processing of state quota transfer requests to address unpredictable late-season events and consequent safety issues in these fisheries. This rule eliminates the references to time of effectiveness in the bluefish and summer flounder quota transfer and combination regulations. With these changes, quota transfer requests addressing unforeseen conditions in either fishery that arise late in the fishing year could be approved, even if the transfer request is made in the subsequent fishing year. Any quota transfer would continue to be valid only for the calendar year for which the request is made, and would therefore have no impact on the resource or the mortality objectives of the FMPs.

Comments and Responses

NMFS received three comment letters regarding the proposed rule (70 FR 43111, July 26, 2005).

Comment 1: The State of North Carolina and a North Carolina industry association both indicated that the proposed action would address safety concerns, particularly for fishermen using Oregon Inlet, NC, and would give states the flexibility to allow fisheries to continue through transfers of quota that would otherwise not be harvested.

Response:

NMFS agrees and is implementing the proposed action in this final rule.

Comment 2: The other commenter indicated general concern about overfishing and opposition to the use of quota transfers in any fishery.

Response: As discussed above, this action is purely administrative in nature, and is taken solely to facilitate the consideration and processing of state quota transfer requests to address unpredictable late-season events in these fisheries. Any quota transfer would continue to be valid only for the calendar year (and fishing year) for which the request is made. Thus, there would be no impacts on the resource or mortality objectives of the FMPs. This action would not make any substantive change in the state commercial quota transfer request or approval process for these fisheries.

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, 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 § 648.100, revise paragraph (d)(4) to read as follows:

§ 648.100 Catch quotas and other restrictions.

* * * * *

(d) * * *

(4) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made.

* * * * *

■ 3. In § 648.160, revise paragraph (f)(2) to read as follows:

§ 648.160 Catch quotas and other restrictions.

* * * * *

(f) * * *

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made.

* * * * *

[FR Doc. 05–18088 Filed 9–12–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333-5040-02 ; I.D. 090705D]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA) for 48 hours. This action is necessary to allow the deep-water species fisheries by vessels using trawl gear in the GOA to resume.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 8, 2005, through 1200 hrs, A.l.t., September 10, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the GOA under § 679.21(d)(7)(i) on September 4, 2005 (70 FR 52326, September 2, 2005).

NMFS has determined that approximately 50 mt of halibut remain in the fourth seasonal apportionments of the 2005 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA. Therefore, in accordance with §§ 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to allow the deep-water species fisheries by vessels using trawl gear in the GOA to resume, NMFS is terminating the previous closure and is reopening directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the GOA. In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the fourth seasonal apportionment of the 2005 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA will be reached after 48 hours. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA after 48 hours. Therefore the reopening is effective 1200 hrs, Alaska local time (A.l.t.), September 8, 2005, through 1200 hrs, A.l.t., September 10, 2005.

The species and species groups that comprise the deep-water species fishery are all rockfish of the genera Sebastes and Sebastolobus, deep-water flatfish, rex sole, arrowtooth flounder, and sablefish.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would unduly delay the opening of the fishery. NMFS was unable to publish an action providing time for public comment because the most recent, relevant data only became available as of August 7, 2005.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–18079 Filed 9–8–05; 12:18 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 090605F]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 48 hours. This action is necessary to fully use the C season allowance of the 2005 total allowable catch (TAC) of pollock specified for Statistical Area 630.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 8, 2005, through 1200 hrs, A.l.t., September 10, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on August 27, 2005 (70 FR 51300, August 30, 2005).

NMFS has determined that approximately 3,677 mt of pollock remain in the directed fishing allowance. Therefore, in accordance with 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the C season allowance of the 2005 TAC of pollock in Statistical area 630, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 630 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 48 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA effective 1200 hrs, A.l.t., September 10, 2005.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish an action providing time for public comment because the most recent, relevant data only became available as of September 6, 2005.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by 50 CFR 679.20 and 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–18078 Filed 9–8–05; 12:18 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 090605E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA) for 96 hours. This action is necessary to fully use the C season allowance of the 2005 total allowable catch (TAC) of pollock specified for Statistical Area 620.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 8, 2005, through 1200 hrs, A.l.t., September 12, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for pollock in Statistical Area 620 of the GOA under § 679.20(d)(1)(iii) on August 29, 2005 (70 FR 51300, August 30, 2005).

NMFS has determined that, approximately 3,039 mt of pollock remain in the directed fishing allowance. Therefore, in accordance with 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the C season allowance of the 2005 TAC of pollock in Statistical area 620, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 620 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 96 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA effective 1200 hrs, A.l.t., September 12, 2005.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries

data in a timely fashion and would delay the opening of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish an action providing time for public comment because the most recent, relevant data only became available as of September 6, 2005.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by 50 CFR 679.25 and 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–18080 Filed 9–8–05; 12:18 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 176
Tuesday, September 13, 2005

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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–156518–04]

RIN 1545–BE10

Section 411(d)(6) Protected Benefits; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains a correction to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Friday, August 12, 2005 (70 FR 47155) relating to the anti-cutback rules under section 411(d)(6) of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Pamela R. Kinard at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing (REG–156518–04) that is the subject of this correction is under section 411(d)(6) of the Internal Revenue Code.

Need for Correction

As published, REG–156518–04 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–156518–04), which was the subject of FR Doc 05–15960, is corrected as follows:

On page 47155, column 2, in the preamble, under the caption **ADDRESSES**, line 17, the language, "156581–04). The public hearing will be" is corrected to read "156518–04). The public hearing will be.".

Cynthia Grigsby,

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

[FR Doc. 05–17959 Filed 9–12–05; 8:45 am]

BILLING CODE 4830–01–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Chapter III

[Docket No. 2005–4 CRB CD 2003]

Distribution of the 2003 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Request for comments.

SUMMARY: The Interim Chief Copyright Royalty Judge, on behalf of the Copyright Royalty Board, is requesting comments on the existence of controversies to the distribution of the 2003 cable royalty fund.

DATES: Written comments should be received no later than October 13, 2005.

ADDRESSES: If hand delivered by a private party, an original and five copies of comments must be brought to Room LM–401 of the James Madison Memorial Building, Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services), an original and five copies of comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Streets, NE., Monday through Friday, between 8:30 a.m. and 4 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000. If sent by mail (including overnight delivery using United States Postal Service Express Mail), an original and five copies of comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, *etc.*, due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: William J. Roberts, Jr., Senior Attorney, or Abioye E. Oyewole, CRB Program Specialist. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Each year cable systems submit royalties to the Copyright Office under the section 111 statutory license for the retransmission to their subscribers of over-the-air television and radio broadcast signals. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in a retransmission and who timely filed a claim for royalties. The copyright owners may either negotiate the terms of a settlement as to the division of the royalty funds, or the Copyright Royalty Board (the "Board") may conduct a proceeding to determine the distribution of the royalties that remain in controversy. *See* 17 U.S.C. Chapter 8.

By motion received on August 31, 2005, representatives of the Phase I claimant categories (the "Phase I Parties")[1] have asked the Board to authorize a partial distribution of 50% of the 2003 cable royalty funds prior to October 31, 2005. In addition, they request that the Board publish a notice in the **Federal Register** requesting comments as to the extent of controversies, either at Phase I or Phase II, that exist over the distribution of the 2003 cable royalties. This **Federal Register** notice responds to these requests.

Accordingly, the Board seeks comments on whether any controversy exists that would preclude the distribution of 50% of the 2003 cable royalty funds to the Phase I Parties.

The Board also seeks comment on the existence and extent of any controversies to the 2003 cable royalty funds, either at Phase I or Phase II, with

[1] The "Phase I Parties" are the Program Suppliers, the Joint Sports Claimants, the Public Television Claimants, the National Association of Broadcasters, the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., the Canadian Claimants, the Devotional Claimants and National Public Radio.

respect to the 50% of those funds that would remain if the partial distribution is granted. In Phase I of a cable royalty distribution, royalties are distributed to certain categories of broadcast programming that have been retransmitted by cable systems. The categories have traditionally been movies and syndicated television series, sports programming, commercial and noncommercial broadcaster-owned programming, religious programming, music and Canadian programming. In Phase II of a cable royalty distribution, royalties are distributed to claimants within each of the Phase I categories. Any party submitting comments on the existence of a Phase II controversy must identify the category or categories in which there is a dispute, and the extent of the controversy or controversies.

The Board must be advised of the existence and extent of all Phase I and Phase II controversies by the end of the comment period. It will not consider any controversies that come to its attention after the close of that period.

Dated: September 8, 2005.

Bruce G. Forrest,

Interim Chief Copyright Royalty Judge.

[FR Doc. 05–18128 Filed 9–12–05; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–319–0488b; FRL–7966–3]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from facilities storing and processing organic liquids such as crude oil and petroleum by-products. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 13, 2005.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment.

You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses SJVUAPCD Rule 4623—Storage of Organic Liquids. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 19, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 05–18018 Filed 9–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2005–IA–0005; FRL–7967–6]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa for the purpose of establishing guidelines to identify stationary sources of air pollution potentially subject to Best Available Retrofit Technology (BART) emission control requirements. Owners and operators of stationary sources meeting the eligibility criteria will be required to submit source identification and emission unit description information to the state by September 1, 2005. BART-eligibility information is to be submitted on Iowa Department of Natural Resources (IDNR) form 542–8125 that lists facility information and emission unit identification and description. Annual emission totals in tons-per-year (potential) for PM_{10}, NO_X, SO_2 and VOCs are also required.

DATES: Comments on this proposed action must be received in writing by October 13, 2005.

ADDRESSES: Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the Addresses section of the direct final rule which is located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct

final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: August 30, 2005.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 05–18013 Filed 9–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R09–OAR–2005–NV–01; FRL–7967–9]

Revisions to the Nevada State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Nevada State Implementation Plan (SIP). These revisions concern definitions, sulfur emission regulations, and various other burning regulations. We are proposing to approve these regulations in order to regulate their corresponding emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 13, 2005.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2005–NV–01, by one of the following methods:

1. Agency Web site: *http://docket.epa.gov/rmepub/*. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions.

3. E-mail: *steckel.andrew@epa.gov*.

4. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal or e-mail. The agency Web site and eRulemaking portal are "anonymous access" systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://docket.epa.gov/rmepub* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Julie Rose, EPA Region IX, (415) 947–4126, *rose.julie@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal

A. What Regulations Did the State Submit?

The NDEP submitted a large revision to the applicable SIP on February 16, 2005. On August 18, 2005, the revision became complete by operation of law pursuant to 40 CFR part 51 Appendix V.

The primary purpose of this revision is to clarify and harmonize State and federally enforceable requirements. Because this revision incorporates so many changes from the 1970s and 1980s vintage SIP regulations, EPA has decided to review and act on the submittal in a series of separate actions. This Proposed rule is proposing to approve a few of the provisions contained in the February 2005 submittal. The remaining portions of the submittal will be acted on in future **Federal Register** actions.

Table 1 lists the provisions of the Nevada Administrative Code (NAC) addressed by this proposal with the dates that they were adopted and submitted by the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection (NDEP). Some of these provisions were renumbered after their initial adoption.

TABLE 1.—SUBMITTED REGULATIONS

NAC No.	NAC title	Adopted	Submitted
445B.001	Definitions	08/19/04	02/16/05
445B.002	Act	09/16/76	02/16/05
445B.004	Administrator	08/19/82	02/16/05
445B.005	Affected Facility	10/03/95	02/16/05
445B.006	Affected Source	09/18/01	02/16/05
445B.009	Air-conditioning equipment	09/16/76	02/16/05
445B.011	Air pollution	01/22/98	02/16/05
445B.018	Ambient air	09/03/87	02/16/05
445B.022	Atmosphere	09/16/76	02/16/05
445B.030	British thermal units	09/03/87	02/16/05

TABLE 1.—SUBMITTED REGULATIONS—Continued

NAC No.	NAC title	Adopted	Submitted
445B.042	Combustible refuse	09/16/76	02/16/05
445B.0425	Commission	01/22/98	02/16/05
445B.047	Continuous monitoring system	09/16/76	02/16/05
445B.051	Day	09/03/87	02/16/05
445B.053	Director	09/16/76	02/16/05
445B.055	Effective date of the program	11/03/93	02/16/05
445B.056	Emergency	11/03/93	02/16/05
445B.058	Emission	01/22/98	02/16/05
445B.059	Emission unit	10/03/95	02/16/05
445B.060	Enforceable	08/19/82	02/16/05
445B.061	EPA	11/03/93	02/16/05
445B.063	Excess emissions	11/03/93	02/16/05
445B.072	Fuel	09/03/87	02/16/05
445B.073	Fuel-burning equipment	08/29/90	02/16/05
445B.075	Fugitive dust	03/03/94	02/16/05
445B.077	Fugitive emissions	10/03/95	02/16/05
445B.080	Garbage	09/16/76	02/16/05
445B.084	Hazardous air pollutant	11/03/93	02/16/05
445B.086	Incinerator	09/16/76	02/16/05
445B.091	Local air pollution control agency	09/16/76	02/16/05
445B.095	Malfunction	09/16/76	02/16/05
445B.097	Maximum allowable throughput	09/03/87	02/16/05
445B.103	Monitoring device	10/03/94	02/16/05
445B.106	Multiple chamber incinerator	09/16/76	02/16/05
445B.109	Nitrogen oxides	03/03/94	02/16/05
445B.112	Nonattainment area	10/03/95	02/16/05
445B.113	Nonroad engine	05/10/01	02/16/05
445B.1135	Nonroad vehicle	05/10/01	02/16/05
445B.116	Odor	10/03/95	02/16/05
445B.119	One-hour period	09/03/87	02/16/05
445B.121	Opacity	09/16/76	02/16/05
445B.122	Open burning	09/16/76	02/16/05
445B.125	Ore	08/12/78	02/16/05
445B.127	Owner or operator	09/16/76	02/16/05
445B.129	Particulate matter	09/16/76	02/16/05
445B.130	Pathological wastes	10/03/95	02/16/05
445B.134	Person	09/16/76	02/16/05
445B.135	PM_{10}	11/18/91	02/16/05
445B.144	Process equipment	09/16/76	02/16/05
445B.145	Process weight	10/03/95	02/16/05
445B.151	Reference conditions	09/03/87	02/16/05
445B.152	Reference method	10/03/95	02/16/05
445B.153	Regulated air pollutant	10/03/95	02/16/05
445B.161	Run	09/16/76	02/16/05
445B.163	Salvage operation	09/16/76	02/16/05
445B.167	Shutdown	09/16/76	02/16/05
445B.168	Single chamber incinerator	11/08/77	02/16/05
445B.174	Smoke	09/16/76	02/16/05
445B.176	Solid waste	09/16/76	02/16/05
445B.177	Source	10/03/95	02/16/05
445B.180	Stack and chimney	10/03/95	02/16/05
445B.182	Standard	03/03/94	02/16/05
445B.185	Start-up	09/16/76	02/16/05
445B.196	Toxic regulated air pollutant	10/03/95	02/16/05
445B.198	Uncombined water	09/16/76	02/16/05
445B.205	Waste	09/16/76	02/16/05
445B.207	Wet garbage	09/16/76	02/16/05
445B.209	Year	09/03/87	02/16/05
445B.211	Abbreviations	08/19/04	02/16/05
445B.2204	Sulfur emission	09/16/76	02/16/05
445B.22043	Sulfur emissions: Calculation of total feed sulfur	08/19/04	02/16/05
445B.22047	Sulfur emissions: Fuel-burning equipment	09/09/99	02/16/05
445B.2205	Sulfur emissions: Other processes which emit sulfur	09/18/03	02/16/05
445B.22067	Open burning	02/26/04	02/16/05
445B.2207	Incinerator burning	02/26/04	02/16/05
445B.2209	Reduction of animal matter	09/16/76	02/16/05
445B.22097	Standards of quality for ambient air	02/26/04	02/16/05
445B.230	Plan for reduction of emissions	08/19/04	02/16/05

B. What Is the Regulatory History of the Nevada SIP?

The State of Nevada first submitted an applicable SIP in January 1972, portions of which EPA approved pursuant to CAA § 110(c) on May 31, 1972 at 37 FR 10842. The SIP included various sections of the NAC and the Nevada Revised Statutes. Nevada subsequently adopted and submitted many revisions to these requirements, some of which EPA approved on January 9, 1978 at 43 FR 1342, July 10, 1980 at 45 FR 46284, August 27, 1981 at 46 FR 43142, and June 18, 1982 at 47 FR 26387. Since 1982, EPA has approved very few revisions to Nevada's applicable SIP despite numerous changes that have been adopted locally.

C. What Is the Purpose of This Proposed Rule?

The purpose of this proposal is to bring the applicable SIP up to date. The regulations we are proposing to approve today address a few of the provisions contained in the February 2005 submittal concerning definitions, sulfur emission controls, and various burning regulations.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Regulations?

Generally, SIP regulations in attainment areas must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). Guidance and policy documents that we used to help evaluate enforceability include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Do the Regulations Meet the Evaluation Criteria?

We believe these regulations are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action.

Because EPA believes the submitted regulations fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these regulations into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have 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 proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxide.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 31, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 05–18092 Filed 9–12–05; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF MANAGEMENT AND BUDGET

48 CFR Part 9904

Office of Federal Procurement Policy; Cost Accounting Standards Board; CAS Exemption for Contracts Executed and Performed Entirely Outside the United States, Its Territories, and Possessions

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Staff Discussion Paper (SDP); request for comments.

SUMMARY: The Cost Accounting Standards (CAS) Board, Office of Federal Procurement Policy, invites public comments on the staff discussion paper regarding a provision that provides an exemption from CAS for contracts that are executed and performed entirely outside the United States, its territories, and possessions.

DATES: Comments must be in writing and must be received by November 14, 2005.

ADDRESSES: Due to delays in OMB's receipt and processing of mail,

respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted to *casb2@omb.eop.gov*. Please put the full body of your comments in the text of the electronic message and also as an attachment readable in either MS Word or Corel WordPerfect. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395–5105.

FOR FURTHER INFORMATION CONTACT: David Capitano, Cost Accounting Standards Board (telephone: 703–847–7486).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Board's rules, regulations and Standards are codified at 48 CFR Chapter 99. The Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires the Board, prior to the establishment of any new or revised Cost Accounting Standard (CAS), to complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of government contracts as a result of the adoption of a proposed Standard (*e.g.*, promulgation of a Staff Discussion Paper.)

2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).

3. Promulgate a Notice of Proposed Rulemaking (NPRM).

4. Promulgate a Final Rule.

This Staff Discussion Paper (SDP) is issued by the Board as step one of the four-step process. The Board notes that the exemption at 48 CFR 9903.201–1(b)(14) is not subject to the four-step process required by 41 U.S.C. 422(g)(1) because it is not a standard. Thus, there is no requirement for the Board to follow the four-step process for this promulgation. Nevertheless, the Board believes following the four-step process is beneficial for this issue. However, the issuance of this SDP is not intended to establish any precedence for use of the four-step process in promulgating CAS rules and regulations other than standards.

B. Background and Summary

The Office of Federal Procurement Policy, Cost Accounting Standards Board, is releasing a SDP regarding the exemption at 48 CFR 9903.201–1(b)(14). The purpose of the SDP is to solicit public views with respect to the Board's consideration of whether the exemption at 48 CFR 9903.201–1(b)(14) should be revised or eliminated. Respondents are encouraged to identify and comment on any issues not addressed in this SDP that they believe are important to the subject. This SDP reflects research accomplished to date by the staff of the Cost Accounting Standards Board in the respective subject area.

C. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this SDP, including but not limited to the questions listed in the SDP. All comments must be in writing or by E-mail, and submitted to the mailing or E-mail addresses indicated in the **ADDRESSES** section.

David H. Safavian,

Chair, Cost Accounting Standards Board.

Cost Accounting Standards Board Staff Discussion Paper (SDP)

48 CFR 9903.201–1(b)(14)

Exemption for Contracts Entirely Executed and Performed Outside the United States

Background

Purpose

48 CFR 9903.201–1(b) provides a list of categories of contracts and subcontracts that are exempt from all CAS requirements (CAS exemptions). Paragraph (14) of this provision provides an exemption for "Contracts and subcontracts to be executed and performed entirely outside the United States, its territories, and possessions." The purpose of this SDP is to explore whether this exemption should be revised or eliminated.

History of Exemption

The original CAS Board (the Board) was established by Section 2168 of the Defense Production Act of 1950 (DPA). Section 2163 of the DPA, entitled "Territorial Application of Act," provided that Sections 2061 through 2170 of the act "shall be applicable to the United States, its territories and possessions, and the District of Columbia" (United States). Since the provisions of the DPA were applicable only within the United States, the CAS Board's rules, regulations and standards were also applicable only within the United States.

On May 29, 1973, Mr. Van Cleve, General Counsel to the CAS Board, wrote to Mr. Jack Kendig, DCAA, reiterating the Board's lack of authority over contracts executed and performed entirely outside the United States. These comments were made during the CAS Board's early deliberations of what contracts were, or were not, under its purview:

"As you are aware, the CASB has previously recognized that its authorizing legislation is a part of Defense Production Act and that pertinent provisions of that Act apply to the activities of the Board. We consider that the above provision [Section 713 of the Act] does exclude from the Board's jurisdiction any contracts which are executed and performed in their entirety outside of the United States, its territories and possessions.

To the extent the Board has dealt with foreign contracts, it has been assumed that either the document was executed in the United States or that some part of performance occurred within the United States which would, of course, bring the contract within the scope of the Board's authority." [Reference added for clarification]

On June 29, 1973, the Deputy Assistant Secretary of Defense for Procurement advised the CAS Board that based on Mr. Van Cleve's May 29, 1973 opinion, DOD was revising ASPR 3–1204 (Contract Clauses) to add contracts and subcontracts executed and performed entirely outside the United States to the list of exclusions from CAS. On September 24, 1973, Defense Procurement Circular No. 115 amended ASPR 3–1204 to provide for this CAS exclusion. As amended, ASPR 3–1204 read as follows:

3–1204 Contract Clause. The Cost Accounting Standards clause set forth in 7–104.83 shall be inserted in all negotiated contracts exceeding $100,000, except when the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public or is set by law or regulation. In addition to the foregoing exceptions, the clause shall not be included in the following contracts:

* * * * * *

(vi) contracts which are executed and performed in their entirety outside the United States, its territories and possessions.

In 1980, the CAS Board ceased to exist under the DPA. CAS administration was undertaken by the Department of Defense until the CAS Board was re-established in 1988 under the Office of Federal Procurement Policy (OFPP) Act.

In 1991, the new CAS Board decided to review the exemption from CAS for contracts and subcontracts executed and performed entirely outside the United States, its territories and possessions at FAR 30.201–1(14). The exemption was retained and incorporated in the current CAS Board's recodified rules and regulations at 48 CFR 9903.201–1(b)(14) on April 17, 1992 (57 FR 14148).

Key Questions for Consideration

The CAS Board is soliciting comments on this issue from interested parties. In particular, the Board is interested in comments related to the following issues:

1. Any statute that would require the CAS Board to retain this exemption. If any such statute exists, provide the specific statute and language that contain this requirement.

2. How this exemption does or does not promote the CAS Board's primary objective of achieving "(1) an increased degree of uniformity in cost accounting practices among Government contractors in like circumstances, and (2) consistency in cost accounting practices in like circumstances by individual government contractor over periods of time."

3. The significance of the location of contract execution to CAS applicability.

4. The significance of the location of contract performance to CAS applicability.

5. The advantages and disadvantages of exempting contracts and subcontracts from CAS that are executed and performed entirely outside the U.S.

6. Contracting situations in which the exemption has historically been utilized.

[FR Doc. 05–17949 Filed 9–12–05; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622

[Docket No. 050729208–5208–01; I.D. 060805B]

RIN 0648–AP51

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Amendment to the Fishery Management Plans of the U.S. Caribbean

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement a comprehensive amendment prepared by the Caribbean Fishery Management Council (Council) to amend its Reef Fish, Spiny Lobster, Queen Conch, and Coral Fishery Management Plans (FMPs). The comprehensive amendment is designed to ensure the FMPs are fully compliant with the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This proposed rule would redefine the fishery management units for the FMPs; establish seasonal closures; impose gear restrictions and requirements; revise requirements for marking pots and traps; and prohibit the filleting of fish at sea. In addition, the comprehensive amendment would establish biological reference points and stock status criteria; establish rebuilding schedules and strategies to end overfishing and rebuild overfished stocks; provide for standardized collection of bycatch data; minimize bycatch and bycatch mortality to the extent practicable; designate essential fish habitat (EFH) and EFH habitat areas of particular concern (HAPCs); and minimize adverse impacts on such habitat to the extent practicable. The intended effect of this proposed rule is to achieve optimum yield in the fisheries and provide social and economic benefits associated with maintaining healthy stocks.

DATES: Comments must be received no later than 5 p.m., eastern time, on September 28, 2005.

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

- E-mail: *0648–AP51.Proposed@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier 0648–AP51.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Steve Branstetter, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308, Attention: Steve Branstetter.

Copies of documents supporting this action may be obtained by contacting the NMFS Southeast Regional Office at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727–824–5305; fax 727–824–5308; e-mail *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fisheries for spiny lobster, queen conch, reef fish, and corals and reef-associated invertebrates in the exclusive economic zone (EEZ) off Puerto Rico and of the U.S. Virgin Islands are managed under the respective fishery management plans prepared by the Council. These fishery management plans are implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622. This proposed rule would implement Amendment 2 to the FMP for the Spiny Lobster Fishery, Amendment 1 to the FMP for Queen Conch Resources, Amendment 3 to the FMP for the Reef Fish Fishery, and Amendment 2 to the FMP for the Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands, known collectively as the Comprehensive Amendment to the FMPs of the Caribbean.

Background

A notice of availability for the comprehensive amendment was published in the **Federal Register** on June 16, 2005 (70 FR 35053). This proposed rule and the comprehensive amendment are intended to address various requirements set forth in the Magnuson-Stevens Act: (1) Assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, fisheries; (2) specify objective and measurable criteria for identifying when a fishery is overfished; (3) end overfishing and rebuild overfished stocks, and prevent overfishing in fisheries that are identified as approaching an overfished condition; (4) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery and implement conservation and management measures that minimize bycatch and bycatch mortality to the extent practicable; and (5) identify, describe, and designate EFH and EFH-HAPCs for managed stocks, minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat.

Provisions of This Proposed Rule

Revision of Fishery Management Units (FMUs)

This proposed rule would redefine the FMUs in all the Council FMPs. FMUs define the specific species that are to be the target of conservation and management.

The proposed rule would remove from the respective FMUs, species found predominantly in the waters of Puerto Rico or the U.S. Virgin Islands (rather than in Federal waters). In addition, those species for which data are inadequate to establish a need for conservation and management, biological reference points, or stock status determination criteria would remain in the FMUs for data collection purposes but would not be subject to Federal regulation at this time. When

sufficient data are available and, if a need for management is determined, appropriate regulations would be implemented through subsequent rulemaking.

Under the proposed rule, Caribbean helmet, flame helmet, Caribbean vase, and whelk (West Indian top shell) would be removed from the Queen Conch FMP. All other species in the Caribbean conch FMU, except queen conch, and all aquarium trade species in the Reef Fish and Coral Reef FMPs, would be retained in the respective FMUs for data collection purposes only. Tables 1 and 2 of Appendix A to 50 CFR Part 622 (Caribbean Coral Reef Resources and Caribbean Reef Fish, respectively) would be revised accordingly; Table 5 of Appendix A to 50 CFR Part 622 (Caribbean Conch Resources) would be added; and the definition of "Caribbean conch resource" would be removed and replaced by a definition of "queen conch."

The proposed change would provide for collection of data on aquarium trade species and other species retained in the respective FMUs for data collection purposes only, but would remove these species from Federal regulations at this time. Consequently, existing regulations at 50 CFR 622.41(b) defining a marine aquarium fish as "a Caribbean reef fish that is smaller than 5.5 inches (14.0 cm) TL" and restricting the harvest of a marine aquarium fish to hand-held dip nets or hand-held slurp guns would be eliminated. The regulation at 50 CFR 622.32(b)(1)(ii) prohibiting the harvest and possession of butterflyfish and seahorses from Federal waters of the U.S. Caribbean also would be eliminated. There would be no specification of maximum sustainable yield (MSY), optimum yield (OY), or stock status determination criteria for species retained for data collection purposes only.

Seasonal Closures

This proposed rule would establish several seasonal closures to reduce fishing mortality, provide protection to key species during peak spawning seasons, protect EFH, and help to rebuild overfished fish stocks or keep healthy stocks from becoming overfished. For snappers, fishing for or possessing black, blackfin, vermilion, or silk snapper, in or from the Caribbean EEZ would be prohibited from October 1 through December 31 each year. From April 1 through June 30 each year, fishing for or possessing lane or mutton snapper in or from the Caribbean EEZ would also be prohibited. For grouper, fishing for or possessing red, black, tiger, yellowfin, or yellowedge grouper, in or from the Caribbean EEZ, would be prohibited from February 1 through April 30 each year. In addition, fishing for or possessing red hind in or from the Caribbean EEZ would be would be prohibited off the west coast of Puerto Rico west of 67°10′ W. longitude from December 1 through February each year. Further, to help rebuild overfished grouper species and to protect EFH, fishing for or possessing any species of fish, except highly migratory species, in or from the Grammanik Bank closed area would be prohibited from February 1 to April 30 each year. Highly migratory species means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in Appendix A to 50 CFR Part 635); white marlin, blue marlin, sailfish, and longbill spearfish. The Grammanik Bank closed area is bound by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	18°11.898′	64°56.328′
B	18°11.645′	64°56.225′
C	18°11.058′	64°57.810′
D	18°11.311′	64°57.913′
A	18°11.898′	64°56.328′

To reduce fishing mortality and help rebuild the overfished stock of Caribbean queen conch, the proposed rule would prohibit fishing for or possessing on board a fishing vessel a Caribbean queen conch in or from the Caribbean EEZ, except during October through June in the area east of 64°34′ W. longitude which includes Lang Bank east of St. Croix, U.S. Virgin Islands.

Restrictions on Gillnets and Trammel Nets

To help achieve necessary reductions in fishing mortality and to reduce bycatch, the use of gillnets or trammel nets to fish for Caribbean reef fish or Caribbean spiny lobster would be prohibited in the Caribbean EEZ. Possession of a gillnet or trammel net and any Caribbean reef fish or Caribbean spiny lobster in or from the Caribbean EEZ would be *prima facie* evidence of a violation of this provision. To further minimize bycatch and bycatch mortality, the proposed rule would require any gillnet or trammel net used in the Caribbean EEZ to fish for any other species, including flying fishes or needlefishes, to be tended at all times.

Other Gear Restrictions to Minimize Adverse Effects on EFH

This proposed rule would prohibit all fishing with pots, traps, gillnets, trammel nets, or bottom longlines year-round in the proposed Grammanik Bank closed area and in the existing seasonally closed mutton snapper spawning aggregation area off the southwest coast of St. Croix, U.S. Virgin Islands and the red hind spawning aggregation areas east of St. Croix and west of Puerto Rico (Bajo de Cico, Tourmaline Bank, and Abrir La Sierra Bank). See 50 CFR 622.33(a)(1) and (2) for the coordinates of these existing seasonally closed areas. The year-round prohibition on use of these gear types within these discrete spawning aggregation sites would protect EFH and contribute to needed reductions in fishing mortality.

To further minimize the adverse impacts of fishing on EFH in the EEZ, the proposed rule would establish several additional regulatory requirements. For all vessels that fish for or possess Caribbean spiny lobster or Caribbean reef fish in or from the EEZ, the proposed rule would require at least one buoy that floats at the surface be attached to all traps or pots fished individually, and at least one such buoy be attached at each end of trap lines linking traps or pots. This is intended to more readily identify the location of traps and, thus, preclude the practice of using a grapnel hook to locate and retrieve unmarked traps which results in substantial damage to EFH. It should also minimize the loss of traps and

subsequent adverse effects of ghost fishing.

To enhance compatibility with regulations in the waters of Puerto Rico and the U.S. Virgin Islands and, thereby, enhance enforceability and compliance, the proposed rule would amend current requirements for trap construction to require one degradable escape panel, which could be the trap door if it is attached with the required degradable fasteners and is located on the side of the trap.

For all commercial and recreational vessels that fish for or possess Caribbean reef species in or from the EEZ, the proposed rule would require an anchor retrieval system that ensures the anchor is recovered by its crown in order to prevent the anchor from dragging along the bottom during recovery and damaging EFH. For a grapnel hook, this could include an incorporated anchor rode reversal bar that runs parallel along the shank, which allows the rode to reverse and slip back toward the crown. For a fluke or plow-type anchor (e.g., Danforth, Delta, Fortress, etc.), a trip line consisting of a line from the crown of the anchor to a surface buoy would be required.

Prohibition on Filleting Fish

Nassau and goliath grouper cannot be harvested or possessed in or from the Caribbean EEZ. However, if fish are filleted, the ability to properly identify these species and enforce the prohibition on harvest and possession is compromised. To enhance enforceability of this provision and to help rebuild the overfished stocks of Nassau and goliath grouper, filleting of fish, except for highly migratory species, in or from the Caribbean EEZ would be prohibited. Fish subject to this prohibition would have to be landed with heads and fins intact. The proposed rule would provide minor exceptions to this requirement regarding "bait" and "consumption at sea" as specified in § 622.38(d) of this proposed rule.

Additional Provisions Contained in the Comprehensive Amendment

Establishment or Refinement of Biological Reference Points and Stock Status Criteria

The comprehensive amendment would establish or revise estimates for MSY, OY, minimum stock size threshold (MSST), and a maximum fishing mortality threshold (MFMT) for various fish stocks.

MSY and OY targets would vary according to FMUs. MSY and OY would be set to zero for all species in the Caribbean coral reef resource FMU, excluding those species retained for data collection purposes. For all other species, MSY would be established from recent average catch (C) in the commercial and recreational fisheries and from estimates of the current biomass (B_{CURR}/B_{MSY}) and fishing mortality (F_{CURR}/F_{MSY}) ratios. MSY would be equal to $C/[(F_{CURR}/F_{MSY}) \times (B_{CURR}/B_{MSY})]$. OY would then be established as the average yield associated with a fishing mortality (F) equal to the fishing mortality to achieve OY (F_{OY}) where $F_{OY} = 0.75F_{MSY}$.

For each FMU sub-unit for which biomass and fishing mortality ratios have not been estimated through a stock assessment or other scientific exercise (i.e., stock status is unknown), the following estimates will be used: (1) For species that are not believed to be at risk based on the best available information, the F_{CURR}/F_{MSY} proxy is estimated as 0.75 and the B_{CURR}/B_{MSY} proxy is estimated as 1.25; (2) For species for which no positive or negative determination can be made on the status of their condition, the default fishing mortality ratio and biomass ratio proxies would be estimated as 1.00; and (3) For species that are believed to be at risk based on the best available information, the fishing mortality ratio would be estimated at 1.50 and the biomass ratio would be estimated as 0.75.

MSST would be established as $B_{MSY}(1-c)$; where c equals the natural mortality rate (M) or 0.50, whichever is smaller. This alternative is preferred for Caribbean spiny lobster, queen conch, and all species in the reef fish and coral reef resource FMUs, excluding those species retained for data collection purposes.

MFMT would be based on an MSY control rule. For all species in the Coral FMP, MFMT would be zero, excluding those species retained for data collection purposes. For Caribbean queen conch, spiny lobster, and reef fish, excluding those species retained for data collection purposes, MFMT would be based on an allowable biological catch (ABC), which would be defined as $ABC = F_{MSY}(B)$. For those species where F_{MSY} estimates are not available, natural mortality (M) would be used as a proxy for F_{MSY}. An OY control rule would define target catch limits such that they equal $F_{OY}(B)$.

Establishment of Rebuilding Schedules

Based on the establishment or revision of the biological reference points and stock status criteria described above, several species would be considered overfished. Therefore, in accordance with the Magnuson-Stevens Act, the Council is establishing the following stock rebuilding schedules.

Nassau Grouper would be rebuilt to B_{MSY} in 25 years, using the formula T_{MIN} (10 years) + one generation time (15 years) = 25 years.

Goliath Grouper would be rebuilt to B_{MSY} in 30 years, using the formula T_{MIN} (10 years) + one generation time (20 years) = 30 years.

Queen Conch would be rebuilt to B_{MSY} in 15 years, using the formula T_{MIN} (10 years) + one generation time (5 years) = 15 years.

Grouper Unit 4 (including red, black, tiger, yellowfin, yellowedge and misty grouper) would be rebuilt to B_{MSY} in 10 years.

Standardized Bycatch Reporting

The comprehensive amendment would establish a standardized bycatch reporting methodology throughout the Council's area of jurisdiction by using existing databases in addition to revising certain other existing databases. Use of the Marine Recreational Fishery Statistics Survey database would provide additional bycatch information on the recreational and subsistence sectors. The Council and NMFS would also consult with Puerto Rico and the U.S. Virgin Islands in an effort to modify the state trip ticket systems currently in place in the U.S. Caribbean to require standardized collection of bycatch data.

Designation of EFH and HAPCs

The comprehensive amendment would describe and identify EFH according to functional relationships between life history stages of federally managed species and Caribbean marine and estuarine habitats. For spiny lobster, queen conch and reef fish, EFH in the U.S. Caribbean would consist of all waters from mean high water to the outer boundary of the EEZ, which are used by eggs and larvae, and seagrass, benthic algae, mangrove, coral, and live/hard bottom substrates from mean high water to 100 fathoms (183 m) depth, which are used by other life stages. EFH for the coral fishery in the U.S. Caribbean consists of all waters from mean low water to the outer boundary of the EEZ, which is used by larvae, and all coral and hard bottom substrates from mean low water to 100 fathoms (83 m) depth, which are used by other life stages.

The comprehensive amendment would designate HAPCs in the Reef Fish FMP based on confirmed spawning locations and on areas or sites identified as having particular ecological importance to managed species. (See Section 6.7.1.3 of the comprehensive

amendment for more detailed description of the respective HAPCs). Based on the confirmed occurrence of spawning in these particular areas, HAPCs in the Reef Fish FMP would be designated off of Puerto Rico at Tourmaline Bank/Buoy 8, Abrir La Sierra Bank/Buoy 6, Bajo de Cico, and Vieques, El Seco. Off St. Croix, HAPCs for reef fish would include the mutton snapper spawning aggregation area (50 CFR 622.33(a)(1)) and Lang Bank, (50 CFR 622.33(a)(2)(i)). Off St. Thomas, HAPCs would be designated as Hind Bank Marine Conservation District (50 CFR 622.33(b)(1)) and Grammanik Bank (50 CFR 622.33(a)(3)). Based on habitat areas or sites identified as having particular ecological importance to Caribbean reef fish species, HAPCs would be designated off Puerto Rico at Hacienda la Esperanza, Manití; Bajuras and Tiberones, Isabela; Cabezas de San Juan, Fajardo; JOBANNERR, Jobos Bay; Bioluminescent Bays, Vieques; Boquerón State Forest; Pantano Cibuco, Vega Baja; Piñones State Forest; Río Espiritu Santo, Río Grande; Seagrass beds of Culebra Island (nine sites designated as Resource Category 1 and two additional sites); and Northwest Vieques seagrass west of Mosquito Pier, Vieques. Off St. Thomas, HAPCs would be designated off southeastern St. Thomas, including Cas Key and the mangrove lagoon in Great St. James Bay; and Saba Island/Perseverance Bay, including Flat Key and Black Point Reef. Off St. Croix, HAPCs would be designated as Salt River Bay National Historical Park and Ecological Preserve and Marine Reserve and Wildlife Sanctuary; Altona Lagoon; Great Pond; South Shore Industrial Area; and Sandy Point National Wildlife Refuge.

For the Coral Reef FMP HAPCs would be designated as those EFH habitat areas or sites identified as having particular ecological importance to Caribbean coral species. (See Section 6.7.1.3 of the comprehensive amendment for more detailed description of the respective HAPCs). Off Puerto Rico, these include Luis Peña Channel, Culebra; Mona/Monito; La Parguera, Lajas; Caja de Muertos, Ponce; Tourmaline Reef; Guánica state Forest; Punta Petrona, Santa Isabel; Ceiba state Forest; La Cordillera, Fajardo; Guayama Reefs; Steps and Tres Palmas, Rincon; Los Corchos Reef, Culebra; and Desecheo Reefs, Desecheo. Off St. Croix, HAPCs would be designated at the St. Croix Coral Reef Area of Particular Concern, including the East End Marine Park; Buck Island Reef National Monument; South Shore Industrial Area Patch Reef and Deep Reef System; Frederiksted Reef System; Cane Bay; and Green Cay Wildlife Refuge.

Memorandums of Understanding (MOUs)

The comprehensive amendment also proposes to develop MOUs to achieve cooperative management and compatible regulatory regimes. The comprehensive amendment proposes to develop a MOU between NMFS and the U.S. Virgin Islands government leading to the development of compatible regulations to achieve the objectives for Nassau grouper set forth in the Council's Reef Fish FMP in U.S. Virgin Islands and Federal waters of the U.S. Caribbean. In addition, the amendment proposes to develop an MOU between NMFS and the governments of Puerto Rico and the U.S. Virgin Islands to develop compatible regulations to achieve the management objectives set forth in the Council's Queen Conch FMP in state and Federal waters of the U.S. Caribbean.

Classification

At this time, NMFS has not determined that the comprehensive amendment that this proposed rule would implement is consistent with the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on this proposed rule.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a final supplemental environmental impact statement for this amendment; a notice of availability was published on June 24, 2005 (70 FR 36582).

The Council in conjunction with NMFS prepared an initial regulatory flexibility analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The proposed rule would implement an integrated FMP amendment that will bring the Caribbean Council's FMPs for spiny lobster, queen conch, reef fish, corals, and reef associated plants and invertebrates into full compliance with requirements of the Magnuson-Stevens Act. The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The objectives of the proposed rule are to: (1) define FMUs and FMU sub-units, (2) specify biological reference points and stock status determination criteria, (3) regulate fishing mortality, (4) rebuild overfished fisheries, (5) conserve and protect yellowfin grouper, (6) achieve bycatch mandates, and (7) achieve the EFH mandates.

The proposed rule would affect commercial and recreational fishermen and charter fishing services in Puerto Rico and the U.S. Virgin Islands. In Puerto Rico, there are approximately 1,758 commercial fishers, of which 1,262 fishers are full-time and 496 are part-time. The number of commercial fishers in the U.S. Virgin Islands is estimated to be 349. Approximately 50 entities offer year-round charter services in the U.S. Caribbean, with the majority located in the U.S. Virgin Islands. NMFS expects that 88 Puerto Rican commercial fishers, or 5 percent, and 50 U.S. Virgin Islands commercial fishers, or 10 percent, and 3 of the charter services, or 5 percent operate in the EEZ and may be affected by this proposed rule. The Small Business Administration (SBA) size standards for the finfish, shellfish, and other marine fishing industries are the same; each has a size standard of $3.5 million in annual sales. The SBA size standard for the charter fishing industry is $6.0 million in annual sales. NMFS assumes that all of the commercial fishers in Puerto Rico, all of the commercial fishers in the U.S. Virgin Islands, and all of the charter fishing services that operate in the U.S. Caribbean EEZ are small businesses. Thus, NMFS expects that a total of 6.5 percent of small businesses in commercial fishing and 5 percent of small businesses in charter fishing services may be affected by this proposed rule.

The proposed rule would: (1) prohibit fishing for or possession of queen conch in the EEZ, with the exception of Lang Bank east of St. Croix; (2a) move aquarium trade species of Caribbean coral and reef fish from a management to a data collection only category, thereby removing existing fishery management restrictions on these species; (2b) move all species of Caribbean conch, with the exception of queen conch, to a data collection only category, thereby removing fishery management restrictions on these species; (3) close the EEZ to the possession of red, black, tiger, yellowfin, and yellowedge grouper from February 1 through April 30; (4) close the EEZ off the west coast of Puerto Rico to the possession of red hind from

December 1 through February 28; (5) close the EEZ to the possession of black, blackfin, vermilion, and silk snapper from October 1 through December 31; (6) close the EEZ to the possession of mutton snapper and lane snapper from April 1 through June 30; (7a) implement an immediate prohibition against the use of gillnets and trammel nets to fish for Caribbean reef fish or Caribbean spiny lobster in the EEZ; (7b) require gillnets used to fish for other species in the EEZ to be tended at all times; (8) prohibit the filleting of fish in the EEZ and require that fish captured or possessed in the EEZ be landed with heads and fins intact, with minor exceptions; (9) close an area of the Grammanik Bank to fishing for or possessing any species of fish, except highly migratory species, from February 1 through April 30 of each year; (10) amend current requirements for trap construction such that only one escape panel is required, which could be the door; (11a) require at least one buoy that floats on the surface for all traps/pots fished individually for all fishing vessels that fish for or possess Caribbean spiny lobster or Caribbean reef fish species in or from the EEZ; (11b) require at least one buoy at each end of trap lines linking traps/pots for all fishing vessels that fish for or possess Caribbean spiny lobster or Caribbean reef fish species in or from the EEZ; (11c) prohibit use of pots/traps, gill/trammel nets, and bottom longlines on coral or hard bottom year-round in the existing seasonally closed areas and Grammanik Bank in the EEZ; and (11d) require an anchor retrieval system for all vessels that fish for or possess Caribbean reef fish species in or from the EEZ.

Identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule is incorporated into the following discussion of compliance requirements and their associated economic impacts.

The queen conch fishery occurs primarily in state waters. Approximately 92 percent of Puerto Rican queen conch harvest is reported to be obtained from state waters of Puerto Rico, while 60 percent of U.S. Virgin Islands queen conch harvests is estimated to be harvested from state waters. Only 18 fishermen were observed harvesting queen conch in the EEZ in the U.S. Caribbean in 1999 (2 from the U.S. Virgin Islands and 16 from Puerto Rico). These 18 fishers represented 7 percent of 260 U.S. Caribbean queen conch fishers (209 in Puerto Rico and 51 in the U.S. Virgin Islands), or less than 1 percent of all small commercial fishing businesses in the U.S. Caribbean. The 16 fishers from Puerto Rico represent 8 percent of queen conch fishers from that area, while the 2 fishers from the U.S. Virgin Islands represent 4 percent of U.S. Virgin Islands queen conch fishers. Because of water depth in the EEZ, SCUBA is the primary harvest gear and likely the only gear used to harvest queen conch in the EEZ. Consequently, harvests of queen conch in the EEZ are limited to a great extent by the amount of time a diver can safely work underwater. It is likely that most to all of the 16 fishers from Puerto Rico that harvest queen conch from the EEZ generate the bulk of their revenues and profits from queen conch taken from shallower state waters. Furthermore, it is likely that their revenues and profits from queen conch harvested from the EEZ represent a small proportion of their total revenues and profits, and the proposed prohibition against fishing for or possession of queen conch in the EEZ, with the exception of Lang Bank, is not expected to have a significant adverse economic impact on these fishers. However, revenues and profits from queen conch fishing in the EEZ represent a larger proportion of total revenues and profits from queen conch for the 2 U.S. Virgin Islands queen conch fishers, and the prohibition could have a greater adverse economic impact on these fishers. Additionally, if Puerto Rico and the U.S. Virgin Islands were to further restrict queen conch fishing in state waters, the combined Federal and state actions would have a much greater adverse economic impact on these fishers.

Any small business that harvests species of Caribbean conch, other than queen conch, or aquarium trade species of Caribbean coral or reef fish in the EEZ could potentially benefit from the proposed movement of these species to a data-collection-only category because this would eliminate existing Federal fishing restrictions on these species. However, any economic benefit that is obtained by small businesses from this proposed movement is expected to be negligible because harvest of these species occurs predominantly in state waters.

The U.S. Caribbean reef fish fishery is essentially a multi-species fishery in that fishers catch multiple species of reef fish on any given trip. Consequently, the harvest of any particular species likely represents a small proportion of total revenue and profit for any given trip. In addition to the closures contained in the proposed rule, there is currently a seasonal closure from December 1 through February 28 to all fishing in red hind spawning areas and a seasonal closure from March 1 through June 30 to all fishing in the mutton snapper spawning aggregation area. To mitigate any revenue and profit losses that may result from the proposed closures, commercial fishers and charter fishing operations that fish for reef fish in the EEZ may intensify fishing before and after the seasonal closures or relocate to state waters. The mitigating economic effects of these behavioral changes cannot be forecast. Nonetheless, the combined seasonal closures may have a significant adverse economic impact on up to 6.5 percent of the small commercial fishing businesses and up to 5 percent of the small charter fishing businesses.

The prohibition against the use of gillnets and trammel nets to catch Caribbean spiny lobster and reef fish would require the adoption of other gear, most likely traps/pots, to harvest these species. NMFS does not believe, however, that Puerto Rican fishers significantly use either gillnets or trammel nets to fish in the EEZ because of water depth. Consequently, the prohibition would likely affect a small number of the small commercial fishing businesses in Puerto Rico that operate in the EEZ. In the U.S. Virgin Islands, more fishable habitat exists that can be targeted by nets due to the 3 nm (5.6 km) state boundary. Divers commonly deploy nets in shallower portions of Lang Bank off St. Croix, where they place the nets in the migratory pathways of reef fish. Nets accounted for 33 percent of parrotfish landings and 11 percent of surgeonfish landings in the U.S. Virgin Islands from 1994 through 2002. Furthermore, the use of gillnets and trammel nets has increased among St. Croix fishers because they have switched from traps due to frequent trap theft and vandalism. Consequently, the prohibition against the use of gill and trammel nets is expected to have a greater adverse economic impact on the small commercial fishing businesses in the U.S. Virgin Islands that operate in the EEZ.

The prohibition against the use of gill and trammel nets in the EEZ would not apply to the harvest of ballyhoo, gar, and flying fish, which are commonly found near the surface. When used to harvest these species, the nets must be tended at all times. Ballyhoo and gar are used as bait. At present, there is insufficient information to determine the economic impact on any small businesses that may currently harvest ballyhoo, gar, or flying fish in the EEZ by using untended gill and trammel nets.

Since 1990 and 1993, there have been prohibitions against the harvest and

possession of Nassau grouper and Goliath grouper in the EEZ, respectively; however, anecdotal evidence suggests that illegal harvest and possession may occur. Prohibiting the filleting of all species of fish in the U.S. Caribbean EEZ, except highly migratory species or species caught and used for bait or the crew's own consumption, and requiring that all fish captured or possessed in the EEZ be landed with heads and fins intact would improve enforcement of existing prohibitions and result in reduced illegal revenues. At the same time, the prohibition may reduce legal revenues for those who fish for other species in the EEZ and fillet their fish due to limited storage capacity. Since whole fish take up more space in a vessel than fillets, harvest per trip may be reduced. However, since the typical fishing vessel in the Caribbean EEZ does not have fish holds and in many cases does not use coolers, it is expected that a substantial number of the small businesses do not fillet their catches in the EEZ and would not experience a significant adverse economic impact.

The proposed rule would prohibit fishing for or possession of any species of fish, except highly migratory species, within a 0.44 nm^2 (1.5 km^2) area of Grammanik Bank from February 1 through April 30 of each year. The proposed seasonal Grammanik Bank closure is expected to have the greatest adverse economic impact on fishers who harvest yellowfin grouper because the reported spawning aggregation of yellowfin grouper is centered within the proposed closed area during this time. As previously discussed, the proposed rule would close the U.S. EEZ to the possession of red, black, tiger, yellowfin, and yellowedge grouper from February 1 through April 30. The combined impact of the Grammanik Bank closure and the February through April prohibition on yellowfin grouper fishers in the EEZ would be a prohibition on fishing for yellowfin grouper or any other fish in an area of Grammanik Bank for 3 months and a ban on the possession of yellowfin grouper in the EEZ for the same 3 months. To mitigate losses due to the prohibitions, commercial fishers may intensify fishing for yellowfin grouper and other species before and after the seasonal bans and/or move their fishing activities to state waters. The 1994 through 2002 average annual landings of all grouper species caught in both state and Federal waters in both St. Thomas and St. John is 22,368 lb (10,146 kg). The proportion of the grouper species caught in the EEZ during February through April within this average is expected to be comparatively small, and the proportion of the average that represents yellowfin grouper caught in the EEZ during those months even smaller. Average annual landings of yellowfin grouper in Puerto Rico from 1997 though 2002 is approximately 4,400 lb (1,996 kg). NMFS expects that the proportion of yellowfin grouper within this average caught in the EEZ from February 1 through April 30 is comparatively small, as well. Nonetheless, the adverse economic impact could be significant for some of the small commercial fishers that operate in the EEZ.

The proposed rule would require only one escape panel for traps and pots. Anecdotal information and the experience of local fishery management officials indicate that Caribbean fishers would be more likely to comply with such a requirement rather than the current requirement of two escape panels. Since the proposed rule would relax an existing restriction, no adverse economic impact associated with this measure is anticipated.

Although the current data collection system in place in the U.S. Caribbean, partially funded through Federal grants, does not require commercial fishers or charter fishing operations to report bycatch data, Puerto Rico has agreed to require that this information be reported, and the U.S. Virgin Islands has already incorporated bycatch data into its reporting requirement. The proposed rule would require consultation with Puerto Rico in an effort to add data fields to its existing mandatory landings reports in order to include consistent and standardized bycatch data. Consequently, the proposed rule does not directly impose any new reporting or recordkeeping requirements. However, the indirect economic impact of requiring additional reporting information will accrue to commercial fishing and charter fishing businesses in Puerto Rico through additional time to report bycatch information. At present, there is insufficient information to quantify the amount of time necessary to report such information and how this might affect business operation; however, the individual burden is not expected to be substantial and not impose a significant adverse impact.

The use of traps and pots in the EEZ is expected to be infrequent because of water depth. Nevertheless, for those who use traps and pots in the EEZ, the requirement to have at least one buoy that floats on the surface of all traps or pots fished individually and have at least one buoy at each end of trap lines linking traps/pots is not expected to impose a significant adverse economic impact since the additional gear expenses should be minor.

The proposed prohibition against the use of traps and pots, gill and trammel nets, and bottom longlines in currently existing, seasonally closed areas and the proposed Grammanik Bank seasonal closure represents a ban against the use of traditional gear types in these areas. This prohibition could be especially burdensome to U.S. Virgin Islands commercial fishers from St. Croix because they have already lost fishing areas in state waters due to U.S. Virgin Islands closures. The majority of fishable habitat off St. Croix is primarily isolated to Lang Bank and, currently, the head of Lang Bank is closed to all fishing from December 1 through February 28 each year. The proposed prohibition would ban the use of traditional gear in an area that encompasses approximately the easternmost half of the Bank. Consequently, NMFS expects that the ban will have a significant adverse economic impact on those St. Croix commercial fishers that currently use traps and pots, gills and trammel nets, and/or bottom longlines in the eastern half of the Bank.

The owner or operator of any fishing vessel, recreational or commercial, that fishes for or possesses Caribbean reef fish in or from the Caribbean EEZ must ensure that the vessel uses only an anchor retrieval system that recovers the anchor by its crown, thereby preventing the anchor from dragging along the bottom during recovery and damaging habitat. NMFS assumes that most commercial and charter fishing vessels that operate in the EEZ do not currently have an anchor retrieval system that meets the proposed requirement. For those fishers that have a grapnel hook, this would require incorporating an anchor rode reversal bar that runs parallel along the shank, and for those that have a fluke or plow-type anchor, a trip line consisting of a line from the crown of the anchor to a surface buoy would be required. There is currently insufficient information to quantify the number of fishing vessels that use the different types of anchors and the costs of making necessary modifications. However, NMFS expects the cost will not represent a significant adverse economic impact on these small businesses.

Significant alternatives to the proposed actions that were considered would have increased the significant adverse economic impact on small businesses. One alternative would have banned fishing for or possession of queen conch in the entire EEZ, which

could have had a greater adverse economic impact on the 7 percent of small businesses that harvest queen conch in the EEZ. Although sufficient data are not available to determine the impact of this rejected alternative on the relatively few individual vessel operators that harvest queen conch in the EEZ, it is expected that few, if any, such operators have a total dependence on harvest from the EEZ because the majority of queen conch are harvested from state waters. Regardless, the opportunity to shift fishing effort from the EEZ to state waters would tend to mitigate any adverse impacts. Alternatives to the preferred seasonal bans on the possession of mutton snapper and lane snapper, red hind, and the respective snapper and grouper species would have banned the possession of all species managed by the Caribbean Council for 3 months, 6 months, or a year. Such bans would have had greater adverse economic impacts than the proposed rule. Alternatives to the proposed prohibition on the use of gillnets and trammel nets in the EEZ considered closing various areas of the EEZ to fishing for or possession of all species or eliminating the use of fish traps in the EEZ, which would have had greater adverse economic impacts. Alternatives to the proposed ban on filleting of fish in the EEZ would have established seasonal or area closures to protect spawning stocks of Nassau and Goliath grouper, which would have had greater adverse economic impact on fishers, especially St. Croix fishers. One alternative to the proposed seasonal ban on fishing for or possession of all fish in the Grammanik Bank, except highly migratory species, would have increased the size and length of the ban and the second alternative would have added a year-round ban on fishing for or possession of yellowfin grouper in the EEZ. Both of these alternatives would have increased the adverse economic impact. Finally, an alternative to the proposed modification of the trip ticket system to include bycatch information would have implemented a Federal permit system for commercial and charter fishing businesses that operate in the EEZ, with a mandatory monthly reporting requirement, and would have had a greater adverse impact than the proposed action.

List of Subjects

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 2, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 600 and 622 are proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600, Subpart H continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

§ 600.725 [Amended]

2. In § 600.725, amend the table in paragraph (v), section V., as follows:

a. Under the heading "1. Caribbean Spiny Lobster Fishery (FMP)", remove entry "C" from the first and second columns; redesignate entries "D" and "E" as "C" and "D", respectively, in the first and second columns; and remove the words "gillnet, trammel net" from the second column in the newly redesignated entry "D"; and

b. Under the heading "2. Caribbean Shallow Water Reef Fish Fishery (FMP)", remove entry "C" from the first and second columns; and redesignate entry "D" as "C" in the first and second columns.

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

3. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 622.2, the definition of "Caribbean conch resource" is removed, and a definition of "Caribbean queen conch" is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Caribbean queen conch means the species, *Strombus gigus*, or a part thereof.

* * * * *

5. In § 622.6, paragraph (b)(1)(ii)(A) is revised to read as follows:

§ 622.6 Vessel and gear identification.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *Caribbean EEZ.* Traps or pots used in the Caribbean spiny lobster or Caribbean reef fish fisheries that are fished individually, rather than tied together in a trap line, must have at least one buoy attached that floats on the surface. Traps or pots used in the Caribbean spiny lobster or Caribbean reef fish fisheries that are tied together in a trap line must have at least one buoy that floats at the surface attached at each end of the trap line. Each buoy must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

* * * * *

6. In § 622.31, paragraph (l) is added to read as follows:

§ 622.31 Prohibited gear and methods.

* * * * *

(l) *Gillnets and trammel nets in the Caribbean EEZ.* A gillnet or trammel net may not be used in the Caribbean EEZ to fish for Caribbean reef fish or Caribbean spiny lobster. Possession of a gillnet or trammel net and any Caribbean reef fish or Caribbean spiny lobster in or from the Caribbean EEZ is *prima facie* evidence of violation of this paragraph (l). A gillnet or trammel net used in the Caribbean EEZ to fish for any other species, including species in the family *Exocoetidae*, flyingfishes, or the family *Belonidae*, needlefishes, must be tended at all times.

7. In § 622.32, paragraph (b)(1)(ii) is revised, and paragraph (b)(1)(iv) is added to read as follows:

§ 622.32 Prohibited and limited-harvest species.

* * * * *

(b) * * *

(1) * * *

(ii) No person may fish for or possess goliath grouper and Nassau grouper in or from the Caribbean EEZ. Such fish caught in the Caribbean EEZ must be released immediately with a minimum of harm.

* * * * *

(iv) No person may fish for, or possess on board a fishing vessel, a Caribbean queen conch in or from the Caribbean EEZ, except during October through June in the area east of 64°34′ W. longitude which includes Lang Bank east of St. Croix, U.S. Virgin Islands.

* * * * *

8. In § 622.33, paragraph (a) introductory text and paragraph (a)(3) are revised, and paragraphs (a)(4) through (a)(7) are added to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) *Seasonal closures.* In addition to the other restrictions specified in this paragraph (a), fishing with pots, traps, bottom longlines, gillnets or trammel nets is prohibited year-round in the closed areas specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

* * * * *.

(3) *Grammanik Bank closed area.* (i) The Grammanik Bank closed area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	18°11.898′	64°56.328′
B	18°11.645′	64°56.225′
C	18°11.058′	64°57.810′
D	18°11.311′	64°57.913′
A	18°11.898′	64°56.328′

(ii) From February through April, each year, no person may fish for or possess any species of fish, except highly migratory species, in or from the Grammanik Bank closed area. This prohibition on possession does not apply to such fish harvested and landed ashore prior to the closure. For the purpose of paragraph (a)(4) of this section, "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. "Highly migratory species" means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in Appendix A to Part 635 of this title); white marlin, blue marlin, sailfish, and longbill spearfish.

(4) *Red, black, tiger, yellowfin, or yellowedge grouper.* From February through April, each year, no person may fish for or possess red, black, tiger, yellowfin, or yellowedge grouper in or from the Caribbean EEZ. This prohibition on possession does not apply to such grouper harvested and landed ashore prior to the closure.

(5) *Additional red hind closure.* From December through February, each year, no person may fish for or possess red hind in or from the Caribbean EEZ west of 67°10′ W. longitude. This prohibition on possession does not apply to red hind harvested and landed ashore prior to the closure.

(6) *Vermilion, black, silk, or blackfin snapper.* From October through December, each year, no person may fish for or possess vermilion, black, silk, or blackfin snapper in or from the Caribbean EEZ. This prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

(7) *Lane or mutton snapper.* From April through June, each year, no person may fish for or possess lane or mutton snapper in or from the Caribbean EEZ. This prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

* * * * *

9. In § 622.38, paragraphs (a), (d), and (f) are revised to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(a) The following must be maintained with head and fins intact: cobia, king mackerel, and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel in paragraph (g) of this section; dolphin and wahoo in or from the Atlantic EEZ; South Atlantic snapper-grouper in or from the South Atlantic EEZ, except as specified in paragraph (h) of this section; finfish in or from the Caribbean EEZ, except as specified in paragraphs (c) and (d) of this section; and finfish in or from the Gulf EEZ, except as specified in paragraphs (c) and (d) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

* * * * *

(d) In the Gulf EEZ or Caribbean EEZ:

(1) Bait is exempt from the requirement to be maintained with head and fins intact.

(i) For the purpose of this paragraph (d)(1), "bait" means—

(A) Packaged, headless fish fillets that have the skin attached and are frozen or refrigerated;

(B) Headless fish fillets that have the skin attached and are held in brine; or

(C) Small pieces no larger than 3 in3 (7.6 cm3) or strips no larger than 3 inches by 9 inches (7.6 cm by 22.9 cm) that have the skin attached and are frozen, refrigerated, or held in brine.

(ii) Paragraph (d)(1)(i) of this section notwithstanding, a finfish or part thereof possessed in or landed from the Gulf EEZ or Caribbean EEZ that is subsequently sold or purchased as a finfish species, rather than as bait, is not bait.

(2) Legal-sized finfish possessed for consumption at sea on the harvesting vessel are exempt from the requirement to have head and fins intact, provided—

(i) Such finfish do not exceed any applicable bag limit;

(ii) Such finfish do not exceed 1.5 lb (680 g) of finfish parts per person aboard; and

(iii) The vessel is equipped to cook such finfish on board.

* * * * *

(f) Queen conch in or from the Caribbean EEZ must be maintained with meat and shell intact.

* * * * *

10. In § 622.40, paragraph (b)(1)(i) is revised to read as follows:

§ 622.40 Limitations on traps and pots.

* * * * *

(b) * * *

(1) * * *

(i) A fish trap used or possessed in the Caribbean EEZ must have a panel located on one side of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by the panel must measure not less than 8 by 8 inches (20.3 by 20.3 cm). The mesh size of the panel may not be smaller than the mesh size of the trap. The panel must be attached to the trap with untreated jute twine with a diameter not exceeding 1/8 inch (3.2 mm). An access door may serve as the panel, provided it is on an appropriate side, it is hinged only at its bottom, its only other fastening is untreated jute twine with a diameter not exceeding 1/8 inch (3.2 mm), and such fastening is at the top of the door so that the door will fall open when such twine degrades. Jute twine used to secure a panel may not be wrapped or overlapped.

* * * * *

11. In § 622.41, paragraph (b) is revised to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(b) *Caribbean reef fish anchoring restriction.* The owner or operator of any fishing vessel, recreational or commercial, that fishes for or possesses Caribbean reef fish in or from the Caribbean EEZ must ensure that the vessel uses only an anchor retrieval system that recovers the anchor by its crown, thereby preventing the anchor from dragging along the bottom during recovery. For a grapnel hook, this could include an incorporated anchor rode reversal bar that runs parallel along the shank, which allows the rode to reverse and slip back towards the crown. For a fluke- or plow-type anchor, a trip line consisting of a line from the crown of the anchor to a surface buoy would be required.

* * * * *

12. In Appendix A to Part 622, Tables 1 and 2 are revised, and Table 5 is added to read as follows:

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Appendix A to Part 622--Species Tables

Table 1 of Appendix A to Part 622--Caribbean Coral Reef Resources

I. Coelenterates--Phylum Coelenterata

A. Hydrocorals--Class Hydrozoa

1. Hydroids--Order Athecatae

Family Milleporidae

Millepora spp., Fire corals

Family Stylasteridae

Stylaster roseus, Rose lace corals

B. Anthozoans--Class Anthozoa

1. Soft corals--Order Alcyonacea

Family Anthothelidae

Erythropodium caribaeorum, Encrusting gorgonian

Iciligorgia schrammi, Deepwater sea fan

Family Briaridae

Briareum asbestinum, Corky sea finger

Family Clavulariidae

Carijoa riisei

Telesto spp.

2. Gorgonian corals--Order Gorgonacea

Family Ellisellidae

Ellisella spp., Sea whips

Family Gorgoniidae

Gorgonia flabellum, Venus sea fan

G. mariae, Wide-mesh sea fan

G. ventalina, Common sea fan

Pseudopterogorgia acerosa, Sea plume

P. albatrossae

P. americana, Slimy sea plume

P. bipinnata, Bipinnate plume

P. rigida

Pterogorgia anceps, Angular sea whip

P. citrina, Yellow sea whip

Family Plexauridae

Eunicea calyculata, Warty sea rod

E. clavigera

E. fusca, Doughnut sea rod

E. knighti

E. laciniata

E. laxispica

E. mammosa, Swollen-knob

E. succinea, Shelf-knob sea rod

E. touneforti

Muricea atlantica

M. elongata, Orange spiny rod

M. laxa, Delicate spiny rod

M. muricata, Spiny sea fan

M. pinnata, Long spine sea fan

Muriceopsis sp.

M. flavida, Rough sea plume

M. sulphurea

Plexaura flexuosa, Bent sea rod

P. homomalla, Black sea rod

Plexaurella dichotoma, Slit-pore sea rod

P. fusifera

P. grandiflora

P. grisea

P. nutans, Giant slit-pore

Pseudoplexaura crucis

P. flagellosa

P. porosa, Porous sea rod

P. wagenaari

3. Hard Corals--Order Scleractinia

Family Acroporidae

Acropora cervicornis, Staghorn coral

A. palmata, Elkhorn coral

A. prolifera, Fused staghorn

Family Agaricidae

Agaricia agaricities, Lettuce leaf coral

A. fragilis, Fragile saucer

A. lamarcki, Lamarck's sheet

A. tenuifolia, Thin leaf lettuce

Leptoseris cucullata, Sunray lettuce

Family Astrocoeniidae

Stephanocoenia michelinii, Blushing star

Family Caryophyllidae

Eusmilia fastigiata, Flower coral

Tubastrea aurea, Cup coral

Family Faviidae

Cladocora arbuscula, Tube coral

Colpophyllia natans, Boulder coral

Diploria clivosa, Knobby brain coral

D. labyrinthiformis, Grooved brain

D. strigosa, Symmetrical brain

Favia fragum, Golfball coral

Manicina areolata, Rose coral

M. mayori, Tortugas rose coral

Montastrea annularis, Boulder star coral

M. cavernosa, Great star coral

Solenastrea bournoni, Smooth star coral

Family Meandrinidae

Dendrogyra cylindrus, Pillar coral

Dichocoenia stellaris, Pancake star

D. stokesi, Elliptical star

Meandrina meandrites, Maze coral

Family Mussidae

Isophyllastrea rigida, Rough star coral

Isophyllia sinuosa, Sinuous cactus

Mussa angulosa, Large flower coral

Mycetophyllia aliciae, Thin fungus coral

M. danae, Fat fungus coral

M. ferox, Grooved fungus

M. lamarckiana, Fungus coral

Scolymia cubensis, Artichoke coral

S. lacera, Solitary disk

Family Oculinidae

Oculina diffusa, Ivory bush coral

Family Pocilloporidae

Madracis decactis, Ten-ray star coral

M. mirabilis, Yellow pencil

Family Poritidae

Porites astreoides, Mustard hill coral

P. branneri, Blue crust coral

P. divaricata, Small finger coral

P. porites, Finger coral

Family Rhizangiidae

Astrangia solitaria, Dwarf cup coral

Phyllangia americana, Hidden cup coral

Family Siderastreidae

Siderastrea radians, Lesser starlet

S. siderea, Massive starlet

4. Black Corals--Order Antipatharia

Antipathes spp., Bushy black coral

Stichopathes spp., Wire coral

II. Sea grasses--Phylum Angiospermae

Halodule wrightii, Shoal grass

Halophila spp., Sea vines

Ruppia maritima, Widgeon grass

Syringodium filiforme, Manatee grass

Thalassia testudium, Turtle grass

Aquarium Trade Species in the Coral FMP--The following species are included for data collection purposes only.

I. Sponges--Phylum Porifera

A. Demosponges--Class Demospongiae

Aphimedon compressa, Erect rope sponge

Chondrilla nucula, Chicken liver sponge

Cynachirella alloclada

Geodia neptuni, Potato sponge

Haliclona spp., Finger sponge

Myriastra spp.

Niphates digitalis, Pink vase sponge

N. erecta, Lavender rope sponge

Spinosella policifera

S. vaginalis

Tethya crypta

II. Coelenterates--Phylum Coelenterata

A. Anthozoans--Class Anthozoa

1. Anemones--Order Actiniaria

Aiptasia tagetes, Pale anemone

Bartholomea annulata, Corkscrew anemone

Condylactis gigantea, Giant pink-tipped anemone

Hereractis lucida, Knobby anemone

Lebrunia spp., Staghorn anemone

Stichodactyla helianthus, Sun anemone

2. Colonial Anemones--Order Zoanthidea

Zoanthus spp., Sea mat

3. False Corals--Order Corallimorpharia

Discosoma spp. (formerly Rhodactis), False coral

Ricordia florida, Florida false coral

III. Annelid Worms--Phylum Annelida

A. Polychaetes--Class Polychaeta

Family Sabellidae, Feather duster worms

Sabellastarte spp., Tube worms

S. magnifica, Magnificent duster

Family Serpulidae

Spirobranchus giganteus, Christmas tree worm

IV. Mollusks--Phylum Mollusca

A. Gastropods--Class Gastropoda

Family Elysiidae

Tridachia crispata, Lettuce sea slug

Family Olividae

Oliva reticularis, Netted olive

Family Ovulidae

Cyphoma gibbosum, Flamingo tongue

B. Bivalves--Class Bivalvia

Family Limidae

Lima spp., Fileclams

L. scabra, Rough fileclam

Family Spondylidae

Spondylus americanus, Atlantic thorny oyster

C. Cephalopods--Class Cephalopoda

1. Octopuses--Order Octopoda

Family Octopodidae

Octopus spp. (except the Common octopus, *O. vulgaris*)

V. Arthropods--Phylum Arthropoda

A. Crustaceans--Subphylum Crustacea

1. Decapods--Order Decapoda

Family Alpheidae

Alpheaus armatus, Snapping shrimp

Family Diogenidae

Paguristes spp., Hermit crabs

P. cadenati, Red reef hermit

Family Grapsidae

Percnon gibbesi, Nimble spray crab

Family Hippolytidae

Lysmata spp., Peppermint shrimp

Thor amboinensis, Anemone shrimp

Family Majidae, Coral crabs

Mithrax spp., Clinging crabs

M. cinctimanus, Banded clinging

M. sculptus, Green clinging

Stenorhynchus seticornis, Yellowline arrow

Family Palaemonida

Periclimenes spp., Cleaner shrimp

Family Squillidae, Mantis crabs

Gonodactylus spp.

Lysiosquilla spp.

Family Stenopodidae, Coral shrimp

Stenopus hispidus, Banded shrimp

S. scutellatus, Golden shrimp

VI. Echinoderms--Phylum Echinodermata

A. Feather stars--Class Crinoidea

Analcidometra armata, Swimming crinoid

Davidaster spp., Crinoids

Nemaster spp., Crinoids

B. Sea stars--Class Asteroidea

Astropecten spp., Sand stars

Linckia guildingii, Common comet star

Ophidiaster guildingii, Comet star

Oreaster reticulatus, Cushion sea star

C. Brittle and basket stars--Class Ophiuroidea

Astrophyton muricatum, Giant basket star

Ophiocoma spp., Brittlestars

Ophioderma spp., Brittlestars

O. rubicundum, Ruby brittlestar

D. Sea Urchins--Class Echinoidea

Diadema antillarum, Long-spined urchin

Echinometra spp., Purple urchin

Eucidaris tribuloides, Pencil urchin

Lytechinus spp., Pin cushion urchin

Tripneustes ventricosus, Sea egg

E. Sea Cucumbers--Class Holothuroidea

Holothuria spp., Sea cucumbers

VII. Chordates--Phylum Chordata

A. Tunicates--Subphylum Urochordata

Table 2 of Appendix A to Part 622--Caribbean Reef Fish

Lutjanidae--Snappers

Unit 1

Silk snapper, Lutjanus vivanus

Blackfin snapper, L. buccanella

Black snapper, Apsilus dentatus

Vermilion snapper, Rhomboplites aurorubens

Unit 2

Queen snapper, Etelis oculatus

Wenchman, Pristipomoides aquilonaris

Unit 3

Gray snapper, Lutjanus griseus

Lane snapper, Lutjanus synagris

Mutton snapper, Lutjanus analis

Dog snapper, Lutjanus jocu

Schoolmaster, Lutjanus apodus

Mahogany snapper, Lutjanus mahogani

Unit 4

Yellowtail snapper, Ocyurus chrysurus

Serranidae--Sea basses and Groupers

Unit 1

Nassau Grouper, Epinephelus striatus

Unit 2

Goliath grouper, Epinephelus itajara

Unit 3

Red hind, Epinephelus guttatus

Coney, Epinephelus fulvus

Rock hind, Epinephelus adscensionis

Graysby, Epinephelus cruentatus

Creole-fish, Paranthias furcifer

Unit 4

Red grouper, Epinephelus morio

Yellowedge grouper, Epinephelus flavolimbatus

Misty grouper, Epinephelus mystacinus

Tiger grouper, Mycteroperca tigris

Yellowfin grouper, Mycteroperca venenosa

Haemulidae--Grunts

White grunt, Haemulon plumieri

Margate, Haemulon album

Tomtate, Haemulon aurolineatum

Bluestriped grunt, Haemulon sciurus

French grunt, Haemulon flavolineatum

Porkfish, Anisotremus virginicus

Mullidae--Goatfishes

Spotted goatfish, Pseudupeneus maculatus

Yellow goatfish, Mulloidichthys martinicus

Sparidae--Porgies

Jolthead porgy, Calamus bajonado

Sea bream, Archosargus rhomboidalis

Sheepshead porgy, Calamus penna

Pluma, Calamus pennatula

Holocentridae--Squirrelfishes

Blackbar soldierfish, Myripristis jacobus

Bigeye, Priacanthus arenatus

Longspine squirrelfish, Holocentrus rufus

Squirrelfish, Holocentrus adscensionis

Malacanthidae--Tilefishes

Blackline tilefish, Caulolatilus cyanops

Sand tilefish, Malacanthus plumieri

Carangidae--Jacks

Blue runner, Caranx crysos

Horse-eye jack, Caranx latus

Black jack, Caranx lugubris

Almaco jack, Seriola rivoliana

Bar jack, Caranx ruber

Greater amberjack, Seriola dumerili

Yellow jack, Caranx bartholomaei

Scaridae--Parrotfishes

Blue parrotfish, Scarus coeruleus

Midnight parrotfish, Scarus coelestinus

Princess parrotfish, Scarus taeniopterus

Queen parrotfish, Scarus vetula

Rainbow parrotfish, Scarus guacamaia

Redfin parrotfish, Sparisoma rubripinne

Redtail parrotfish, Sparisoma chrysopterum

Stoplight parrotfish, Sparisoma viride

Redband parrotfish, Sparisoma aurofrenatum

Striped parrotfish, Scarus croicensis

Acanthuridae--Surgeonfishes

Blue tang, Acanthurus coeruleus

Ocean surgeonfish, Acanthurus bahianus

Doctorfish, Acanthurus chirurgus

Balistidae--Triggerfishes

Ocean triggerfish, Canthidermis sufflamen

Queen triggerfish, Balistes vetula

Sargassum triggerfish, Xanthichthys rigens

Monacanthidae--Filefishes

Scrawled filefish, Aluterus scriptus

Whitespotted filefish, Cantherhines macrocerus

Black durgon, Melichthys niger

Ostraciidae--Boxfishes

Honeycomb cowfish, Lactophrys polygonia

Scrawled cowfish, Lactophrys quadricornis

Trunkfish, Lactophrys trigonus

Spotted trunkfish, Lactophrys bicaudalis

Smooth trunkfish, Lactophrys triqueter

Labridae--Wrasses

Hogfish, Lachnolaimus maximus

Puddingwife, Halichoeres radiatus

Spanish hogfish, Bodianus rufus

Pomacanthidae--Angelfishes

Queen angelfish, Holacanthus ciliaris

Gray angelfish, Pomacanthus arcuatus

French angelfish, Pomacanthus paru

Aquarium Trade--The following aquarium trade species are included for data collection purposes only:

Frogfish, Antennarius spp.

Flamefish, Apogon maculatus

Conchfish, Astrapogen stellatus

Redlip blenny, Ophioblennius atlanticus

Peacock flounder, Bothus lunatus

Longsnout butterflyfish, Chaetodon aculeatus

Foureye butterflyfish, Chaetodon capistratus

Spotfin butterflyfish, Chaetodon ocellatus

Banded butterflyfish, Chaetodon striatus

Redspotted hawkfish, Amblycirrhitus pinos

Flying gurnard, Dactylopterus volitans

Atlantic spadefish, Chaetodipterus faber

Neon goby, Gobiosoma oceanops

Rusty goby, Priolepis hipoliti

Royal gramma, Gramma loreto

Creole wrasse, Clepticus parrae

Yellowcheek wrasse, Halichoeres cyanocephalus

Yellowhead wrasse, Halichoeres garnoti

Clown wrasse, Halichoeres maculipinna

Pearly razorfish, Hemipteronotus novacula

Green razorfish, Hemipteronotus splendens

Bluehead wrasse, Thalassoma bifasciatum

Chain moray, Echidna catenata

Green moray, Gymnothorax funebris

Goldentail moray, Gymnothorax miliaris

Batfish, Ogcocepahalus spp.

Goldspotted eel, Myrichthys ocellatus

Yellowhead jawfish, Opistognathus aurifrons

Dusky jawfish, Opistognathus whitehursti

Cherubfish, Centropyge argi

Rock beauty, Holacanthus tricolor

Sergeant major, Abudefduf saxatilis

Blue chromis, Chromis cyanea

Sunshinefish, Chromis insolata

Yellowtail damselfish, Microspathodon chrysurus

Dusky damselfish, Pomacentrus fuscus

Beaugregory, Pomacentrus leucostictus

Bicolor damselfish, Pomacentrus partitus

Threespot damselfish, Pomacentrus planifrons

Glasseye snapper, Priacanthus cruentatus

High-hat, Equetus acuminatus

Jackknife-fish, Equetus lanceolatus

Spotted drum, Equetus punctatus

Scorpaenidae--Scorpionfishes

Butter hamlet, Hypoplectrus unicolor

Swissguard basslet, Liopropoma rubre

Greater soapfish, Rypticus saponaceus

Orangeback bass, Serranus annularis

Lantern bass, Serranus baldwini

Tobaccofish, Serranus tabacarius

Harlequin bass, Serranus tigrinus

Chalk bass, Serranus tortugarum

Caribbean tonguefish, Symphurus arawak

Seahorses, Hippocampus spp.

Pipefishes, Syngnathus spp.

Sand diver, Synodus intermedius

Sharpnose puffer, Canthigaster rostrata

Porcupinefish, Diodon hystrix

* * * * *

Table 5 of Appendix A to Part 622—Caribbean Conch Resources

Queen conch, *Strombus gigas*

The following species are included for data collection purposes only:

Atlantic triton's trumpet, *Charonia variegata*

Cameo helmet, *Cassis madagascarensis*

Green star shell, *Astrea tuber*

Hawkwing conch, *Strombus raninus*

Milk conch, *Strombus costatus*

Roostertail conch, *Strombus gallus*

West Indian fighting conch, *Strombus pugilis*

True tulip, *Fasciolaria tulipa*

[FR Doc. 05–17945 Filed 9–12–05; 8:45 am]

BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 70, No. 176
Tuesday, September 13, 2005

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

September 7, 2005.

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) 720–8681.

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.

Forest Service

Title: Public Support for Fuel Reduction Policies: Multimedia versus Printed Materials.

OMB Control Number: 0596–NEW.

Summary of Collection: This information collection is being undertaken to solicit information on public support of two fuel reduction programs; prescribed burning and mechanical treatment. To gather the information needed for the study, a stratified random sample of California and Montana residents will be contacted by telephone through a random-digit dialing process. Those who agree to participate in the study will be asked an introductory set of questions to determine their pre-existing knowledge of fuels reduction treatments. This study will provide credible information to fire managers to plan fuels reduction treatment programs acceptable to the communities. In addition it will allow for the testing of whether a self-administered video survey elicits more support for prescribed burning and mechanical fuels treatment programs than a paper-based survey. The Healthy Forests Restoration Act (Pub. L. 108–148) gives the Forest Service the authority to collect this information.

Need and Use of the Information: Researchers will evaluate the responses of California and Montana residents to different scenarios related to fire hazard reduction program. Information collected will help natural resource and fire managers to better understand the public's opinions on fuels reduction activities and what type of media could be more effective in conveying information to the public. Without the information the agencies with fire protection responsibilities will lack the capability to evaluate the general public understanding of proposed fuels reduction projects and programs or their willingness-to-pay for implementing such programs.

Description of Respondents: Individuals or households.

Number of Respondents: 1,400.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 612.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–18048 Filed 9–12–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kaibab National Forest; Arizona; Cancellation of Notice of Intent To Prepare an Environmental Impact Statement for the Expansion of the Bill Williams Ski Area

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an Environmental Impact Statement for expansion of the Bill Williams Ski Area.

SUMMARY: The United States Department of Agriculture Forest Service (USDA, FS), Region 3, Kaibab National Forest, announces the cancellation of its intent to prepare an Environmental Impact Statement (EIS) for expansion of the Bill Williams Ski Area. The Notice of Intent to prepare this EIS was published in the **Federal Register** Volume 62, No. 223 on November 19, 1997, page 61726. The notice of availability for the Draft EIS was published in the **Federal Register** Volume 64, No. 246 on December 23, 1999, pages 72078 and 72079. The environmental analysis process for this project has been terminated and a decision on the proposed action is no longer necessary.

FOR FURTHER INFORMATION CONTACT: Liz Schuppert at USDA, FS Kaibab National Forest, 800 S. 6th St., Williams, AZ 86046, 928/635–8200.

Dated: August 18, 2005.

Mike R. Williams,

Forest Supervisor.

[FR Doc. 05–17825 Filed 9–12–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Northeast Oregon Forests Resource Advisory Committee (RAC) will meet on September 19 and 20, 2005 in La Grande, Oregon. The purpose of the meeting is to meet as a Committee to review proposed projects for fiscal year 2006 and to review projects in the field.

DATES: The meeting will be held as follows: September 19, 2005, 1 p.m. to 5 p.m. in La Grande, Oregon; September 20, 2005, 8 a.m. to 3 p.m. in La Grande, Oregon.

ADDRESSES: The September 19, 2005 meeting will be held at the Blue Mountain Conference Center, 404 12th Street, La Grande, Oregon.

FOR FURTHER INFORMATION CONTACT: Jennifer Harris, Designated Federal Official, USDA, Malheur National Forest, P.O. Box 909, John Day, Oregon 97845. Phone: (541) 575–3008.

SUPPLEMENTARY INFORMATION: At the September 19, 2005 meeting the RAC will finish reviewing proposed projects for the coming year. A public comment period will be provided at 1:40 p.m. and individuals will have the opportunity to address the committee at that time. The September 20, 2005 field trip will leave from the La Grande Ranger District, Highway 30, La Grande, Oregon.

Dated: September 7, 2005.

Jennifer L. Harris,

Designated Federal Official.

[FR Doc. 05–18054 Filed 9–12–05; 8:45 am]

BILLING CODE 3410–DK–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Colorado State Advisory Committee will convene at 9 a.m. (m.d.t.) and adjourn at 10 a.m. (m.d.t.), Friday, September 16, 2005. The purpose of the conference call is to provide a status report on the Commission and regional programs, and planning for future activities.

This conference call is available to the public through the following call-in number: 1–800–473–7796; call-in ID#: 4390–5596. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting John F. Dulles, Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049), by 3 p.m. (m.d.t.) on Monday, September 12, 2005.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 7, 2005.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 05–18135 Filed 9–12–05; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a conference call of the Michigan Advisory Committee will convene at 1 p.m. and adjourn at 2 p.m., Thursday, September 15, 2005. The purpose of the conference call is to approve the project proposal, "Hispanic Communities in Detroit: Growth and Challenges."

This conference call is available to the public through the following call-in number: 1–800–473–6926, contact name: Jack Martin. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights at (312) 353–8311, (TDD 312–353–8362), by *4 p.m. on Wednesday, September 14, 2005.*

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 7, 2005.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 05–18137 Filed 9–12–05; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Utah State Advisory Committee will convene at 10 a.m. (m.d.t.) and adjourn at 11 a.m. (m.d.t.), Thursday, September 15, 2005. The purpose of the conference call is to provide a status report on the Commission and regional programs, and planning for future activities.

This conference call is available to the public through the following call-in number: 1–800–473–7796; call-in ID#: 4390–5603. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting John F. Dulles, Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049), by 3 p.m. (m.d.t.) on Monday, September 12, 2005.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC September 7, 2005.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 05–18136 Filed 9–12–05; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–552–801

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the "Department") is conducting an administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam"). This review covers imports of subject merchandise from three manufacturers/exporters, Vinh Hoan Company, Ltd. (Vinh Hoan), Can Tho Agricultural and Animal Products Import Export Company ("CATACO"), and Phan Quan Company, Ltd. ("Phan Quan"). We are preliminarily rescinding the review with respect to Phu Thanh Company ("Phu Thanh"). For the three remaining companies, we preliminarily find that certain manufacturers/exporters sold subject merchandise at less than normal value ("NV") during the period of review ("POR"). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. We invite interested parties to comment on these preliminary review results. We will issue the final review results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: September 13, 2005.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik (Vinh Hoan), Javier Barrientos (CATACO), and Matthew Renkey (Phan Quan), AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6905, (202) 482–2243 and (202) 482–2312, respectively.

SUPPLEMENTARY INFORMATION:

Case History

General

On August 12, 2003, the Department published in the **Federal Register** the antidumping duty order on certain frozen fish fillets from Vietnam. *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003). *See* the "Scope of the Order" section below for a complete description of the subject merchandise.

On August 3, 2004, the Department published a notice of an opportunity to request an administrative review on the antidumping duty order on certain frozen fish fillets from Vietnam. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 69 FR 46496 (August 3, 2004). On August 27, 2004, we received requests for review from An Giang Fisheries Import and Export Joint Stock Company ("Agifish") and CATACO. On August 31, 2004, we received requests for review from An Giang Agriculture and Foods Import–Export Company ("AFIEX"), QVD Food Co., Ltd. ("QVD"), and Vinh Hoan. Also on August 31, 2004, we received requests from Amland Corporation and Amland Foods Corporation, U.S. importers of subject merchandise, to conduct an administrative review of the following Vietnamese exporters and/or producers: (1) Phan Quan, an exporter; (2) Phu Thanh, a producer; and (3) Mekong Fisheries Joint Stock Company ("Mekonimex"), a producer and exporter. On September 22, 2004, the Department initiated this administrative review, covering the aforementioned eight companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part ("Initiation Notice")*, 69 FR 56745 (September 22, 2004). Subsequently, on January 28, 2005, due to the withdrawal of their review requests, the Department rescinded the review with respect to Agifish, AFIEX, QVD, and Mekonimex. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rescission, in Part, of Antidumping Duty Administrative Review*, 70 FR 4092 (January 28, 2005). On April 5, 2005, the Department extended the deadline for the preliminary results of this review by 120 days, to August 31, 2005. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the First Antidumping Duty Administrative Review*, 70 FR 17231 (April 5, 2005).

Questionnaires and Responses

On October 6, 2004, the Department issued its Section A, C and D antidumping duty questionnaires to the companies listed in the Initiation Notice.[1] The four companies for which the Department rescinded the review withdrew their requests for review before responding to the Department's questionnaires. Phu Thanh reported that it was the producer for Phan Quan, and submitted Section D data as part of Phan Quan's response. A list of the responses submitted by each company, as well as a list of Petitioners' comments on those responses, follows.

On November 4, 2004, we received Vinh Hoan's Section A questionnaire response. On November 29, 2004, we received Vinh Hoan's Sections C and D questionnaire responses. We issued supplemental questionnaires on: (1) January 11, 2005 (response received on January 25, 2005); (2) March 7, 2005, and March 15, 2005 (aligned responses received on April 5, 2005); (3) April 15, 2005 and May 11, 2005 (responses received on May 25, 2005, and June 3, 2005); and (4) August 8, 2005 (response received on August 12, 2005). Also on June 3, 2005, Vinh Hoan submitted its sales and cost reconciliations.

On October 27, 2004, we received CATACO's Section A questionnaire response. On November 29, 2004, we received CATACO's Sections C and D questionnaire responses. We issued supplemental questionnaires on: (1) December 13, 2004 (response received on January 10, 2005); (2) March 7, 2005, and March 15, 2005 (aligned responses received on April 6, 2005); April 15, 2005 (response received April 22, 2005); (3) May 11, 2005 (responses received on June 8, 2005, and June 17, 2005); (4) June 22, 2005 (response received July 1, 2005); and (5) July 22, 2005 and July 26, 2005 (aligned responses received on August 9, 2005). On June 8, 2005, CATACO submitted its sales and cost reconciliations.

On November 3, 2004, we received Phan Quan's Section A questionnaire response. On November 29, 2004, we received Phan Quan's Sections C and D questionnaire responses. On January 3, 2005, Phan Quan submitted a letter stating that it should have reported a constructed export price ("CEP") rather than an export price ("EP") sales database, and that it would do so in its next supplemental response. On January 24, 2005, the Department issued a Section A supplemental questionnaire to Phan Quan, and received Phan Quan's response on February 15, 2005. On February 23 and 25, 2004, the Department sent letters to Phan Quan

[1] Section A of the antidumping duty questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation, and the manner in which it sells that merchandise in all of its markets. Section C requests a complete listing of the company's U.S. sales of subject merchandise. Section D requests information on the factors of production of the merchandise under review.

explaining that its Section A supplemental response was deficient, including the fact that it had not submitted a revised Section C response, as it had indicated it would do on January 3, 2005. Phan Quan submitted responses to the Department's deficiency letters on February 23, 2005, March 4, 2005, and March 7, 2005. On April 4, 2005, the Department issued Phan Quan a Section A, C and D supplemental questionnaire, and Phan Quan submitted its responses on May 2 and 18, 2005. On June 2, 2005, Phan Quan submitted a letter stating that it would no longer participate in this review.

Petitioner submitted comments on respondents' questionnaire responses on December 1, 23 and 27, 2004, April 27, 2005 and May 16, 2005. On December 30, 2004, Petitioners requested that the Department conduct verification of the responses submitted during the course of this review.

Surrogate Country and Surrogate Values

On November 9, 2004, we issued a letter to the interested parties requesting comments on surrogate country selection. Petitioners submitted comments on surrogate country selection on December 15, 2004; no other party submitted comments on this issue.

On July 13, 2005, in response to the Department's request, the parties submitted surrogate value information for the Department to consider for these preliminary results. On July 27, 2005, Petitioners submitted rebuttal comments on the surrogate value information submitted by respondents, and CATACO submitted rebuttal comments on Petitioners' surrogate value filing.

Period of Review

The POR is January 1, 2003, through July 31, 2004.

Scope of the Order

The product covered by this order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact ("regular" fillets), boneless fillets with the belly flap removed ("shank" fillets), boneless shank fillets cut into strips ("fillet strips/finger"), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly–flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone–in, cross–section cuts of dressed fish. Nuggets are the belly–flaps.

The subject merchandise will be hereinafter referred to as frozen "basa" and "tra" fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States ("HTSUS").[2] This order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Verification

Following the publication of these preliminary results, we intend to verify, as provided in section 782(i)(3) of the Act, sales and cost information submitted by respondents, as appropriate. At that verification, we will use standard verification procedures, including on–site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original source documentation containing relevant information. We will prepare verification reports outlining our verification results and place these reports on file in the Central Records Unit, room B099 of the main Commerce building.

Partial Rescission of Review

As noted in the *Initiation Notice*, Phu Thanh was among the companies for which we initiated this administrative review. However, based upon the information described below, we are now rescinding this review with respect to Phu Thanh. Although Amland Corporation and Amland Foods Corporation requested a review of Phu Thanh, their request identified Phu Thanh only as a producer, while noting that the other companies in their request were exporters or producers/exporters. Phan Quan identified Phu Thanh only as its contract processor for the subject merchandise. At no point during the course of this review did Phu Thanh report that it exported subject merchandise during the POR. To confirm that Phu Thanh did not export subject merchandise during the POR, we examined shipment data furnished by CBP and found no entries from Phu Thanh. Accordingly, in accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding the review of Phu Thanh.

Separate Rates Determination

The Department has treated Vietnam as a non–market economy ("NME") country in all previous antidumping cases. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 70997 (December 8, 2004). It is the Department's policy to assign all exporters of the merchandise subject to review that are located in NME countries a single antidumping duty rate unless an exporter can demonstrate an absence of governmental control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. To establish whether an exporter is sufficiently independent of governmental control to be entitled to a separate rate, the Department analyzes the exporter using the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under the separate rates criteria established in these cases, the Department assigns separate rates to NME exporters only if they can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities.

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of the absence of *de jure* governmental control over export activities includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

In the less–than-fair–value ("LTFV") investigation for this case, the Department granted separate rates to Vinh Hoan and CATACO. *See Notice of*

[2] Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS.

Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) and accompanying Issues and Decision Memorandum at Comments 5 and 6. However, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of whether the respondent received a separate rate in the past. *See Manganese Metal From the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12441 (March 13, 1998). In the instant review Vinh Hoan and CATACO submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted in the instant review by these respondents includes government laws and regulations on corporate ownership, business licences, and narrative information regarding the companies' operations and selection of management. The evidence provided by Vinh Hoan and CATACO supports a finding of a *de jure* absence of governmental control over their export activities because: (1) there are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; and (2) the subject merchandise does not appear on any government list regarding export provisions or export licensing.

Absence of De Facto Control

The absence of *de facto* governmental control over exports is based on whether the Respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In their questionnaire responses, Vinh Hoan and CATACO submitted evidence indicating an absence of *de facto* governmental control over their export activities. Specifically, this evidence indicates that: (1) Each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) foreign currency does not need to be sold to the government. Therefore, the Department has preliminarily found that Vinh Hoan and CATACO have established *primae facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*. As discussed below, the Department is not granting Phan Quan a separate rate because we are unable to verify the separate rate information it submitted in its questionnaire responses.

Use of Facts Available

Section 776(a)(2) of the Act, provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act states that "if the administrating authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission ..., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also* Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103–316 at 870 (1994).

Phan Quan/Vietnam–Wide Entity

Phan Quan submitted a letter on June 2, 2005 stating that it would no longer participate in this review. By stating it would no longer participate, Phan Quan is explicitly impeding this proceeding. As evidenced by Petitioners' May 16, 2005, comments and by the CBP entry packages placed on the record by the Department also on May 16, 2005, there were a number of outstanding issues that Phan Quan needed to address before the Department could fulfill its statutory duty to calculate a dumping margin as accurately as possible. Because Phan Quan stated that it would no longer participate in this review, the Department is precluded from asking additional questions to clarify certain information it had placed on the record and from obtaining new information from Phan Quan. In addition, the Department intended on verifying Phan Quan's information because Phan Quan did not participate in the original LTFV investigation. Therefore, the Department had good cause to verify Phan Quan's information in this proceeding. See 19 CFR 351.307(b)(v)(B). Given Phan Quan's withdrawal from the proceedings, the Department will not be able to verify any of the information Phan Quan has submitted throughout the review, including its eligibility for a separate rate.

Because we were unable to ask Phan Quan any follow–up questions regarding its claim for a separate rate, we find that it is appropriately considered to be part of the Vietnam–wide entity. Furthermore, we note that the Vietnam–wide entity did not provide information necessary to the instant proceeding. Section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In selecting from among the facts available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has failed to cooperate by not acting to the best of its ability to comply with our request for information. Since Phan Quan significantly impeded the proceeding, the application of AFA is appropriate. Thus, because the Vietnam–wide entity (including Phan Quan) has failed to cooperate to the best of its ability in providing the requested information, we find it appropriate to use an inference that is adverse to the interests of the Vietnam–wide entity in selecting from among the facts otherwise available. By doing so, we ensure that the companies that are part of the Vietnam–wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

Section 776(b) of the Act indicates that an adverse inference may include reliance on information derived from

the petition, the final determination in the less–than-fair–value ("LTFV") investigation, any previous administrative review, or any other information placed on the record. As AFA, we are assigning the Vietnam–wide entity (which includes Phan Quan) the 63.88 percent Vietnam–wide rate from the LTFV investigation.

CATACO

On November 29, 2004, we received CATACO's Section C questionnaire response, including the total quantity and value of U.S. sales. On April 6, 2005, in response to a supplemental questionnaire, CATACO submitted revised quantity and value data, explaining in part that it had inadvertently omitted a large percentage of its U.S. sales in its original Section C response. On April 27, 2005, Petitioners submitted comments regarding how certain merchandise was sold to the United States by CATACO. In subsequent supplemental questionnaires, due in part to the comments received from Petitioners, we asked CATACO for more information regarding its U.S. sales of certain subject and non–subject merchandise. In its June 8, 2005 supplemental questionnaire response, CATACO stated that the differences in its original and revised sales database were due to the way in which certain sales to the United States were described in its records. On July 1, 2005, in response to another supplemental questionnaire, CATACO submitted additional information about product descriptions for these sales. We also requested entry data from CBP, which included entries of merchandise exported by CATACO during the POR.

Based on the information pertaining to certain sales submitted by CATACO, as well as the analysis of the CBP entry data, we have determined that CATACO undermined the Department's statutory obligation under Section 736 of the Act to ensure assessment of the correct antidumping duty amount and has also submitted contradictory information on the record of this review with respect to its sales of subject merchandise to the United States. In so doing, CATACO has significantly impeded this review under Section 776(a)(2)(C) of the Act. We further find that, pursuant to Section 776(b) of the Act, an adverse inference is warranted because CATACO failed to cooperate to the best of its ability. The Department is unable to calculate an accurate assessment rate for entries of subject merchandise from CATACO based upon the information CATACO submitted. Therefore, as partial AFA, we are assigning the Vietnam–wide rate of 63.88 percent for certain sales by CATACO. Because of the proprietary nature of the information relevant to this issue, the Department's detailed analysis of the basis for application of AFA is set forth in the *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Can Tho Agricultural and Animal Products Import Export Company ("CATACO") Analysis for the Preliminary Results of the Administrative Review*, dated August 31, 2005 ("*CATACO Analysis Memo*").

Corroboration

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994); *see also* 19 CFR 351.308(d).

The SAA further provides that the term "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total AFA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin. *See e.g., Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 67 FR 57789, 57791 (September 12, 2002).

The AFA rate selected above was calculated using information provided during the LTFV investigation. As this rate has not been judicially invalidated, we consider it to be reliable. When circumstances warrant, the Department may diverge from its standard practice of selecting as the AFA rate the highest rate in any segment of the proceeding. For example, in *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996) ("*Flowers from Mexico*"), the Department did not use the highest margin in the proceeding as best information available (the predecessor to facts available) because that margin was based on another company's aberrational business expenses and was unusually high. *See Flowers from Mexico*, 61 FR at 6814. In other cases, the Department has not used the highest rate in any segment of the proceeding as the AFA rate because the highest rate was subsequently discredited, or the facts did not support its use. *See D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present with respect to the rate being used here. Accordingly, we have corroborated the AFA rate identified above, as required

in accordance with the requirement of section 776(c) of the Act that secondary information be corroborated (*i.e.*, that it have probative value).

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production, valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market–economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" Section below.

As discussed in the "Separate Rates" section, the Department considers Vietnam to be an NME country. The Department has treated Vietnam as an NME country in all previous antidumping proceedings. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. We have no evidence suggesting that this determination should be changed. Therefore, we treated Vietnam as an NME country for purposes of this review and calculated NV by valuing the FOP in a surrogate country.

The Department determined that Bangladesh, Pakistan, India, Indonesia, and Sri Lanka are countries comparable to the Vietnam in terms of economic

development. *See Memorandum from Ron Lorentzen, Office of Policy, Acting Director, to James C. Doyle, Program Manager: Antidumping Duty Administrative Review of Certain Frozen Fish Fillets ("Frozen Fish") from the Socialist Republic of Vietnam: Request for a List of Surrogate Countries*, dated November 9, 2004. We select an appropriate surrogate country based on the availability and reliability of data from the countries. *See Department Policy Bulletin No. 04.1: Non–Market Economy Surrogate Country Selection Process* ("*Policy Bulletin*"), dated March 1, 2004. In this case, we have found that Bangladesh is a significant producer of comparable merchandise, is at a similar level of economic development pursuant to 773(c)(4) of the Act, and has publically available and reliable data. *See* the memorandum entitled "Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of a Surrogate Country," dated August 31, 2005 ("*Surrogate Country Memo*"). Thus, we have selected Bangladesh as the primary surrogate country for this administrative review. However, in certain instances where Bangladeshi data was not available, we used data from Indian or Indonesian sources.

U.S. Price

In accordance with section 772(a) of the Act, the Department calculated EP for sales to the United States for the participating respondents receiving calculated rates because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight, brokerage and handling, warehousing, containerization, and international freight. For the respondents receiving calculated rates, each of these services was either provided by an NME vendor or paid for using an NME currency, with one exception. For international freight provided by a market economy provider and paid in U.S. dollars, we used the actual cost per kilogram of the freight. *See Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Surrogate Values for the Preliminary Results*, dated August 31, 2005 ("*Surrogate Values Memo*") for details regarding the surrogate values for other movement expenses.

Normal Value

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by the Respondents for the POR. We have decided to calculate NV based upon the whole fish input. Respondents initially reported their FOPs on a whole fish basis. In subsequent questionnaires, based on comments from Petitioners, the Department also requested that Respondents provide FOPs for their integrated stages of production. However, in reporting the FOPs from their integrated stages, Respondents Vinh Hoan and CATACO stated that they encountered significant difficulties providing the Department with comprehensive data since they were integrated producers for only a small portion of the POR. Therefore, for these preliminary results and consistent with the LTFV investigation, we are calculating NV beginning with the whole fish input at the processing stage. *See Surrogate Values Memo.* Additionally, for these preliminary results, because Vinh Hoan's reported by–products offsets and fish fillet production exceeded the direct materials input amounts, we capped Vinh Hoan's reported by–products to a level that would reconcile to the total amount of the direct raw material inputs (whole fish and MTR–79). *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Vinh Hoan Company Ltd. ("Vinh Hoan") Analysis for the Preliminary Results of the Administrative Review*, dated August 31, 2005.

To calculate NV, we multiplied the reported FOP usage ratios by publicly available Bangladeshi, Indian, and Indonesian surrogate values. In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. We calculated these inland freight costs using the reported distances from the Vietnam port to the Vietnam factory, or from the domestic supplier to the factory. This adjustment is in accordance with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation or deflation using data published in the IMF's *International Financial Statistics*. We excluded from the surrogate country import data used in our calculations imports from Korea, Thailand, Indonesia and India due to generally available export subsidies. *See China Nat'l Mach. Import & Export Corp. v. United States*, CIT 01–1114, 293 F. Supp. 2d 1334 (CIT 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004) and *Certain Cut–to–Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 4. We converted the surrogate values to U.S. dollars as appropriate, using the official exchange rate recorded on the dates of sale of subject merchandise in this case, obtained from Import Administration's website at http://www.ia.ita.doc.gov/exchange/index.html. For further detail, *see* the *Surrogate Values Memo.*

Preliminary Results of the Review

As a result of our review, we preliminarily find that the following margins exist for the period January 31, 2003, through July 31, 2004:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Vinh Hoan	7.23
CATACO	38.08
Vietnam–wide Rate[1]	63.88

[1]The Vietnam-wide rate includes Phan Quan.

Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Since the verifications for Respondents are being conducted subsequent to these preliminary results, interested parties may submit written comments (case briefs) within seven days of release of the verification reports and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those

comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

Assessment Rates

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. We will calculate importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total volume of the examined sales for that importer. However, to ensure proper assessment, the Department has adjusted the total volume of the examined sales for CATACO as outlined in the *CATACO Analysis Memo*. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. We will instruct CBP to take into account the "provisional measures cap" in accordance with 19 CFR 351.212(d).

Cash–Deposit Requirements

The following cash–deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each of the reviewed companies that received a separate rate in this review will be the rate listed in the final results of review (except that if the rate for a particular company is *de minimis, i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously 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, a prior review, or the original 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 (including Phan Quan) will continue to be the "Vietnam–wide" rate of 63.88 percent, which was established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice 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 POR. 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 determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4973 Filed 9–12–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China: Notice of Amended Final Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce ("the Department") is amending the final results of the administrative review of the antidumping duty order on glycine from the People's Republic of China ("PRC") to reflect the correction of a ministerial error in the final results. The period of review ("POR") is March 1, 2003, through February 29, 2004.

EFFECTIVE DATE: September 13, 2005.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy at (202) 482–5403; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2005, the Department published the final results of its administrative review of the antidumping duty order on glycine from PRC. *See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005) *(Final Results)*. On August 12, 2005, the respondent, Baoding Mantong Fine Chemistry Co., Ltd. (Baoding Mantong), timely submitted comments alleging that the Department made a certain ministerial error in the *Final Results* by using an incorrect U.S. price. No rebuttal comments were filed.

Amended Final Results

After reviewing the ministerial error allegation, we have determined that the Department did make a clerical error in completing the *Final Results* by making an improper adjustment to U.S. price, and we have amended the *Final Results* accordingly. For a detailed discussion of the Department's analysis of the ministerial error allegation, *see* Ministerial Error Allegation Memorandum, dated concurrently with this notice.

Pursuant to section 751(h) of the Tariff Act of 1930, as amended ("the Act"), we have amended the *Final Results* by correcting the ministerial error regarding U.S. price. We will issue amended cash-deposit instructions to U.S. Customs and Border Protection to reflect the amendment of the final results of this review. Pursuant to these amended results, we revised the dumping margin as follows:

Manufacturer/exporter	Margin (percent)
Baoding Mantong Fine Chemistry Co., Ltd.	2.95

The amended final results of this administrative review and notice are in accordance with sections 751(a)(1), 751(h), and 777(i)(1) of the Act.

Dated: September 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5001 Filed 9–12–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Preliminary Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico

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

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of subject merchandise to the United States during the period August 1, 2003, through July 31, 2004, from one firm, CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V. We have preliminarily determined that sales were made below normal value during the period of review.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issues, and (2) a brief summary of the argument.

EFFECTIVE DATE: September 13, 2005.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Jeffrey Frank, Office of AD/CVD Operations 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3477, (202) 482–0090, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2004, the Department of Commerce (the Department) published in the **Federal Register** the *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation* concerning the antidumping duty order on gray portland cement and clinker (cement) from Mexico (69 FR 46496). In accordance with 19 CFR 351.213(b), the petitioner, the Southern Tier Cement Committee (STCC), requested a review of CEMEX, S.A. de C.V. (CEMEX), and CEMEX's affiliate, GCC Cemento, S.A. de C.V. (GCCC). In addition, CEMEX and GCCC requested reviews of their own sales during the period of review (POR). On September 22, 2004, the Department published in the **Federal Register** the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part* (69 FR 56745) in which it initiated an administrative review of the antidumping duty order on cement from Mexico. The POR is August 1, 2003, through July 31, 2004. We are conducting a review of CEMEX and GCCC pursuant to section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products subject to this order include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) item number 2523.29, and cement clinker is currently classifiable under HTSUS item number 2523.10. Gray portland cement has also been entered under HTSUS item number 2523.90 as "other hydraulic cements." Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, we verified certain home–market information submitted by CEMEX using standard verification procedures, including an examination of relevant sales and financial records and the selection of original documentation containing relevant information. For further details, please see the Department's verification report dated August 30, 2005, on file in the Central Records Unit (CRU), Room B–099 of the main Department building.

Collapsing

Section 771(33) of the Act defines when two or more parties will be considered affiliated for purposes of an antidumping analysis. Moreover, the regulations describe when the Department will treat two or more affiliated producers as a single entity (i.e., "collapse" the firms) for purposes of calculating a dumping margin (see 19 CFR 351.401(f)). In previous administrative reviews of this order, we analyzed the record evidence and collapsed CEMEX and GCCC in accordance with the regulations.[1]

The regulations state that we will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and we conclude that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the factors we may consider include the following: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. See 19 CFR 351.401(f).

Having reviewed the current record, we found that the factual information underlying our decision to collapse these two entities has not changed from previous administrative reviews. See "Collapsing CEMEX, S.A., de C.V. and GCC Cemento, S.A. de C.V. for the Current Administrative Review," dated June 7, 2005. CEMEX's indirect ownership of GCCC exceeds five percent; therefore, these two companies are affiliated pursuant to section 771(33)(E) of the Act. In addition, both CEMEX and GCCC satisfy the criteria for treatment of affiliated parties as a single entity described at 19 CFR 351.401(f)(1): both producers have production facilities for similar and identical products such that substantial retooling of their production facilities would not be necessary to restructure manufacturing priorities. Consequently, any minor retooling required could be accomplished swiftly and with relative ease.

We also find that a significant potential for manipulation of prices and production exists as outlined under 19 CFR 351.401(f)(2). CEMEX owns indirectly a substantial percentage of GCCC. Also, CEMEX's managers or directors sit on the board of directors of GCCC and its affiliated companies. Accordingly, CEMEX's percentage ownership of GCCC and the interlocking boards of directors give rise to a significant potential for affecting GCCC's pricing and production

[1] See, *e.g.*, *Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico*, 69 FR 34647, 34648 (June 22, 2004). No changes were made in the final results of review (see *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Review*, 69 FR 77989 (December 29, 2004)).

decisions. Therefore, we have collapsed CEMEX and GCCC into one entity and calculated a single weighted–average margin using the information the firms provided in this review.

Constructed Export Price

Both CEMEX and GCCC reported constructed export price (CEP) sales. We calculated CEP based on delivered prices to unaffiliated customers in accordance with section 772(b) of the Act. Where appropriate, we made adjustments to the starting price for discounts, rebates, and billing adjustments. In accordance with section 772(d) of the Act and 19 CFR 351.402(b), we deducted those expenses, including inventory carrying costs, that were associated with commercial activities in the United States and related to the sale to an unaffiliated purchaser. We also made deductions for foreign brokerage and handling, foreign inland freight, U.S. inland freight and insurance, U.S. warehousing expenses, U.S. brokerage and handling, and U.S. duties pursuant to section 772(c)(2)(A) of the Act. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act[2]. No other adjustments to CEP were claimed or allowed.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers (*i.e.*, cement that was imported and further–processed into finished concrete by U.S. affiliates of foreign exporters), we preliminarily determine that the special rule under section 772(e) of the Act for merchandise with value added after importation is applicable.

Section 772(e) of the Act provides that, where the subject merchandise is imported by a person affiliated with the exporter or producer and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we will determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. The regulations at 19 CFR 351.402(c)(2) provide that normally we will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if we estimate the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. Normally, we will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for the subject merchandise by the affiliated person. We will base this determination normally on averages of the prices and the value added to the subject merchandise. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP. See section 772(e) of the Act.

During the course of this administrative review, the respondent submitted information which allowed us to determine whether, in accordance with section 772(e) of the Act, the value added in the United States by its U.S. affiliates is likely to exceed substantially the value of the subject merchandise. To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for subject merchandise by the affiliate. Based on this analysis, we estimate that the value added was at least 65 percent of the price the respondent charged to the first unaffiliated purchaser for the merchandise as sold in the United States. Therefore, we preliminarily determine that the value added is likely to exceed substantially the value of the subject merchandise. Also, the record indicates that there is a sufficient quantity of subject merchandise to provide a reasonable and appropriate basis for comparison. Accordingly, for purposes of determining dumping margins for the further–manufactured sales, we have applied the preliminary weighted–average margin reflecting the rate we calculated for sales of identical or other subject merchandise sold to unaffiliated purchasers.

Normal Value

A. Comparisons

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value, we compared the respondent's volume of home–market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home–market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based normal value on home–market sales.

During the POR, the respondent sold Type II LA and Type V LA cement in the United States. The statute expresses a preference for matching U.S. sales to identical merchandise in the home market. See section 771(16) of the Act. The respondent sold cement produced as CPC 30 R, CPC 40, CPO 30, CPO 40, and CPO30R BRA cement in the home market. We have attempted to match the subject merchandise to identical merchandise sold in the home market. In situations where identical product types cannot be matched, we have attempted to match the subject merchandise to sales of similar merchandise in the home market. See sections 773(a)(1)(B) and 771(16) of the Act.

We were able to find home–market sales of identical and similar merchandise to which we could match sales of Type II LA and Type V LA cement sold in the U.S. market. In the three most recent administrative reviews of this proceeding, we determined that CPO 40 cement produced and sold in the home market is the identical match to Type V LA cement sold in the United States. See, *e.g.*, *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 67 FR 12518 (March 19, 2002), and the accompanying Issues and Decision Memorandum at Comment 7. We have reviewed the information on the record and have determined that CPO 40 cement produced and sold in the home market is the identical match to Type V LA cement sold in the United States during this review period. If we could not find an identical match to the cement types sold in the United States in the same month in which the U.S. sale was made or during the contemporaneous period, we based normal value on similar merchandise.

[2] As a result of our findings at verification, we made an adjustment to the information CEMEX provided concerning its U.S. sales which affects the calculation of constructed export price profit. Specifically, while verifying indirect selling expenses CEMEX incurred in Mexico for sales to the United States, we found that CEMEX did not account for or claim a portion of its corporate selling expenses attributable to U.S. sales. For the preliminary results, we made an adjustment to the amount CEMEX claimed for indirect selling expenses incurred in Mexico for sales to the United States to correct for this omission.

During the POR, GCCC had sales of Type II LA cement in the United States and asserted that the merchandise it sells in the home market as CPO30R BRA cement is identical to Type II LA cement. We have reviewed the information on the record of this review and, based on our analysis, we have determined that GCCC's sales of CPO30R BRA cement in the home market were made outside the ordinary course of trade. See "Ordinary Course of Trade" section below.

In the 2000/2001 administrative review of this proceeding, we determined that the chemical and physical characteristics of CPO 40 cement produced and sold in Mexico are most similar to Type II LA cement sold in the United States. We have reviewed the information on the record of this POR and have determined that it is appropriate to match sales of CPO 40 cement produced and sold in Mexico to all sales of Type II LA sold in the United States.

Further, in accordance with section 771(16)(B) of the Act, we find that both bulk and bagged cement are produced in the same country and by the same producer as the types sold in the United States, both bulk and bagged cement are like the types sold in the United States in component materials and in the purposes for which used, and both bulk and bagged cement are approximately equal in commercial value to the types sold in the United States. The questionnaire responses submitted by the respondent indicate that, with the exception of packaging, sales of cement in bulk and sales of cement in bags are physically identical and both are used in the production of concrete. Also, because there is no difference in the cost of production between cement sold in bulk or in bagged form, both are approximately equal in commercial value. See CEMEX's and GCCC's responses to the Department's original and supplemental questionnaires dated November 30, 2004, December 9, 2004, March 31, 2005, and April 8, 2005. Therefore, we find that matching the U.S. merchandise which is sold in both bulk and bag to the foreign like product sold in either bulk or bag is appropriate.

B. Ordinary Course of Trade

Section 773(a)(1)(B) of the Act requires the Department to base normal value on "the price at which the foreign like product is first sold (or in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade." Ordinary course of trade is defined as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind." See section 771(15) of the Act.

In the instant review, we analyzed home–market sales of CPO30R BRA cement. Pursuant to section 773(a)(1)(B) of the Act, we based our examination on the totality of circumstances surrounding the respondent's sales in Mexico of CPO30R BRA cement, and we find that the respondent's home–market sales of this product made during the instant POR are outside the ordinary course of trade. See memorandum from Minoo Hatten to Laurie Parkhill, entitled "Ordinary–Course-of–Trade Analysis for the Preliminary Results of the 2003/2004 Administrative Review of the Antidumping Duty Order on Gray Portland Cement and Clinker from Mexico," dated August 30, 2005.

Consequently, we have disregarded the respondent's sales of CPO30R BRA cement in Mexico and, as in previous reviews, matched sales of CPO 40 cement produced and sold in Mexico to sales of Type II LA sold in the United States. See "Comparisons" section above.

C. Arm's–Length Sales

To test whether sales to affiliated customers were made at arm's length, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was, on average, within a range of 98 to102 percent of the price of the same or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. See *Modification Concerning Affiliated Party Sales in the Comparison Market*, 67 FR 69186 (November 15, 2002). Consistent with 19 CFR 351.403, we only included in our margin analysis those sales to affiliated parties that were made at arm's length.

D. Cost of Production

The petitioner alleged on December 29, 2004, that the respondent sold cement in the home market at prices below the cost of production (COP). Upon examining the allegation, we determined that the petitioner had provided a reasonable basis to believe or suspect that the CEMEX and GCCC sold cement in Mexico at prices below the COP. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation to determine whether CEMEX and GCCC made home–market sales of cement during the POR at below–cost prices. See the memorandum from Mark Ross to Laurie Parkhill entitled "Gray Portland Cement and Clinker from Mexico: Request to Initiate Cost Investigation in the 2003/2004 Review," dated February 18, 2005.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing cement plus amounts for home–market selling, general, and administrative (SG&A) expenses. We used the home–market sales data and COP information provided by CEMEX and GCCC in their questionnaire responses.

After calculating the weighted–average COP and in accordance with section 773(b)(3) of the Act, we tested whether CEMEX's and GCCC's home–market sales were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted recovery of all costs within a reasonable period of time. We compared the COP appropriate to the home–market prices less any applicable direct selling expenses, movement charges, discounts and rebates, and indirect selling expenses.

Pursuant to section 773(b)(2)(C) of the Act, if less than 20 percent of CEMEX's and GCCC's sales of a certain type of cement were at prices less than the COP, we do not disregard any below–cost sales of that product because the below–cost sales were not made in substantial quantities within an extended period of time. If 20 percent or more of CEMEX's and GCCC's sales of a certain type during the POR were at prices less than the COP, such below–cost sales were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act. Based on comparisons of home–market prices to the appropriate weighted–average COP for the POR, we determined that below–cost sales were not made in substantial quantities within an extended period of time, and, therefore, we did not disregard any below–cost sales.

E. Adjustments to Normal Value

Where appropriate, we adjusted home–market prices for discounts, rebates, packing, handling revenue, interest revenue, and billing adjustments to the invoice price. In addition, we adjusted the starting price for inland freight, inland insurance, and warehousing expenses. We also deducted home–market direct selling expenses from the home–market price and home–market indirect selling expenses as a CEP–offset adjustment

(see Level of Trade/CEP Offset section below). In addition, in accordance with section 773(a)(6) of the Act, we deducted home–market packing costs from and added U.S. packing costs to normal value.

Section 773(a)(6)(C)(ii) of the Act directs us to make an adjustment to normal value to account for differences in the physical characteristics of merchandise where similar products are compared. The regulations at 19 CFR 351.411(b) direct us to consider differences in variable costs associated with the physical differences in the merchandise. Where we matched U.S. sales of subject merchandise to similar models in the home market, we adjusted for differences in merchandise.

F. Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the home market at the same level of trade as the CEP. The home–market level of trade is that of the starting–price sales in the home market or, when normal value is based on constructed value, that of sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Act (the CEP level).

To determine whether home–market sales are at a different level of trade than CEP level, we examine stages in the marketing 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. Finally, for CEP sales, if the normal–value level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between normal value and CEP level affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP–offset provision). See *Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

With respect to U.S. sales (respondent reported CEP sales in the U.S. market), we conclude that CEMEX's and GCCC's sales constituted one level of trade. We based our conclusion on our analysis of each company's reported selling functions and sales channels after making deductions for selling expenses under section 772(d) of the Act. We found that, with some minor exceptions, CEMEX and GCCC performed the same selling functions to varying degrees in similar channels of distribution. We also concluded that the variations in the intensities of selling functions performed were not substantial when all selling expenses were considered.

Based on our analysis of CEMEX's and GCCC's reported selling functions and sales channels, we conclude that CEMEX's and GCCC's home–market sales to various classes of customers constitute two separate levels of trade (the CEMEX home–market level of trade and the GCCC home–market level of trade). We found that CEMEX and GCCC performed significantly different sales functions for sales to their home–market customers. Specifically, we found that the two home–market levels of trade differed with respect to selling activities such as after–sales service/warranties, customer approval, sales promotion/discount programs, sales forecasting, personnel training/exchange, and procurement and sourcing services. See the memorandum entitled "Gray Portland Cement and Clinker from Mexico: Level–of-Trade Analysis for the 03/04 Administrative Review," dated August 30, 2005.

Further, we compared the CEMEX home–market level of trade to the CEP level and found that significantly different selling functions are performed at each level of trade and that fewer selling functions are performed for the U.S. sales than for the home–market sales. For example, sales at the CEP level do not include activities such as market research, strategic and economic planning, advertising, and after–sales service/warranties whereas sales in the CEMEX home–market level of trade include these activities. Based on this analysis, we concluded that the CEMEX home–market level of trade is different, is at a more advanced stage of distribution, and is more remote from the factory than the CEP level.

Next, we compared the GCCC home–market level of trade to the CEP level and also found that significantly different selling functions are performed at these levels of trade and that fewer selling functions are performed for the U.S. sales than for the home–market sales. For example, sales at the CEP level do not include activities such as advertising, customer approval, sales promotion, sales forecasting, strategic and economic planning, personnel training/exchange, and procurement and sourcing services whereas sales in the GCCC home–market level of trade include these activities. Based on this analysis, we have concluded that the GCCC home–market level of trade is different, is at a more advanced stage of distribution, and is more remote from the factory than the CEP level.

We could not match the CEP sales to sales at the same level of trade in the home market. In addition, we could not make a level–of-trade adjustment because the differences in price between the CEP level of trade and the home–market level of trade cannot be quantified due to the lack of an equivalent to the CEP level in the home market. Also, there is no other data on the record which would allow us to make a level–of-trade adjustment. Thus, we made a CEP–offset adjustment to normal value in accordance with section 773(a)(7)(B) of the Act. In accordance with section 773(a)(7) of the Act, we calculated the CEP offset as the smaller of the indirect selling expenses on the home–market sale or the indirect selling expenses we deducted from the starting price in calculating CEP.

Currency Conversion

Pursuant to section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine the dumping margin for the collapsed respondent for the period August 1, 2003, through July 31, 2004, to be 40.54 percent.

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than one week after the issuance of the Department's last verification report in this review. The Department will notify all parties of the applicable briefing schedule. Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs are due no later than five days after the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with 19 CFR 351.310, we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If we receive a request for a hearing, we plan to hold the hearing

three days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of the preliminary results of this review in the **Federal Register**. Requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal briefs, within 120 days of publication of this notice. See 19 CFR 351.213(h).

Assessment Rates

Upon completion of this review, the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer–specific assessment rate for merchandise subject to this review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on the importer's entries during the POR.

Cash–Deposit Requirements

In conducting recent reviews of CEMEX and GCCC, the Department has observed a pattern of significant differences between the weighted–average margins and the assessment rates it has determined for this respondent in those reviews. This pattern of differences suggests that the collection of a cash deposit for estimated antidumping duty based on net U.S. price may result in the undercollection of estimated antidumping duties at the time of entry, as discussed at Comment 6 of the "Issues and Decision Memorandum for the Administrative Review of Gray Portland Cement and Clinker from Mexico August 1, 2002, through July 31, 2003," dated December 29, 2004. Therefore, we have determined that it is appropriate to continue to require a per–unit cash–deposit amount for entries of subject merchandise produced or exported by CEMEX and GCCC.

The following 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 review, as provided by section 751(a)(1) of the Act: (1) The cash–deposit amount for CEMEX/GCCC will be the amount per metric ton determined in the final results of review; (2) for previously reviewed or investigated companies not mentioned 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, a prior review, or in 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 be 61.85 percent, the all–others rate from the LTFV investigation. See *Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Mexico*, 55 FR 29244 (July 18, 1990). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. 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)(1) and 777(i)(1) of the Act.

Dated: August 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4974 Filed 9–12–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–201–827

Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Notice of Final Rescission of Antidumping Duty Administrative Review

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

SUMMARY: We have determined that the fourth antidumping duty administrative review of Tubos de Acero de Mexico, S.A. ("TAMSA") should be rescinded.

EFFECTIVE DATE: September 13, 2005.

FOR FURTHER INFORMATION CONTACT: Victoria Cho or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5075, or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2004, the Department of Commerce ("the Department") published in the **Federal Register** the notice of "Opportunity to Request Administrative Review" of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe ("SLP") from Mexico, for the period August 1, 2003, through July 31, 2004. *See Notice of Opportunity to Request an Administrative Review, 69 FR 46496 (August 3, 2004).*

On August 31, 2004, we received a request from the petitioner[1] to review TAMSA. On September 22, 2004, we published the notice of initiation of this antidumping duty administrative review with respect to TAMSA. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part*, 69 FR 56745 (September 22, 2004). On November 23, 2004, TAMSA submitted a letter certifying that neither TAMSA, nor its U.S. affiliate, Tenaris Global Services USA ("Tenaris"), directly or indirectly, exported or sold for consumption in the United States any subject merchandise during the period of review ("POR").

On May 6, 2005, the Department published in the **Federal Register**, *Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Notice of*

[1] The petitioner is United States Steel Corporation.

Intent to Rescind Administrative Review, 70 FR 23988 (May 6, 2005), and invited comments from interested parties. The Department did not receive comments from any interested party.

Scope of the Order

The products covered are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials ("ASTM") A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and the American Petroleum Institute ("API") 5L specifications and meeting the physical parameters described below, regardless of application, with the exception of the exclusions discussed below. The scope of this order also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of this order are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall–thickness, manufacturing process (hot finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this order are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non–covered specification. Standard, line, and pressure applications and the above–listed specifications are defining characteristics of the scope of this review. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this order.

Specifically excluded from the scope of this order are:

A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications.

B. Finished and unfinished oil country tubular goods ("OCTG"), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

C. Products produced to the A–335 specification unless they are used in an application that would normally utilize ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications.

D. Line and riser pipe for deepwater application, *i.e.*, line and riser pipe that is (1) used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific

deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.*, "API 5L").

With regard to the excluded products listed above, the Department will not instruct U.S. Customs and Border Protection to require end–use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application. If such information is provided, the Department will require end–use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–335 specification is being used in an A–106 application, it will require end–use certifications for imports of that specification. Normally, the Department will require only the importer of record to certify to the end–use of the imported merchandise. If it later proves necessary for adequate implementation, the Department may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

Rescission of Fourth Administrative Review

On May 6, 2005, the Department published in the **Federal Register** its intent to rescind the administrative review. *See Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe: Notice to Intent to Rescind Administrative Review*, 70 FR 23988 (May 6, 2005). In that notice we stated that, based on our shipment data query and examination of entry documents, (*see* Memorandum dated February 24, 2005, entitled "Request for U.S. Entry Documents–Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico, Customs Case Number A–201–827" and Memorandum dated April 14, 2005, entitled "Memorandum to File: Customs Data Entry Results") we should treat TAMSA as a non–shipper and, in accordance with section 351.213(d)(3) of the Department's regulations, rescind this review. We invited interested parties to comment on our intent to rescind the administrative review. No comments were submitted.

Consequently, the Department continues to treat TAMSA as a non–shipper for the purpose of this review. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, and consistent with our practice, we are rescinding this review because TAMSA was the only company for which a review was requested and we have determined that TAMSA did not have entries of subject merchandise manufactured, produced or exported by TAMSA during the POR. *See, e.g., Polychloroprene Rubber from Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 66 FR 45005 (August 27, 2001).

We are issuing this notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and section 351.213(d) of the Department's regulations.

Dated: September 6, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–4975 Filed 9–12–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–837]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Preliminary Results of Changed Circumstances Review

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

SUMMARY: On May 10, 2005, the Department of Commerce (the Department) self-initiated a changed circumstances review to consider information contained in a recent Federal court decision, *Goss International Corp.* v. *Tokyo Kikai Seisakusho, Ltd.*, 321 F.Supp.2d 1039 (N.D. Iowa 2004) (*Goss Int'l*). As detailed in our "Notice of Initiation of the Changed Circumstances Review," evidence was presented in that court proceeding demonstrating that Tokyo Kikai Seisakusho, Ltd. (TKS) intentionally provided false information regarding its sale to the Dallas Morning News (DMN), the subject of the Department's 1997–1998 administrative review. After consideration of comments and information provided for this review, we preliminarily determine that it is appropriate to take the following course of action in order to protect the integrity of the Department's proceedings: (1) Revise TKS' margin for the 1997–1998 review to apply a rate of 59.67 percent based on adverse facts available; (2) rescind the revocation of the antidumping duty order for TKS because TKS no longer qualifies for revocation based on three consecutive administrative reviews resulting in zero dumping margins; and (3) reconsider the revocation of the order under the sunset review provision of the statute (section 751(c) of the Tariff Act of 1930, as amended (the Act)). If these preliminary results are confirmed in the final results, the Department will revise TKS' margin for the 1997–1998 review, rescind the revocation of the antidumping duty order for TKS, and initiate a new sunset review to reconsider the revocation of this order. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 13, 2005.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4136 and (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1996, the Department published in the **Federal Register** an amended final determination and antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled, from Japan (LNPPs) (61 FR 46621), (*Amended Final and Order*). One of the producers/exporters covered by the order was TKS. Its rate from the less-than-fair-value investigation was 56.28 percent. The Department conducted administrative reviews of TKS for the following periods: September 1, 1997–August 31, 1998, September 1, 1998–August 31, 1999, and September 1, 1999–August 31, 2000. The administrative review for the 2000–2001 review period was rescinded. A zero margin was found for TKS in the 1997–1998, 1998–1999, and 1999–2000 review periods. On January 16, 2002, the antidumping duty order was revoked with respect to TKS (*see Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Final Results of Antidumping*

Duty Administrative Review and Revocation in Part, 67 FR 2190) based on the three consecutive reviews resulting in zero dumping margins (*see* 19 CFR 351.222(b)). On February 25, 2002, the Department revoked the antidumping duty order under a five-year sunset review pursuant to section 751(c)(3)(A) of the Act because the only domestic interested party in the sunset review, Goss International Corporation (Goss), withdrew its participation and thus its interest in the review. *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan (A–588–837) and Germany (A–428–821): Notice of Final Results of Five-Year Sunset Reviews and Revocation of Antidumping Duty Orders*, 67 FR 8522 (February 25, 2002).

On May 5, 2005, the Department self-initiated a changed circumstances review to consider information contained in a recent Federal court decision, *Goss Int'l*. *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Initiation of Changed Circumstances Review*, 70 FR 24524 (May 10, 2005). In that court proceeding, evidence was presented demonstrating that TKS provided false information regarding its sale to the DMN, the sale that was the subject of the Department's 1997–1998 administrative review. The Department placed the *Goss Int'l* decision and documents from the *Goss Int'l* record on the public record of this changed circumstances review in separate memoranda.

On June 9, 2005, Goss, TKS, and Mitsubishi Heavy Industries, Ltd. (MHI) provided comments in response to the Department's request for comments in the notice of initiation of this changed circumstances review. Goss' comments included documents from the *Goss Int'l* record and from the Department's administrative reviews of the antidumping duty order. On June 20, 2005, Goss and TKS provided comments in response to the parties' respective June 9, 2005, comments.

On July 19, 2005, TKS requested that the Department seek further information about Goss' claim that it is currently a domestic manufacturer of LNPPs. Goss responded to TKS' letter in an August 11, 2005, submission.

Scope of the Changed Circumstances Review

The products covered by this changed circumstances review are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of the review includes the five press system components. They are: (1) a printing unit, which is any component that prints in monocolor, spot color and/or process (full) color; (2) a reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit; (3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format; (4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and (5) a computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this review. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of the review, the following definitions apply irrespective of any different definition that may be found in customs rulings, U.S. Customs law or the *Harmonized Tariff Schedule of the United States* (HTSUS): (1) the term "unassembled" means fully or partially unassembled or disassembled; and (2) the term "incomplete" means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this review. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's-length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Also excluded from the scope, in accordance with the Department's determination in a previous changed circumstances review of the antidumping duty order which resulted in the partial revocation of the order with respect to certain merchandise, are elements and components of LNPP systems, and additions thereto, which feature a 22-inch cut-off, 50-inch web width and a rated speed no greater than 75,000 copies per hour. *See Large Newspaper Printing Presses Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order, In Part*, 64 FR 72315 (December 27, 1999). In addition to the specifications set out in this paragraph, all of which must be met in order for the product to be excluded from the scope of the review, the product must also meet all of the specifications detailed in the five numbered sections following this paragraph. If one or more of these criteria is not fulfilled, the product is not excluded from the scope of the review.

1. *Printing Unit*: A printing unit which is a color keyless blanket-to-blanket tower unit with a fixed gain infeed and fixed gain outfeed, with a rated speed no greater than 75,000 copies per hour, which includes the following features:

Each tower consisting of four levels, one or more of which must be populated.

Plate cylinders which contain slot lock-ups and blanket cylinders which contain reel rod lock-ups both of which are of solid carbon steel with nickel plating and with bearers at both ends which are configured in-line with bearers of other cylinders.

Keyless inking system which consists of a passive feed ink delivery system, an eight roller ink train, and a non-anilox and non-porous metering roller.

The dampener system which consists of a two nozzle per page spraybar and two roller dampener with one chrome drum and one form roller.

The equipment contained in the color keyless ink delivery system is designed to achieve a constant, uniform feed of ink film across the cylinder without ink keys. This system requires use of keyless ink which accepts greater water content.

2. *Folder:* A module which is a double 3:2 rotary folder with 160 pages collect capability and double (over and under) delivery, with a cut-off length of 22 inches. The upper section consists of three-high double formers (total of 6) with six sets of nipping rollers.

3. *RTP:* A component which is of the two-arm design with core drives and core brakes, designed for 50 inch diameter rolls; and arranged in the press line in the back-to-back configuration (left and right hand load pairs).

4. *Conveyance and Access Apparatus:* Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheets across through the production process, and a drive system which is of conventional shafted design.

5. *Computerized Control System:* A computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

Further, this review covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this review are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the review is dispositive.

Use of Facts Otherwise Available

As noted above in the "Background" section, the Department has examined documents from *Goss Int'l* and from the 1997–1998 administrative review, all of which have been placed on the record of this review, and has determined that TKS provided false information in the context of the 1997–1998 administrative review.

Information on the record of this changed circumstances review clearly demonstrates that TKS granted DMN a $1 million rebate and credits for spare parts tied to the sale reviewed, yet it did not disclose this information in its questionnaire responses submitted in the 1997–1998 administrative review. TKS was specifically asked in the questionnaire issued in the 1997–1998 administrative review whether it had granted any discounts or rebates in connection with the subject sale. TKS unequivocally stated that "TKS did not provide any discounts to the contract price," and "TKS did not provide any rebates to the contract price." *See* pages 16 and 17, respectively, of the March 29, 1999, Section C response (included on the record of this review as an attachment to the Memorandum to the File dated August 23, 2005, which also includes the certifications from the responsible TKS official and TKS' counsel that the information in the response was accurate and complete). The changed circumstances review record shows that TKS did in fact grant rebates and credits for additional supplies but intentionally failed to disclose them. Specifically, TKS' undisclosed rebate to the DMN is documented in fax correspondence between TKS and its U.S. affiliate included as Exhibits 23 and 26 in Volume III of Goss' June 9, 2005, submission; DMN's invoice to TKS for the $1 million, included as Exhibit 27 in Volume III of Goss' June 9, 2005, submission; and TKS' application for a telegraphic transfer of funds, included as Attachment 30 of the Department's May 5, 2005, Memorandum to the File (*May Memo*) (also in Exhibit 28 of Volume III of Goss' June 9, 2005, submission). This payment is also discussed in two memoranda and a deposition by the DMN's production manager (Exhibit 31 in Volume III of Goss' June 9, 2005, submission, and Attachments 34 and 41, respectively, of the *May Memo*), and in a deposition by a former TKS official now at the DMN (Attachment 40 of the *May Memo*). In the same *May Memo* depositions, the DMN officials also attest to a total of $1.2 million of credits granted to the DMN in consideration of the LNPP sale to the DMN. *See, also,* Goss' discussion of the payment and credits at Volume I, page 5, and Volume II, pages 5–6 of its June 9, 2005, submission, as well as *Goss Int'l* at pages 8–9.

Because TKS did not provide accurate and complete information in its questionnaire responses, we preliminarily determine that the application of facts available is appropriate, pursuant to section 776(a)(2) of the Act. Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Once we determine that the use of facts available is warranted, section 776(b) of the Act permits the Department to determine whether the application of an adverse inference is also warranted. In making this additional determination, the Department may find that "[a respondent] has failed to cooperate by not acting to the best of its ability to comply with a request for information." *See* section 776(b) of the Act.

As discussed above, a comparison of the *Goss Int'l* documents and the record from the 1997–1998 review indicates that TKS failed to disclose its rebate and credit arrangements associated with its sale to the DMN, TKS' sole sale in the 1997–1998 review, and falsely reported to the Department that no such rebate or credits existed. The Department is reexamining TKS' margin in the 1997–1998 review in the context of this changed circumstances review pursuant to its inherent authority to protect the integrity of its proceedings. As a general matter, an agency may act to protect the integrity of its proceedings. *See Eikem Metals Co.* v. *United States*, 193 F. Supp. 2d 1314 (CIT 2002) (*Elkem Metals*); *Alberta Gas Chemicals, Ltd.* v. *Celanese Corp.*, 650 F.2d 9, 12–13 (2d Cir. 1981); *Touche Ross & Co.* v. *SEC*, 609 F.2d 570, 582 (D.C. Cir. 1979). In

Elkem Metals, the Court of International Trade (CIT) affirmed the International Trade Commission's (ITC's) reopening of an affirmative injury determination on ferrosilicon from various countries because of fraudulent activity, even though the ITC did not have explicit statutory authority to do so. In the reopened investigation, the ITC reversed its final affirmative determination of injury after foreign producers petitioned to reopen the investigation; the foreign producers had based their petition on a "recently disclosed price-fixing conspiracy among some domestic manufacturers, and its consequent distortion of the price data presented to the ITC during its original material injury investigations." *See Elkem Metals*, 193 F. Supp.2d at 1317. This instant proceeding is similar to *Elkem Metals* because a Federal court has determined that TKS concealed rebates and other relevant information affecting the sales price information reported to the Department in the context of the antidumping duty review, and because, upon the Department's own examination of the documents, as discussed above, the Department determines that TKS failed to disclose requested information and provided false statements to the Department about the DMN sale. There was only one sale examined in the 1997–1998 review; therefore, false and incomplete information about the DMN sale discredits the findings of the entire review.

Because TKS provided false and incomplete information in the context of its only sale in the 1997–1998 administrative review, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate. *See, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review and Final Rescission of Review, in Part*, 69 FR 7193 (February 13, 2004) and accompanying Issues and Decision Memorandum at Comment 2 (*Freshwater Crawfish Tail Meat Decision Memo*) (aff'd *Shanghai Taoen Int'l Trading Co.* v. *United States*, No. 04–00125, Slip. Op. 05–22 (CIT Feb. 17, 2005)); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794 (August 30, 2002); *Porcelain-on-Steel Cooking Ware from the People's Republic of China; Final Results of Antidumping Administrative Review*, 62 FR 32757, 32761, at Comment 8 (June 17, 1997) (*Porcelain-on-Steel Cooking Ware*).

Moreover, TKS' failure to provide accurate and complete information about the DMN sale, along with its false statement in its questionnaire response concerning rebates and other concessions to price, demonstrate that TKS did not respond truthfully and completely to the Department's requests for information. Accordingly, TKS did not act to the best of its ability as required by section 776(b) of the Act. Consequently, we have made an adverse inference in determining a dumping margin for TKS. *See Porcelain-on-Steel Cooking Ware*, 62 FR at 32761; *Freshwater Crawfish Tail Meat Decision Memo* at Comment 2.

Section 776(b) of the Act authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or any other information placed on the record. As AFA, we have preliminarily assigned to TKS the rate of 59.67 percent, which is the rate calculated for MHI in the LTFV investigation, as amended and recalculated pursuant to a remand redetermination (*see Notice of Court Decision: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan*, 65 FR 31879 (May 19, 2000) (Redetermination on Remand aff'd *Mitsubishi Heavy Indus., Ltd.* v. *United States*, 275 F.3d 1056 (Fed. Cir. 2001))).[1] The rate of 59.67 percent is the highest rate calculated for any respondent in the LTFV investigation or the three subsequent administrative reviews. The Department's purpose when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). We find the application of a rate of 59.67 percent to TKS to be sufficiently adverse in this case.

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted "corroborate" to mean that we will, to the extent practicable, examine the reliability and relevance of the information used. *See, e.g., Notice of Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China*, 68 FR 57869, 57874 (October 7, 2003) (unchanged in *Final Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China*, 69 FR 4108 (January 28, 2004)), citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), and *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 66 FR 42628, 42628–29 (August 14, 2001).

Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. In an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period because it was calculated in accordance with the statute.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

We preliminarily determine that the calculated margin selected as AFA has probative value because it is based on

[1] For a discussion of the AFA rate selection, *see* Memorandum to the File entitled "AFA Rate Selection," dated September 6, 2005 (*AFA Rate Memo*).

verified data from a respondent in the LTFV investigation. Although this margin is the highest in the range of calculated margins, there is no basis to conclude that it is aberrational or inappropriate as applied to TKS. Accordingly, we preliminarily determine that this rate is an appropriate rate to be applied in this review to exports of the subject merchandise produced by TKS during the 1997–1998 administrative review period as facts otherwise available.

Preliminary Results of Changed Circumstances Review

Because of the information developed in this changed circumstances review, the Department preliminarily finds that the final results of TKS' 1997–1998 review should be revised from zero to an AFA rate of 59.67 percent.

Pursuant to 19 CFR 351.222, the antidumping order was revoked with respect to TKS prior to the conclusion of the sunset review. This revocation was based in part on TKS receiving zero margins for the 1997–1998, 1998–1999, and 1999–2000 administrative review periods. However, this changed circumstances review preliminarily finds that the 1997–1998 review was flawed, based on TKS' withholding of information as described above, and consequently, an AFA rate should be assigned to TKS for the 1997–1998 review period. Thus, TKS did not have a zero margin in three consecutive administrative reviews. As a result of that preliminary finding, TKS no longer qualifies for revocation. Because of the information developed in this changed circumstances review, the Department preliminarily determines that the revocation of the order with respect to TKS should be rescinded.

Pursuant to section 751(c)(3)(A) of the Act, the Department sunset the order in 2002 because no domestic producer stated an interest in continuing the order. At that time, Goss had ceased production in the United States and was unable to participate as a domestic producer. However, Goss has provided information in this changed circumstances review that its cessation of production at that time was, in large measure, due to TKS' improper actions. Goss contends that "but for" TKS' actions it would have been able to continue production at the time of the sunset review and thus participate in the sunset review which, in turn, may have rendered different results.

We preliminarily find that the changed circumstances review record supports the fact that TKS' actions negatively impacted Goss' position as a domestic producer. Goss' economic consultant prepared a study identifying up to tens of millions of dollars that Goss may have lost directly or indirectly due to TKS' unfair trade activity. *See* Volume V, pages 36–43 and Attachments 13 through 20 of Goss' June 9, 2005, submission (resubmitted on June 29, 2005). Consequently, Goss likely suffered lost sales and profit as a result of TKS' improper actions, which, in turn, affected Goss' ability to continue production at the time of the sunset review.

Although we are unable to measure the precise quantitative effect of TKS' unfair trade practices on Goss' operations, the record supports the conclusion that they negatively impacted Goss' position as a domestic producer. While the Department cannot determine with certitude what would have happened, but for TKS' actions, the evidence of TKS' unfair trade practices on the record of this review warrants adverse assumptions. Given TKS' actions in this proceeding, as revealed by the *Goss Int'l* case and the information developed in this review, it is reasonable to make the adverse assumption with respect to TKS that, but for TKS' actions, Goss would have been able to continue production at the time of the sunset review and thus to participate in the sunset review.

Therefore, based on the evidence on the record in this changed circumstances review and the reasonable adverse assumptions that we have determined are appropriate, we also preliminarily determine that, if we continue to find in our final results that an AFA rate should be applied to TKS for the 1997–1998 administrative review and that TKS should not have been revoked from the order, a new sunset review should be initiated following completion of this changed circumstances review. If, in the context of a sunset review, the Department finds a likelihood of continuation or recurrence of dumping, the Department will present this determination to the ITC. *See Asahi Chemical Industry Co., Ltd., Plaintiff* v. *United States*, 727 F. Supp. 625 (CIT 1989).

Public Comment

Interested parties are invited to comment on these preliminary results, including comments on how a new sunset review should be conducted, if one were to be initiated upon the completion of this changed circumstances review. Case briefs may be submitted by interested parties not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in the case briefs, may be filed not later than five days after the deadline for submission of case briefs. Any interested party may request a hearing within 30 days of publication of this notice. If requested, a hearing will be held no later than five days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted in accordance with a schedule to be determined. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will publish the final results of this changed circumstances review, which will include the results of its analysis of issues raised in any case or rebuttal briefs.

This notice of preliminary results of changed circumstances review is in accordance with sections 751(b) and 777(i) of the Act and 19 CFR 351.216(d).

Dated: September 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5000 Filed 9–12–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–810)

Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India

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

SUMMARY: On March 7, 2005, the Department of Commerce published the

preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India. The period of review is February 1, 2003, through January 31, 2004. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comment received, we have made certain changes for the final results. The final dumping margin for Chandan Steel, Ltd. is listed below in the "Final Results of the Review" section of this notice.

EFFECTIVE DATE: September 13, 2005.

FOR FURTHER INFORMATION CONTACT: Scott Holland or Andrew McAllister, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1279 and (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the preliminary results of this review (*see Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 10977 (March 7, 2005) ("*Preliminary Results*")), the following events have occurred:

On March 11, 2005, the Department of Commerce (the "Department") issued a supplemental questionnaire to the respondent in this review, Chandan Steel, Ltd. ("Chandan"). We received Chandan's response on March 21, 2005. On March 28, 2005, the Department received a submission from Chandan attempting to supplement its U.S. sales, and corresponding costs, for a group of stainless steel flat bar ("SSFB") sales made to the United States during the period of review ("POR"). On April 4, 2005, Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America ("AFL–CIO/CLC") (collectively, the "petitioners"), argued that Chandan's March 28, 2005, submission should be rejected by the Department on the basis that it was untimely filed. On May 12, 2005, the Department rejected Chandan's March 28, 2005, submission because the information and the data contained in the submission represented untimely filed factual information. *See* letter from Susan Kuhbach to Peter Koenig, counsel to Chandan Steel Ltd., dated May 12, 2005.

In May and June of 2005, we conducted verification of the sales and cost of production ("COP") information contained in Chandan's questionnaire responses at the company's production facilities located in Umbergaon, Gujarat, India. The verification report was issued on July 22, 2005. *See* Memorandum to the File, "Verification of the Sales and Cost Responses of Chandan Steel, Ltd. in the 2003/2004 Antidumping Duty Administrative Review of Stainless Steel Bar from India," ("SCVR") dated July 22, 2005. The report is on file in the Central Records Unit, Room B–099 of the main Department building ("CRU").

On June 1, 2005, the Department published in the **Federal Register** an extension of the time limit for the final results in the antidumping duty administrative review to no later than August 25, 2005, in accordance with 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"). *See Stainless Steel Bar from India: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 70 FR 31425 (June 1, 2005).

On July 29, 2005, we received a case brief from the petitioners. We did not receive a case or a rebuttal brief from Chandan.

On August 24, 2005, the Department published in the **Federal Register** an extension of the time limit for the final results in the antidumping duty administrative review to no later than September 6, 2005, in accordance with 751(a)(3)(A) of the Act. *See Stainless Steel Bar from India: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 70 FR 49567 (August 24, 2005).

Scope of the Order

Merchandise covered by the order is shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold–finished SSBs that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut–to-length flat–rolled products (*i.e.*, cut–to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes, and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

On May 23, 2005, the Department issued a final scope ruling that SSB manufactured in the United Arab Emirates out of stainless steel wire rod from India is not subject to the scope of this proceeding. *See* Memorandum to Barbara E. Tillman, Antidumping Duty Orders on Stainless Steel Bar from India and Stainless Steel Wire Rod from India: Final Scope Ruling (May 23, 2005).

Period of Review

The POR is February 1, 2003, through January 31, 2004.

Verification

As provided in section 782(i) of the Act, we conducted verification of the sales and cost information submitted by Chandan. We used standard verification procedures, including an on–site examination of Chandan's production facilities, and an examination of the relevant sales, cost, and financial records.

Analysis of Comments Received

The issue raised in the case brief submitted by the petitioners in this review is addressed in the "Issues and Decision Memorandum for the Final Results in the Antidumping Duty Administrative Review of Stainless Steel Bar from India" from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated September 6, 2005 ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an appendix is a description of the issue that the petitioners have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of the issue raised in this review and the corresponding recommendation in this

public memorandum, which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

A. Application of Facts Available

Section 776(a)(1) and (2) of the Act provides that the Department will apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party (A) withholds information requested by the Department; (B) fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information which cannot be verified as provided by section 782(i).

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide the party the opportunity to remedy or explain the deficiency within the applicable time limits. If that party submits further deficient information, then, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides further that the Department shall not decline to consider submitted information by an interested party that is necessary to the determination but does not meet all the applicable requirements established by the Department if (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Thus, if any one of these criteria is not met, the Department may decline to consider the information at issue in making its determination.

As discussed in the "Background" section above, on March 28, 2005, the Department received a submission from Chandan with additional information and data with respect to sales of SSFB, which is covered under the scope of this order. On May 12, 2005, we determined that the information and data contained in the submission represented untimely filed factual information; therefore, we rejected this submission. *See* section 351.302(c)(2) of the Department's regulations. At verification, we verified the quantity of sales of SSFB to the United States. Additionally, we reviewed invoices for two of the sales of SSFB to the United States and confirmed that, according to the product characteristics, these sales should have been reported in Chandan's U.S. sales listing.

In addition, at verification we found numerous errors and omissions with respect to Chandan's sales information contained in its comparison market ("CM") and U.S. sales databases. Specifically, Chandan: (1) failed to report marine insurance expenses on certain U.S. sales and reported all marine insurance expenses in U.S. dollars rather than the currency in which they were incurred (*i.e.*, rupees); (2) misreported foreign inland freight charges and international freight charges for certain U.S. and CM sales; (3) calculated credit expenses in both the U.S. and CM sales listings incorrectly; and (4) misclassified its fumigation expenses incurred on CM sales as indirect selling expenses rather than direct selling expenses in accordance with 19 CFR 351.410(c) of the Department's regulations.

Similarly, in verifying Chandan's cost information, we identified errors and information from Chandan's response that could not be supported. Specifically, Chandan (1) provided revised production quantities during the course of verification which precluded the Department from verifying this information; (2) could not support its billet cost allocation for certain raw materials such as chromium, nickel, and titanium to certain grades of SSB; (3) could not support its allocation of rolling costs; (4) could not support its allocation of costs at the bright bar stage of production; and (5) misreported the scrap value in offsetting its reported rolling and bright bar costs for certain grades of bright bar. *See Decision Memorandum.*

For some of the deficiencies and omissions cited above, the Department finds that the information necessary to calculate an accurate and otherwise reliable margin for Chandan is not available on the record. Furthermore, the Department finds that Chandan failed to provide information requested by the Department in a timely manner and in the form required, significantly impeded the proceeding, and provided unverifiable information pursuant to sections 776(a)(2)(B) and (D) of the Act. Although, in isolation, the aforementioned deficiencies may not have warranted the application of facts otherwise available, the multitude of missing and incorrect data, in conjunction with Chandan's inability to support much of its submitted cost data at verification and the fact that Chandan submitted the information regarding sales and cost data for SSFB after the established deadline, leads the Department to conclude that Chandan's sales and cost information does not meet the standards for consideration of information as outlined in section 782(e) of the Act. For these reasons, we find that the use of facts otherwise available is necessary for Chandan.

B. Adverse Facts Available

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See, e.g., Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, at 870 (1994) ("SAA"). Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997) and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–1384 (Fed. Cir. 2003) ("*Nippon*").

In determining the appropriate facts available to assign to Chandan, we find that Chandan did not act to the best of its ability in this proceeding, within the meaning of section 776(b) of the Act. *See Nippon* 337 F.3d 1373, 1382–83; *see also Decision Memorandum.* In not reporting its sales and cost data for SSFB at the time it provided its questionnaire responses for other categories of SSB, Chandan did not provide the Department with full and complete answers. With respect to discrepancies in its reporting of sales expenses, we note that Chandan did not put forth its maximum effort, resulting in numerous errors discovered by the Department at verification. With respect to its reporting of costs, although the

Department did not find inherent flaws in Chandan's cost methodology, we find that Chandan did not act to the best of its ability by virtue of its inadequate record keeping. We note that, for each stage of production (*i.e.*, billet, rolling, and bright bar), Chandan failed to retain essential documentation to support its allocation methodologies.

Therefore, we find that an adverse inference is warranted in selecting facts otherwise available. Section 776(b) of the Act further provides that the Department may use as adverse facts available ("AFA"), information derived from: (1) the petition, (2) a final determination in the investigation, (3) any previous review, or (4) any other information placed on the record.

As AFA for Chandan, we have assigned a margin of 19.80 percent. This margin was calculated for Uday Engineering Works in the 2001 antidumping duty new shipper review and represents the highest calculated weighted–average margin determined for any respondent in any segment of this proceeding. *See Stainless Steel Bar from India: Final Results of New Shipper Antidumping Duty Administrative Review*, 67 FR 69721 (November 19, 2002) ("*New Shipper Review Final Results*").

Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Department's regulations provide that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* 19 CFR 351.308(d).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as AFA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not to Revoke in Part*, 69 FR 55581 (September 15, 2004), and attached *Issues and Decision Memorandum* at Comment 18.

The highest calculated margin in the history of this proceeding is 19.80 percent. *See New Shipper Review Final Results*. In this review, there are no circumstances indicating that this margin is inappropriate as facts available. There are no calculated margins for any other respondents in this administrative review. Therefore, there is no reason to question the relevance of this margin for Chandan, and for the reasons stated above, we find that the 19.80 percent rate is corroborated to the greatest extent practicable in accordance with section 776(c) of the Act.

Final Results of the Review

For the firm listed below, we find that the following percentage margin exists for the period February 1, 2003, through January 31, 2004:

Exporter/Manufacturer	Margin
Chandan Steel, Ltd.	19.80

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. For Chandan, we will instruct CBP to liquidate entries at the rate indicated above. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of these final results of review.

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of SSB from India entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed company will be the rate listed above (except no cash deposit will be required if a company's weighted–average margin is *de minimis, i.e.*, less than 0.5 percent); (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, the previous review, or the original 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) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 12.45 percent, the "all others" rate established in the less than fair value investigation. *See Stainless Steel Bar from India; Final Determination of Sales at Less Than Fair Value*, 59 FR 66915 (December 28, 1994). These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final 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 doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX I

Comment in the Issues and Decision Memorandum

Comment 1: Use of Total Adverse Facts Available for Chandan

[FR Doc. E5–4976 Filed 9–12–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–507–501)

Certain In–shell Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review

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

SUMMARY: On April 7, 2005, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results in the countervailing duty (CVD) administrative review of certain in–shell pistachios from Iran. *See Certain In–shell Pistachios from the Islamic Republic of Iran: Preliminary Results of Countervailing Duty Administrative Review*, 70 FR 17653 (*Preliminary Results*). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the *Preliminary Results* and our analysis of the comments received, the Department has not revised the net subsidy rate for Tehran Negah Nima Trading Company, Inc., trading as Nima Trading Company (Nima), the respondent company in this proceeding. For further discussion of our positions, *see* the "Issues and Decision Memorandum" from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, concerning the "Final Results of Countervailing Duty Administrative Review: Certain In–Shell Pistachios from the Islamic Republic of Iran" (Decision Memorandum) dated September 6, 2005. The final net subsidy rate for the reviewed company is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: September 13, 2005.

FOR FURTHER INFORMATION CONTACT: Darla Brown, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2005, the Department published in the **Federal Register** its *Preliminary Results*. We invited interested parties to comment on these results. Since the preliminary results, the following events have occurred.

On May 9, 2005, petitioners[1] submitted a request for a public hearing. On June 24, 2005, we received case briefs from petitioners and Nima. On July 1, 2005, we received rebuttal briefs from petitioners and Nima. On July 25, 2005, Nima informed the Department that it would not be participating in the hearing. On August 11, 2005, the Department extended the time limit for the completion of its final results until September 6, 2005. *See Certain In–Shell Pistachios from the Islamic Republic of Iran: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review*, 70 FR 46814 (August 11, 2005). On August 15, 2005, a public hearing was held at the Department of Commerce.

In accordance with 19 CFR 351.213(b), this administrative review covers only those producers or exporters for which a review was specifically requested. Accordingly, this administrative review covers Nima and its grower, Razi Domghan Agricultural and Animal Husbandry Company (Razi) and ten programs for the period of review (POR) January 1, 2003, through December 31, 2003.

Scope of the Order

For purposes of this order, the product covered is in–shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and edible meat, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item number 0802.50.20.00. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope is dispositive.

Analysis of Comments Received

For a discussion of the programs and the issue raised in the case and rebuttal briefs by parties to this review, *see* the Decision Memorandum, which is hereby adopted by this notice. A listing of the issue which parties raised and to which we have responded, which is in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of the issue raised in this review and the corresponding recommendation in this public memorandum, which is on file in the Central Records Unit (CRU), room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at http://ia.ita.doc.gov, under the heading "**Federal Register** Notices." The paper copy and electronic version of the Decision Memorandum are identical in content.

[1] Petitioners include the California Pistachios Commission (CPC) and its members and a domestic interested party, Cal Pure Pistachios, Inc. (Cal Pure).

Final Results of Review

In accordance with section 777A(e)(1) of the Act and 19 CFR 351.221(b)(5), we calculated an *ad valorem* subsidy rate for Nima for calendar year 2003.

Producer/Exporter	Net Subsidy Rate
Tehran Negah Nima Trading Company, Inc., trading as Nima Trading Company (Nima) and Razi Domghan Agricultural and Animal Husbandry Company (Razi)	0.00 percent *ad valorem*

As Nima is the exporter but not the producer of subject merchandise, the Department's final results of review apply to subject merchandise exported by Nima and produced by Nima's supplier of pistachios, Razi. *See* 19 CFR 351.107(b) (providing that the Department may establish a combination rate for each combination of exporter and its supplying producer).

Therefore, we will issue the following cash deposit requirements, within 15 days of publication of the final results of the instant review, for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication: (1) for merchandise exported by Nima and produced by Razi, the cash deposit rate will be 0.00 percent *ad valorem, i.e.*, the rate calculated in the final results of the instant administrative review; (2) for merchandise exported by Nima and produced by Maghsoudi Farms, the cash deposit rate will be 23.18 percent, the rate calculated for Nima and Maghsoudi Farms in the new shipper reviews (*see Certain In–Shell Pistachios (C–507–501) and Certain Roasted In–Shell Pistachios (C–507–601) from the Islamic Republic of Iran: Final Results of New Shipper Countervailing Duty Reviews*, 68 FR 4997 (January 31, 2003) (*New Shipper Reviews*); (3) for merchandise exported by Nima but not produced by Razi or Maghsoudi Farms, the cash deposit rate will be the "all others" rate established in the original CVD investigation (*see* 51 FR 8344 (March 11, 1986)); (4) if the exporter is not a firm covered in this review, a prior review, or the original CVD investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise;

and (5) if neither the exporter nor producer is a firm covered in this review or the original investigation, the cash deposit rate for all other producers or exporters of the subject merchandise will continue to be 99.52 percent *ad valorem*. This rate is the "all others" rate from the final determination in the original investigation.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I - Issues and Decision Memorandum

I. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Not Used

1. Provision of Fertilizer and Machinery
2. Provision of Credit
3. Tax Exemptions
4. Provision of Water and Irrigation Equipment
5. Technical Support
6. Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Export Goods
7. Program to Improve Quality of Exports of Dried Fruit
8. Iranian Export Guarantee Fund
9. GOI Grants and Loans to Pistachio Farmers
10. Crop Insurance for Pistachios

II. TOTAL AD VALOREM RATE

III. ANALYSIS OF COMMENTS

Comment 1: Use of Adverse Facts Available

[FR Doc. E5–4994 Filed 9–12–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting of the Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Manufacturing Council will hold a full Council meeting to discuss topics related to the state of manufacturing. The Manufacturing Council is a Secretarial Board at the Department of Commerce, established to ensure regular communication between Government and the manufacturing sector. This will be the fourth meeting of The Manufacturing Council and will include updates by the Council's three subcommittees. For information about the Council, please visit the Manufacturing Council Web site at: *http://www.manufacturing.gov/council*.

DATES: September 27, 2005.

Time: 9:45 a.m.

ADDRESSES: Gateway Building, 200 NE., Water Street, Peoria, Illinois 61602. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than September 19, 2005, to The Manufacturing Council, Room 4043, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: The Manufacturing Council Executive Secretariat, Room 4043, Washington, DC 20230 (Phone: 202–482–1369). Interested parties are encouraged to visit The Manufacturing Council Web site (*http://www.manufacturing.gov/council*) for the most up-to-date information about the meeting and the Council.

Dated: September 8, 2005.

Sam Giller,

Executive Secretary, The Manufacturing Council.

[FR Doc. 05–18162 Filed 9–12–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 050906238–5238–01; ID 090705E]

RIN 0648–ZB68

2006 Monkfish Research Set-aside Program

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

ACTION: Notice; solicitation of proposals for research activities.

SUMMARY: NMFS announces that the New England and Mid-Atlantic Fishery Management Councils (Councils) have set aside 500 monkfish days-at-sea (DAS) to be used for research endeavors under a research set-aside (RSA) program. NMFS is soliciting proposals to utilize the DAS for research activities concerning the monkfish fishery for fishing year 2006 (May 1, 2006–April 30, 2007). Through the allocation of research DAS, the Monkfish RSA Program provides a mechanism to reduce the cost for vessel owners to participate in cooperative monkfish research. The intent of this RSA program is for fishing vessels to utilize these research DAS to conduct monkfish related research, rather than their allocated monkfish DAS, thereby eliminating any cost to the vessel associated with using a monkfish DAS.

DATES: Applications must be received on or before 5 p.m. eastern standard time on October 13, 2005. Delays may be experienced when registering with Grants.gov near the end of a solicitation period. Therefore, NOAA strongly recommends that applicants do not wait until the deadline date to begin the application process through *http://www.grants.gov*.

ADDRESSES: Electronic application submissions must be transmitted on-line through *http://www.grants.gov*. Applications submitted through *http://www.grants.gov* will be accompanied by a date and time receipt indication on them. If an applicant does not have Internet access, hard copy proposals will be accepted, and date recorded when they are received in the program office. Paper applications must be sent to NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Electronic or hard copies received after the deadline will not be considered, and hard copy applications will be returned to the sender.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Paul Howard, Executive Director, New England Fishery Management Council (NEFMC), by phone 978–465–0492, or by fax 978–465–3116; Philip Haring, Senior Fishery Analyst, NEFMC, by phone 978–465–0492, or by email at pharing@nefmc.org; or Allison Ferreira, Fishery Policy Analyst, NMFS, by phone 978–281–9103, by fax 978–281–9135, or by e-mail at *allison.ferreira@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

Application information is available at *http://www.grants.gov*. Electronic copies of the Standard Forms for submission of research proposals may be found on the Internet in a PDF (Portable Document Format) version at *http://www.ago.noaa.gov/grants/appkit.shtml* under the title "Grants Management Division-Application Kit." Applicants without Internet access can contact Rich Maney, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, by phone 978–281–9265, by fax 978–281–9117, or by email at *rich.maney@noaa.gov*.

To apply for this NOAA Federal funding opportunity, please go to *http://www.grants.gov*, and use the following funding opportunity ı NMFS-NERO–2006–2000372.

Background

Landings from such research trips may be sold to generate funds to help defray research costs. No Federal funds are provided for research under this notification. Rather, projects funded under the Monkfish RSA Program would be provided with additional opportunity to harvest monkfish, and the catch sold to generate income to offset research costs. Projects funded under an RSA DAS award must enhance the knowledge of the monkfish fishery resource or contribute to the body of information on which management decisions are made. The Councils and NMFS will give priority to funding research proposals in the following general subject areas: (1) Research concerning monkfish bycatch and discards; (2) research to minimize bycatch and interactions with sea turtles and other protected species; (3) research to minimize impacts of monkfish fishery on essential fish habitat (EFH), or other sensitive habitats; (4) research to establish an exempted monkfish trawl fishery in the Northern Fishery Management Area; (5) research on the biology or population structure and dynamics of monkfish; (6) tagging studies; (7) mesh and gear selectivity studies, including studies on gear efficiency; and (8) cooperative stock assessment surveys. Please note that the research subject areas listed above are not listed in order of priority.

Funding Availability

No Federal funds are provided for research under this notification. Rather, 500 DAS (approximating 519 metric tons of whole monkfish landings) will be set aside for projects under the Monkfish RSA Program. This will provided additional opportunity to harvest monkfish, and to sell the additional catch to generate income to offset research costs. Projects funded under an RSA DAS award must enhance the knowledge of the monkfish fishery resource or contribute to the body of information on which management decisions are made. The Federal Government (i.e., NMFS) may issue an Exempted Fishing Permit (EFP), if needed, to provide special fishing privileges in response to research proposals selected under this program. For example, vessels participating in an approved research project may be authorized by the Northeast Regional Administrator, NMFS, to harvest monkfish in excess of established possession limits. Because this is the first year of the Monkfish RSA Program, information on the number of awards issued in previous fishing years, and the income generated from those awards, is not available.

Funds generated from landings harvested and sold under the Monkfish RSA Program shall be used to cover the cost of research activities, including vessel costs. For example, the funds may be used to pay for gear modifications, monitoring equipment, the salaries of research personnel, or vessel operation costs. The Federal Government shall not be liable for any costs incurred in the conduct of the project. Specifically, the Federal Government is not liable for any costs incurred by the researcher or vessel owner should the sale of catch not fully reimburse the researcher or vessel owner for his/her expenses.

Statutory Authority

Issuing grants is consistent with sections 303(b)(11), 402(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1853(b)(11), 16 U.S.C. 1881a(e), and 16 U.S.C. 1881(c), respectively.

The ability to set aside monkfish DAS for research purposes was established in the final rule implementing Amendment 2 to the Monkfish Fishery Management Plan (70 FR 21927, April 28, 2005), and codified in the regulations at 50 CFR 648.92(c).

CFDA Number

In the Catalog of Federal Domestic Assistance, the program number is 11.454, and the program name is Unallied Management Projects.

Eligibility

1. Eligible applicants include, but are not limited to, institutions of higher education, hospitals, other nonprofits, commercial organizations, individuals, state, local, and Native American tribal governments. Federal agencies and institutions are not eligible to receive Federal assistance under this notice. Additionally, employees of any Federal agency or Regional Fishery Management Council (Council) are ineligible to submit an application under this program. However, Council members who are not Federal employees may submit an application.

2. DOC/NOAA supports cultural and gender diversity and encourages women and minority individuals and groups to submit applications to the RSA program. In addition, DOC/NOAA is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in under served areas, DOC/NOAA encourages proposals involving any of the above institutions.

3. DOC/NOAA encourages applications from members of the fishing community and applications that involve fishing community cooperation and participation.

Cost Sharing Requirements

None required.

Evaluation and Selection Procedures

NMFS will solicit written technical evaluations from the Council members who make up the Monkfish Research Set-Aside Committee (Committee) and from up to three or more appropriate private and public sector experts to determine the technical merit of the proposal and to provide a rank score of the project based on the criteria described in the Evaluation Criteria section of this document. Following completion of the technical evaluation, NMFS will convene a review panel, including the Committee and technical experts, to review and individually critique the scored proposals to enhance NOAA's understanding of the proposals. Initial successful applicants may be required, in consultation with NMFS, to further refine/modify the study methodology as a condition of project approval. No consensus recommendations will be made by the Committee members, technical experts, or by the review panel.

Evaluation Criteria

1. *Importance and/or relevance of the proposed project:* This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, state or local activities. (25 points)

2. *Technical/scientific merit:* This criterion assesses whether the approach is technically sound and/or innovative,

if the methods are appropriate, and whether there are clear project goals and objectives. (25 points)

3. *Overall qualifications of the project:* This criterion assesses whether the applicant, and team members, possess the necessary education, experience, training, facilities and administrative resources to accomplish the project. (15 points)

4. *Project costs:* This criterion evaluates the budget to determine if it is realistic and commensurate with the project needs and time frame. (25 points)

5. *Outreach and education:* This criterion assesses whether the project involves a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources. (10 points)

The merit review ratings shall provide a rank order to the Selecting Official (the Northeast Regional Administrator) for final funding recommendations. A program officer may first make recommendations to the Selecting Official applying the selection factors. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.
2. Balance/distribution of funds:
   a. Geographically
   b. By type of institutions
   c. By type of partners
   d. By research areas
   e. By project types
3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or Participation of targeted groups.
7. Adequacy of information necessary to conduct a National Environmental Policy Act (NEPA) analysis and determination.

Key program policy factors (see item 4 above) to be considered by the Selecting Official are: (1) the time of year the research activities are to be conducted; (2) the ability of the proposal to meet the applicable experimental fishing requirements; (3) redundancy of research projects; and (4) logistical concerns. Therefore, the highest scoring projects may not necessarily be selected for an award. All approved research must be conducted in accordance with provisions approved by NOAA, and provided in an EFP issued by NMFS. Unsuccessful applications will be returned to the submitter. Successful applications will be incorporated into the award document.

For proposals that request exemptions from existing regulations (e.g., possession limits, closed areas, etc.), the impacts of the proposed exemptions must be analyzed. Any applicants who request regulatory exemptions that extend beyond the 500 DAS set-aside implemented in Amendment 2 may be required to adhere to the regulations governing the issuance of an EFP by NMFS. As appropriate, NMFS will consult with the Councils and successful applicants to secure the information required for granting an exemption if issuance of an EFP is necessary for the research to be conducted. No research or usage of research DAS will be allowed until NMFS notifies the applicant that the applicant's EFP request is approved.

NEPA Requirements

NOAA must analyze the potential environmental impacts, as required by NEPA, for applicant projects or proposals which are seeking NOAA Federal assistance opportunities, including special fishing privileges. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: *http://www.nepa.noaa.gov*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*.

Consequently, as part of an applicant's package, and under the description of program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species, and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). The impacts of the 500 DAS set-aside were analyzed in the Final Supplemental Impact Statement prepared for Amendment 2. Therefore, if the applicant does not request additional regulatory exemptions beyond the use of research DAS, additional NEPA analysis may not be required. However, if the research proposal requests exemptions from regulations that extend beyond the 500 DAS set-aside, applicants may be required to provide additional specific information that will serve as the basis for any required impact analyses. Applicants may also be requested to assist NOAA in drafting an environmental assessment if NOAA determines such an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts associated with their proposed research activity. The failure to do so shall be grounds for the denial of an application.

Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Reporting Requirements

Recipients will be required to submit the following financial and performance (technical) reports. These reports are to be submitted electronically unless the recipient does not have Internet access, in which case hard copy submissions will be accepted. Financial Status Reports (SF–269 and SF–272) are required to be submitted to the Grants Officer semi-annually. Performance or progress reports are required to be submitted to the NOAA Program Officer semi-annually. The final report is due 90 days after the award expiration.

Universal Identifier

Applicants should be aware that they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 (67 FR 66177), **Federal Register** for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the internet (*http://www.dunandbradstreet.com*).

Executive Order 12372

Applications under this program are subject to Executive Order 12372 "Intergovernmental Review of Federal Programs."

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fishing Year 2005 Monkfish RSA DAS. In no event will NOAA or DOC be responsible for application preparation costs if these programs fail to receive a DAS award or

are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Paperwork Reduction Act (PRA)

This document contains collection-of-information requirements subject to the PRA. The use of Standard Forms 424, 424A, 424B, SF-LLL, 269, 272, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, 0348–0039, 0348–0003, and 0605–0001. Notwithstanding any other provision of 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 PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: September 7, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–18087 Filed 9–12–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030805A]

Incidental Take of Marine Mammals Incidental to Specified Activities; Seismic Retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, CA

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA), notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the California Department of Transportation (CALTRANS) to take small numbers of marine mammals, by harassment, incidental to seismic retrofit construction of the Richmond-San Rafael Bridge (the Bridge), San Francisco Bay (SFB), CA.

DATES: This authorization is effective from September 06, 2005 to September 06, 2006.

ADDRESSES: A copy of the application may be obtained by writing to Stephen L. Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contacts listed here. Documents cited in this notice may be viewed, by appointment, during regular business hours, at this address.

FOR FURTHER INFORMATION CONTACT: Layne Bolen, NMFS, (301) 713–2289, ext. 117 or Monica DeAngelis, NMFS Southwest Region, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

An authorization may be granted if the Secretary finds that the total taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of actions not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On December 16, 2004, NMFS received a letter from CALTRANS requesting reauthorization of an IHA that was first issued to it on December 16, 1997 (62 FR 67045, December 23, 1997), was renewed on January 8, 2000 (65 FR 2375, January 14, 2000), September 19, 2001 (66 FR 49165, September 26, 2001), September 23, 2002 (67 FR 61323, September 30, 2002), and November 19, 2003 (68 FR 66076, November 25, 2003). The authorization renewal request is for the possible harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) and possibly some California sea lions (*Zalophus californianus*), incidental to seismic retrofit construction of the Bridge.

The Bridge is being seismically retrofitted to withstand a future severe earthquake. Construction is scheduled to extend through the year 2005. A detailed description of the work planned is contained in the Final Natural Environmental Study/Biological Assessment for the Richmond-San Rafael Bridge Seismic Retrofit Project (CALTRANS, 1996). As in the previous IHAs, activities will include excavation around pier bases, hydro-jet cleaning, installation of steel casings around the piers with a crane, installation of micro-piles, and installation of precast concrete jackets. Foundation construction will require approximately 2 months per pier, with construction occurring on more than one pier at a

time. In addition to pier retrofit, superstructure construction and tower retrofit work may also be carried out. Other seismic retrofit work will include:

1. Installation of isolation bearings, needed to strengthen bridge structure;
2. Reinforcement of lower chord members and diagonal trusses by bolting new additional steel members and gusset plates to the existing members;
3. Cleaning and painting of new and existing steel members;
4. Removal and replacement of the truss shoe pins;
5. Deck rehabilitation and joint replacement at various locations on the bridge; and
6. Installation of temporary bracing prior to the removal of the steel chevron members on the piers followed by the installation of permanent Eccentric Braced Frames to provide additional strength.

Because seismic retrofit construction between piers 52 and 57 has the potential to disturb harbor seals hauled out on Castro Rocks, an IHA is warranted.

Comments and Responses

A notice of receipt of the application and proposed authorization was published on April 5, 2005 (70 FR 17234), and a 30–day public comment period was provided on the application and proposed authorization. NMFS received two comments on this IHA and proposed authorization:

Comment 1: The Marine Mammal Commission (Commission) reviewed the application and concurs that the Service's preliminary determinations are reasonable. The Commission believes that the proposed mitigation measures are appropriate and recommends issuance of the IHA as proposed.

Response: NMFS agrees.

Comment 2: A commenter stated, "I oppose and object to the methods that are being used that will kill marine life in this area. These seals/sea lions populations are already depleted."

Response: No take by injury and/or death is anticipated, and harassment takes will be reduced to the lowest level practicable by implementation of the proposed work restrictions and mitigation measures (see Mitigation). No deaths or injuries to marine mammals have been reported in association with this project since the first IHA issued in 1997.

Description of Habitat and Marine Mammals Affected by the Activity

A description of SFB ecosystem and its associated marine mammals can be found in the CALTRANS application (CALTRANS, 1997) and in CALTRANS (1996). Castro Rocks are a small chain of rocky islands located next to the Bridge and approximately 1500 ft (460 m) north of the Chevron Long Wharf. They extend in a southwesterly direction for approximately 800 ft (240 m) from pier 55. The rocks start at about 55 ft (17 m) from pier 55 (A rock) and end at approximately 250 ft (76 m) from pier 53 (F rock). The chain of rocks is exposed during low tides and inundated during high tide.

Marine Mammals

General information on harbor seals and other marine mammal species found in Central California waters can be found in Forney et al. (2000, 2001, 2003), which are available at the following URL: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.* Please refer to these documents for information on these species. The marine mammals likely to be affected by work in the Bridge area are limited to harbor seals and California sea lions.

Harbor seals are widely distributed in the North Atlantic and North Pacific, and is the only marine mammal species expected to be found regularly in the Bridge area. The minimum size of the California harbor seal population is estimated at 25,720 animals (Forney *et al.*, 2003). A more detailed description of harbor seals was provided in the 1997 proposed notification of issuance of an authorization (62 FR 46480, September 3, 1997) with corrections and clarifications provided on December 23, 1997 (62 FR 67045). This information is not repeated here, but may be found in those **Federal Register** notices. Pups are born in mid- to late-March, peak numbers of pups are observed in early May, and, by the first week in June, all pups are weaned (Kopec and Harvey, 1995). Estimated total mother and pup pairs at Castro Rocks were 35 in 1999, 40 in 2000 and 40 in 2001 (A. Bohorquez pers. comm in Green *et al.*, 2001). This represents approximately 22–24 percent of the pups born in SFB annually. The maximum number of individual pups hauled out at Castro Rocks from 2002 to 2004 were 44, 48 and 56 pups, respectively (Green *et al.*, 2004). A maximum count of 594 adults and immature harbor seals was recorded at Castro Rocks in the Winter of 2004 (Green *et al.*, 2004).

The California sea lion primarily uses the Central SFB area to feed. California sea lions are periodically observed at Castro Rocks. The minimum population size of the California sea lion (U.S. stock) is estimated to be 138,881 (Forney *et al.*, 2003). No pupping or regular haulouts occur in the project area.

Potential Effects on Marine Mammals

The impact to the harbor seals and California sea lions is expected to be disturbance by the presence of workers, construction noise, and construction vessel traffic. Disturbance from these activities is expected to have only a short-term negligible impact to approximately 600 adult and immature harbor seals, 50 harbor seal pups, and less than 5 sea lions annually (Green *et al.*, 2004; Green, D., pers. comm. August 26, 2005). These disturbances will be reduced to the lowest level practicable by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

Marine mammal monitoring under previous IHAs has been conducted at Castro Rocks and at two "control" haul-out locations in SFB - Mowry Slough and Yerba Buena Island (Green *et al.*, 2004) since 1998. To date, over 14,000 hours of observations have been conducted at these sites with two-thirds of those hours at Castro Rocks. While disturbances can consist of head alerts, approaches to the water, and flushes into the water, only the latter behavior is considered by NMFS to be Level B harassment under these circumstances. At Castro Rocks, of all flush disturbances monitored during the day, the major harassment sources were watercraft (e.g. motorboats, sailboats, tankers, kayaks and jet skis) with 0.0990 disturbances/hr field time (d/hr); wildlife (seals and birds) with 0.0635 d/hr; other man-made (debris, workmen on bridge, other people) with 0.0695 d/hr; and automobiles with 0.0157 d/hr. Construction activities resulted in 0.0165 d/hr. There were fewer flushes observed at night. More detailed information on the extent of disturbance at Castro Rocks by activities other than the requested authorization is available in Green *et al.* (2004).

During the work period (July 16 through March 1), the incidental harassment of harbor seals and, on rare occasions, California sea lions is expected to occur on a daily basis. In addition, the number of seals disturbed will vary daily depending upon tidal elevations. Monitoring during construction periods by Green et al. (2004) indicates that although overall seal numbers each month of the year are not significantly different across years, there are differences in subsite use by seals at Castro Rocks during both the daytime and nighttime. For example, the average number of seals hauled out on Castro Rocks (rocks A and C) during

the fall of 2001 (when construction activity was taking place within the area of the haul-out site) was significantly different than the average number of seals hauled out on Castro Rocks during 1998–2000, prior to the construction period. For a more detailed discussion on the distribution of harbor seals during the work and non-work periods and levels of impact by various natural and anthropogenic disturbance sources, please see Green *et al.* (2004) which is available upon request (see **ADDRESSES**).

California sea lions have been shown to react to pile driving noise by porpoising quickly away from the site (SRS Technologies, 2001), but it is not known whether they will react to general construction noise and move away from the rocks during construction activities. However, sea lions are generally thought to be more tolerant of human activities than harbor seals and are, therefore, less likely to be affected.

Potential Effects on Habitat

Short-term impacts of the activities are expected to result in a temporary reduction in utilization of the Castro Rocks haulout site while work is in progress or until seals acclimate to the disturbance. This will not likely result in any permanent reduction in the number of seals at Castro Rocks. The abandonment of Castro Rocks as a harbor seal haulout and rookery is not anticipated since existing traffic noise from the Bridge, commercial activities at the Chevron Long Wharf used for off-loading crude oil, and considerable recreational boating and commercial shipping that currently occur within the area have not caused long-term abandonment. In addition, mitigation measures and work restrictions are designed to preclude abandonment.

Therefore, as described in detail in CALTRANS (1996), other than the potential short-term abandonment by harbor seals of part or all of Castro Rocks during retrofit construction, no impact on the habitat or food sources of marine mammals are likely from this construction project.

Mitigation

Several mitigation measures to reduce the potential for harassment will be implemented by CALTRANS as part of their activity. With the exception of the Concrete Trestle Section, between 9 p.m. and 7 a.m. no piles will be driven (i.e., no repetitive pounding of piles) on the Bridge and noise levels will not exceed 86 dBA at 50 ft (15 m). Seismic retrofitting will cease in the vicinity of Castro Rocks (piers 52 through 57) during the pupping/molting restriction period (March 1 through July 15).

Previous authorizations (1997–2001) required CALTRANS to comply with the following mitigation measures: (1) A February 15 through July 31 restriction on work in the water south of the Bridge center line and retrofit work on the Bridge substructure, towers, superstructure, piers, and pilings from piers 52 through 57; (2) no watercraft will be deployed by CALTRANS employees or contractors during the year within the exclusion zone located between piers 52 and 57 except for when construction equipment is required for seismic retrofitting of piers 52 through 57; and (3) minimize vessel traffic to the greatest extent practicable in the exclusion zone when conducting construction activities between piers 52 and 57. From 1997 through September 2002, the boundary of the exclusion zone was rectangular in shape (1700 ft (518 m) by 800 ft (244 m)), completely enclosing Castro Rocks and piers 52 through 57, inclusive. The northern boundary of the exclusion zone was located 300 ft (91 m) from the most northern tip of Castro Rocks, and the southern boundary was located 300 ft (91 m) from the most southern tip of Castro Rocks. The eastern boundary was located 300 ft (91 m) from the most eastern tip of Castro Rocks, and the western boundary was located 300 ft (91 m) from the most western tip of Castro Rocks. The exclusion zone is restricted as a controlled access area and is marked off with buoys and warning signs for the entire year.

In 2002 (see 67 FR 61323, September 30, 2002), NMFS modified the Work/Boat Exclusion Zone (W/BEZ) so that the eastern boundary was shifted from 100 ft (31 m) east of Pier 57 to 100 ft (31 m) west of Pier 57. This maintains a 400–ft (122–m) "buffer" as opposed to the previous 600–ft (183–m) buffer, between the work at Pier 57 and "A" rock. This modification is reasonable based on observed seal behavior during the construction within the W/BEZ that harbor seals adjusted their location preference on Castro Rocks by moving westerly to rocks further from the construction (see discussion previously in this document). However, CALTRANS notes that there has not been a statistically significant change in the total numbers of animals that utilize the Castro Rocks haulout. The eastern boundary of the exclusion zone was relocated to its original position at 300 ft (91 m) from the most eastern tip of Castro Rocks upon conclusion of work at Pier 57. This IHA does not include any further changes of the exclusion zone and will be identical to the previous IHA.

In addition to shifting the W/BEZ, in 2002, NMFS extended the period in which work was allowed in the vicinity of Castro Rocks from February 15th to March 1st. CALTRANS requested this modification due to unforseen circumstances affecting the ability of the contractor to the seismic retrofit work on Pier 57. The original Work Closure Period (February 15–July 31) was designed to encompass the entire harbor seal pupping and breeding seasons and nearly the entire molting season at Castro Rocks. Thus, the Work Closure Period included the entire pupping season at Castro Rocks and a substantial pre-pupping period when females are moving into pupping areas (see 62 FR 67045, December 23, 1997). Moving the start of the Work Closure Period from February 15th to March 1st still provides a 2–week window prior to the onset of successful pupping (March 15th), and because NMFS did not find scientific evidence indicating that female harbor seals need a "quiet period" from general noise in order to pup successfully, NMFS determined that shifting the Work Closure Period from February 15th to March 1st would not have a significant impact on harbor seal pupping.

In 2002, NMFS also modified the date at which work is allowed to start in the vicinity of Castro Rocks from August 1st to a new date of July 16th. As mentioned in previous documents, newborn harbor seal pups are able to swim immediately after birth (Zeiner et al., 1990) and pups are weaned by the first week of June. Therefore, terminating the Closure Period on July 16th is not expected to affect pup survival. Under previous authorizations, the July 31st ending date for the Work Closure Period was established to protect harbor seals during the molting season. However, those documents also noted that NMFS believed that it is likely that harbor seals evolved adaptive mechanisms to deal with exposure to the water during the molt. For example, on some harbor seal haul-outs (such as Castro Rocks) during the molting season seals must enter the water once or even twice a day due to tidal fluctuations limiting access to the haul-out. Also, since harbor seals lose hair in patches during the molt, they are never completely hairless and would not be as vulnerable to heat loss in the water during this period compared to other seals (e.g., elephant seals) that lose their all their hair at one time. Finally, NMFS notes that if the levels of harbor seal disturbance during the molt are relatively high, seals are likely to utilize other local haul-out sites during the

molt (DeLong, R., pers. comm. 1997; Hanan, D., pers. comm. 1997; Harvey, J., pers. comm. 1997). Hanan (1996) found that although harbor seals tagged at an isolated southern California haul-out tended to exhibit site-fidelity during the molt, some seals were observed molting at other nearby haul-outs. Based on these reasons, NMFS determined that terminating the Closure Period on July 16th would not significantly affect harbor seals in general or molting seals at Castro Rocks in particular.

Monitoring

NMFS will require CALTRANS to continue to monitor the impact of seismic retrofit construction activities on harbor seals at Castro Rocks. Monitoring will be conducted by one or more NMFS-approved monitors. CALTRANS is to monitor at least one additional harbor seal haulout within San Francisco Bay to evaluate whether harbor seals use alternative haulout areas as a result of seismic retrofit disturbance at Castro Rocks.

The monitoring protocol will be divided into the Work Period Phase (July 16 through February 28) and the Closure Period Phase (March 1 through July 15). During the Work Period Phase and Closure Period Phase, the monitor(s) will conduct observations of seal behavior at least 3 days/week for approximately one tidal cycle each day at Castro Rocks. The following data will be recorded: (1) number of seals and sea lions on site; (2) date; (3) time; (4) tidal height; (5) number of adults, subadults, and pups; (6) number of individuals with red pelage; (7) number of females and males; (8) number of molting seals and sea lions; and (9) details of any observed disturbances. Concurrently, the monitor(s) will record general construction activity, location, duration, and noise levels. At least two nights/week, the monitor will conduct a harbor seal and sea lion census after midnight at Castro Rocks. In addition, during the Work Period Phase and prior to any construction between piers 52 and 57, inclusive, the monitor(s) will conduct baseline observations of seal and sea lion behavior at Castro Rocks and at the alternative site(s) once a day for a period of five consecutive days immediately before the initiation of construction in the area to establish pre-construction behavioral patterns. During the Work Period and Closure Period Phases, the monitor(s) will conduct observations of seal and sea lion behavior, and collect appropriate data, at the alternative Bay haulout at least three days/week (Work Period) and two days/week (Closure Period), during a low tide.

In addition, NMFS will require that, immediately following the completion of the seismic retrofit construction of the Bridge, the monitor(s) will conduct observations of seal and sea lion behavior, at Castro Rocks, at least five days/week for approximately 1 tidal cycle (high tide to high tide) each day, for one week/month during the months of April, July, October, and January. At least two nights/week during this same period, the monitor will conduct an additional harbor seal and sea lion census after midnight.

Reporting

Under previous IHAs, CALTRANS has provided monitoring reports (Green *et al.*, 2001, 2002, 2003, 2004) that are used by NMFS to help assess the effectiveness of the mitigation measures and corroborate our negligible impact determination. Copies of these reports are available upon request (see **ADDRESSES**).

CALTRANS will provide weekly reports to the Southwest Regional Administrator (Regional Administrator), NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of harbor seals and sea lions that may have been disturbed as a result of seismic retrofit construction activities. These reports will provide dates, time, tidal height, maximum number of harbor seals ashore, number of adults, sub-adults and pups, number of females/males, number of harbor seals with a red pelage, and any observed disturbances. A description of retrofit activities at the time of observation and any sound pressure levels measurements made at the haulout will also be provided. A draft 6–month interim report must be submitted to NMFS by March 06, 2006.

Because seismic retrofit activities may continue beyond the date of expiration of this IHA (presumably under a new IHA), a draft final report must be submitted to the Regional Administrator within 90 days after the expiration of this IHA. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

CALTRANS will provide NMFS with a follow-up report on the post-construction monitoring activities within 18 months of project completion in order to evaluate whether haulout patterns are similar to the pre-retrofit haul-out patterns at Castro Rocks.

National Environmental Policy Act

NMFS prepared an Environmental Assessment (EA) in 1997 that concluded that the impacts of CALTRANS' seismic retrofit construction of the Richmond-San Rafael Bridge will not have a significant impact on the human environment. A copy of that EA, which includes the Finding of No Significant Impact (FONSI) is available upon request (see **ADDRESSES**). This action has not changed significantly from the action analyzed in the 1997 EA. Therefore, this action is not expected to change the analysis or conclusion of the 1997 EA.

Endangered Species Act (ESA)

On January 27, 1997, NMFS completed consultation under section 7 of the ESA with the Federal Highway Administration (FHWA) on Caltrans' proposed seismic retrofit work on the Richmond-San Rafael Bridge. That consultation concluded that the project is not likely to adversely affect winter-run chinook salmon. Because the proposed underlying action has not changed significantly from that considered in the consultation, NMFS has preliminarily determined that issuance of an IHA will not lead to any effects to listed species nor critical habitat for any species apart from those that were considered in the consultation on FHWA's action.

Conclusions

NMFS has determined that the short-term impact of the seismic retrofit construction of the Bridge, as described in this document, should result, at worst, in the temporary modification in behavior by small numbers of harbor seals and, possibly, by small numbers of California sea lions. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Authorization

For the reasons previously discussed, NMFS has reissued an IHA for a 1–year period, for the incidental harassment of harbor seals and California sea lions incidental to CALTRANS' seismic retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, CA, provided the above mentioned mitigation, monitoring, and reporting

requirements are incorporated without the submission of additional scientific information.

Dated: September 6, 2005.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–18089 Filed 9–12–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083005A]

Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT); Fall Meetings

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

ACTION: Notice of public meeting.

SUMMARY: In preparation for the 2005 ICCAT meeting, the Advisory Committee to the U.S. Section to International Commission for the Conservation of Atlantic Tunas (ICCAT) will hold two fall meetings. A summary of the meeting topics is provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The open sessions will be held on September 21, 2005, from 8:30 a.m. to 12:15 p.m. and October 17, 2005, from 8 a.m. to 10:30 a.m. Closed sessions will be held on September 21, 2005, from 1:30 p.m. to 5:30 p.m.; September 22, 2005, from 8 a.m. to 12 p.m.; October 17, 2005, from 11 a.m. to 5 p.m.; and October 18, 2005, from 8:30 a.m. to 12:30 p.m. Oral comments can be presented during the public comment session on October 17, 2005. Written comments on issues being considered at the meeting should be received no later than September 30, 2005.

ADDRESSES: The meetings will be held at the Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910. Written comments should be sent to Erika Carlsen at NOAA Fisheries Office of International Affairs, Room 13114, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Erika Carlsen, (301) 713–2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet twice in open sessions, on September 21 and October 17, 2005, during its fall meetings. At the first session, the Advisory Committee will receive reports on ICCAT intersessional meetings, the domestic implementation of prior ICCAT decisions, and the implementation of Advisory Committee recommendations. At the second session, the Advisory Committee will receive information on the stock status of highly migratory species and management recommendations of ICCAT's Standing Committee on Research and Statistics. The only opportunity for oral public comment will be during the October 17, 2005 open session. Written comments are encouraged and, if mailed, should be received by September 30, 2005 (see **ADDRESSES**). Written comments can also be submitted during the open sessions of the Advisory Committee meeting.

During its fall meetings, the Advisory Committee will also hold several executive sessions that are closed to the public. The first executive session will be held on September 21, 2005, after the adjournment of the first open session. A second executive session will be held on September 22, 2005. During its second fall meeting, the Advisory Committee will also hold an executive session on October 17, 2005, immediately following the adjournment of the second open session. The final closed session will be held October 18, 2005. The purpose of these sessions is to discuss sensitive information relating to upcoming international negotiations.

NMFS expects members of the public to conduct themselves appropriately for the duration of the meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (e.g., alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak, and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Erika Carlsen at (301) 713-2276 at least five days prior to the meeting date.

Dated: September 7, 2005.

Alan D. Risenhoover,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–18077 Filed 9–8–05; 12:35 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0139]

Federal Acquisition Regulation; Information Collection; Federal Acquisition and Community Right-To-Know

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0139).

SUMMARY: Under the provisions of the Paperwork Reduction Actof 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the reporting requirements of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109). The clearance currently expires on December 31, 2005.

DATES: Submit comments on or before November 14, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT Ms. Kimberly Marshall, Contract Policy Division, GSA (202) 219–0986.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subpart 23.9 and its associate solicitation provision and contract clause implement the requirements of E.O. 12969 of August 8, 1995, published in the **Federal Register** at 60 FR 40989, August 10, 1995, "Federal Acquisition

and Community Right-to-Know," and the Environmental Protection Agency's "Guidance Implementing E.O. 12969; Federal Acquisition Community Right-to-Know; Toxic Chemical Release Reporting" published in the **Federal Register** at 60 FR 50738, September 29, 1995. The FAR coverage requires offerors in competitive acquisitions over $100,000 (including options) to certify that they will comply with applicable toxic chemical release reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C 11001–11050) and the Pollution Prevention Act of 1990 (42 U.S.C 13101–13109).

B. Annual Reporting Burden

Respondents: 167,487.
Responses Per Respondent: 1.
Annual Responses: 167,487.
Hours Per Response: 0.50.
Total Burden Hours: 83,744.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0139, Federal Acquisition and Community Right-to-Know, in all correspondence.

Dated: September 7, 2005.

Julia B. Wise,

Director, Contract Policy Division.

[FR Doc. 05–18068 Filed 9–12–05; 8:45 am]

BILLING CODE 6820–EP–S

DEFENSE OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on September 22, 2005 from 0900 to 2000 and September 23, 2005 from 0830 to 1500.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: September 8, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–18166 Filed 9–8–05; 3:48 pm]

BILLING CODE 5000–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DOD.

ACTION: Notice; time change.

SUMMARY: The committee meeting scheduled for September 16, 2005, at 1 p.m. published in the **Federal Register** on Friday, August 12, 2005 (70 FR 47183) has a time change. The meeting will now start at 4 p.m. There will also be a closed session prior to the annual meeting from 3 p.m. to 3:45 p.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Shaun T. Wurzbach, United States Military Academy, West Point, NY 10966–5000, (845) 93804200.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–18072 Filed 9–12–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant Exclusive Patent License; Extreme Endeavors and Consulting

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: In compliance with 37 CFR 404 *et seq.*, the Department of the Army hereby gives notice of its intent to grant to Extreme Endeavors and Consulting, a corporation having its principal place of business at P.O. Box 2093, Philippi, WV 26416, exclusive license to practice in the United States, the Government-owned inventions described in U.S. Patent No. 5,515,865 issued May 14, 1996 entitled, "Sudden Infant Death Syndrome (SIDS) Monitor and Simulator," U.S. Patent No. 5,684,460 issued in November 4, 1997 entitled "Motion and Sound Monitor Simulator,"; and U.S. Patent No. 5,853,005 issued in December 29, 1998 entitled "Acoustic Monitoring System,".

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than 15 days from the date of this notice.

ADDRESSES: Send written objections to Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRD–ARL–DP–T/Bldg. 454, Aberdeen Proving Ground, MD 21005–5425.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, telephone (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–18071 Filed 9–12–05; 8:45 am]

BILLING CODE 8170–08–M

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Election Assistance Commission (EAC).

ACTION: Notice of Public Meeting Agenda.

DATE AND TIME: Tuesday, September 27, 2005, 10 a.m.–12 noon.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 1100, Washington, DC 20005 (Metro Stop: Metro Center).

AGENDA: The Commission will receive the following reports: Title II Requirements Payments Update; public comments received regarding the proposed Voluntary Voting System Guidelines; and updates on other administrative matters. The Commission will receive presentations on the Election Day Survey Report.

This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 05–18219 Filed 9–9–05; 11:02 am]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–1379–001]

American Electric Power Service Corporation; Notice of Filing

September 7, 2005.

Take notice that on September 1, 2005, American Electric Power Service Corporation as agent for its affiliate Appalachian Power Company (AEP), submitted for filing an amendment to its August 22, 2005, filing in Docket No. ER05–1379–000 involving an interconnection and local delivery service agreement between AEP and Old Dominion Electric Cooperative.

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

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

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

Comment Date: 5 p.m. eastern time on September 15, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4988 Filed 9–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–445–011; ER04–435–015; ER04–441–009; ER04–443–009]

California Independent System Operator Corporation, et al; Notice of Filing

September 7, 2005.

Take notice that on August 30, 2005, the California Independent System Operator Corporation (ISO), Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE), jointly submitted for filing a Standard Large Generator Interconnection Agreement, for incorporation into the ISO Tariff.

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

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

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

Comment Date: 5 p.m. eastern time on September 20, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4987 Filed 9–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–406–000]

Columbia Gas Transmission Corporation; Notice of Application for Abandonment

September 7, 2005.

Take notice that on August 30, 2005, Columbia Gas Transmission Corporation (Columbia) filed an application pursuant to section 7(b) of the Natural Gas Act (NGA) for authorization to abandon by sale to Columbia Natural Resources, LLC (CNR) certain natural gas facilities known as Columbia's Kermit Compressor Station System consisting of approximately 43.62 miles of pipeline ranging from 2 through 20-inch, two compressor units with a combined horsepower of 2,640, and a single 540 horsepower compressor unit from Columbia's Boldman Compressor Station, all located in West Virginia and Kentucky. Columbia requests approval to abandon the various services being provided through the facilities to be sold. Additionally, Columbia requests that the Commission find the facilities to be gathering and exempt from the Commission's jurisdiction pursuant to section 1(b) of the NGA. Columbia further requests that the Commission grant such other and further relief as may be deemed appropriate. This application is on file with the Commission and open to public inspection.

Any questions regarding this application should be directed to V. J. Hamilton Certificate Lead or Fredric J. George Lead Council for Columbia Gas Transmission Corporation, Post Office Box 1273, Charleston, West Virginia, 25325 at (304) 357–2926 and (304) 357–3206, respectively.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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

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

Comment Date: 5 p.m. eastern time on September 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4983 Filed 9–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–409–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

September 7, 2005.

Take notice that on September 1, 2005, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP05–409–000, an application pursuant to sections 157.205, 157.208, and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, for authorization to increase the maximum allowable operating pressure (MAOP) from 300 psig to 500 psig on portions of its existing transmission pipelines designated as Lines 1907 and 10016 in Adams and York Counties, Pennsylvania, under Columbia's blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any questions concerning this application may be directed to counsel for Columbia Gulf, Frederic J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston West Virginia 25325–1273; telephone 304–357–2359, fax 304–357–3206.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, Please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4984 Filed 9–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–133–000]

NAPG Pawtucket, L.L.C.; Pawtucket Power Holding Company, L.L.C.; Maxim Power (USA), Inc.; Notice of Filing

September 7, 2005.

Take notice that on September 2, 2005, NAPG Pawtucket, L.L.C. (NAPG Pawtucket), Pawtucket Power Holding Company, L.L.C. (Pawtucket) and Maxim Power (USA), Inc. (Maxim) (collectively, Applicants), pursuant to section 203 of the Federal Power Act, filed with the Commission an application to transfer control of a 66.5 MW generation facility in Pawtucket, RI and certain jurisdictional facilities to Maxim.

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

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

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

Comment Date: 5 p.m. eastern standard on September 23, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4986 Filed 9–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–405–000]

Natural Gas Pipeline Company of America; Notice of Application

September 7, 2005.

On August 29, 2005, Natural Gas Pipeline Company of America (Natural) filed an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission) requesting a certificate of public convenience and necessity for authorization to construct and operate 12 new injection/withdrawal wells, install a 13,000 horsepower compressor unit, and construct 8.7 miles of 30-inch pipeline and other facilities at the North Lansing storage facility in Harrison County, Texas to enable Natural to provide an additional 10 Bcf of firm storage service. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to Bruce H. Newsome, Vice President, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148, telephone (630) 691–3525.

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

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

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

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. eastern standard time on September 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4992 Filed 9–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–463–001]

NGO Transmission, Inc.; Notice of Proposed Changes in Ferc Gas Tariff

September 7, 2005.

Take notice that on August 29, 2005, NGO Transmission, Inc. (NGO) tendered for filing to become part of its FERC Gas Tariff, Volume No. 1, Substitute Second Revised Sheet No. 113, which has a proposed effective date of September 1, 2005. NGO states that this filing was submitted in compliance with the order issued by the Commission in the above-referenced docket on August 18, 2005.

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E5–4982 Filed 9–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–20–000]

The Peoples Gas Light and Coke Company; Notice of Petition for Rate Approval

September 7, 2005.

Take notice that on August 31, 2005, The Peoples Gas Light and Coke Company (Peoples Gas) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's Regulations. Peoples Gas states that there are no changes to the rates for its existing firm and interruptible transportation and storage services. Peoples Gas explains that for the new services, it proposes rates derived from its existing services. Peoples Gas proposes an effective date of September 1, 2005.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistant, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper.

The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: September 12, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4991 Filed 9–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP93–541–014]

Young Gas Storage Company, Ltd.; Notice of Application

September 7, 2005.

On August 29, 2005, Young Gas Storage Company (Young Gas) filed an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission) requesting to further amend the certificate issued in Docket Nos. CP93–541–000 *et al.*, authorizing the construction and operation of the Young Gas Storage Field. Young Gas seeks amended authorization to increase storage gas withdrawals, under certain conditions, above the limits currently certificated for the storage field's operation. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to Richard Derryberry, Director, Regulatory Affairs Department, Colorado Interstate Gas Company, as operator for Young Gas Storage Company, Ltd., Post Office Box 1087, Colorado Springs, Colorado 80944; telephone (719) 520–3788; fax (719) 667–7534.

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

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

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

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. eastern standard on September 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4985 Filed 9–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings #1

September 7, 2005.

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

Docket Numbers: ER04–780–003.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc as agent for Alabama Power Co. *et al.* submits an informational filing concerning the payment of refunds in connection with the True-Up Informational filing submitted on 4/29/04.

Filed Date: 08/31/2005.

Accession Number: 20050902–0013.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2005.

Docket Numbers: ER05–1119–001.

Applicants: Doswell Limited Partnership.

Description: Doswell Limited Partnership submits its Substitute Original Sheet No. 7 reflecting removal of the cost attributable to the combustion turbine agreement filed in ER05–1119.

Filed Date: 08/31/2005.

Accession Number: 20050902–0015.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2005.

Docket Numbers: ER05–1314–001.

Applicants: Allegheny Power.

Description: Allegheny Power submits a Corrected Original Sheet No. 6, to its FERC Electric Tariff, First Revised Volume 6.

Filed Date: 08/31/2005.

Accession Number: 20050902–0014.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2005.

Docket Numbers: ER05–1410–000; EL05–148–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits its new Reliability Pricing Model modifying the existing capacity rules in PJM's region to address current inadequacies.

Filed Date: 08/31/2005.

Accession Number: 20050902–0088.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2005.

Docket Numbers: ER05–1411–000.

Applicants: First Electric Cooperative Corporation.

Description: First Electric Cooperative Corporation advises that due to amendments to section 201(f) of the Federal Power Act, it is no longer a public utility.

Filed Date: 08/31/2005.

Accession Number: 20050906–0042.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2005.

Docket Numbers: ER05–1412–000.

Applicants: Kandiyohi Cooperative Electric Power Association.

Description: Kandiyohi Power Cooperative advises that due to amendments to section 201(f) of the Federal Power Act, it is no longer a public utility .

Filed Date: 08/31/2005.

Accession Number: 20050906–0035.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2005.

Docket Numbers: ER05–1413–000.

Applicants: White River Electric Association, Inc.

Description: White River Electric Association Inc advises FERC that due to amendments to section 201(f) of the Federal Power Act, it is no longer a public utility.

Filed Date: 08/31/2005.

Accession Number: 20050906–0034.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2005.

Docket Numbers: ER05–1414–000.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Co submits its First Revised Sheet 129, 131, 132 and 148 of its Rate Schedule 12.

Filed Date: 08/31/2005.

Accession Number: 20050906–0043.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2005.

Docket Numbers: ER05–1415–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp., submits Amendment 2 to the Participating Generator Agreement with Energia Azteca X, S. de R.L de C.V, Second Revised Service Agreement 539.

Filed Date: 08/31/2005.

Accession Number: 20050906–0036.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2005.

Docket Numbers: ER05–1416–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc., files an executed service agreement for long-term firm point-to-point transmission service with Southwestern Public Service Co dba Xcel Energy Marketing.

Filed Date: 08/31/2005.

Accession Number: 20050906–0037.

Comment Date: 5 p m. Eastern Time on Wednesday, September 21, 2005.

Docket Numbers: ER05–1417–000.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Co, LLC's files a rate schedule on behalf of Buchanan Generation, LLC.

Filed Date: 08/31/2005.

Accession Number: 20050906–0038.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2005.

Docket Numbers: ER05–1418–000.

Applicants: Reliant Energy Wholesale Generation, LLC.

Description: Reliant Energy Wholesale Generation, LLC submits a rate schedule, supporting testimony and cost data for reactive service.

Filed Date: 08/31/2005.

Accession Number: 20050906–0039.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2005.

Docket Numbers: ER05–1419–000.

Applicants: Hot Spring Power Company, LP.

Description: Hot Spring Power Co, LP submits a rate schedule under which it specifies its rates for providing cost-based for reactive service.

Filed Date: 08/31/2005.

Accession Number: 20050906–0040.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2005.

Docket Numbers: ER05–1420–000.

Applicants: Lehman Brothers Commodity Services Inc.

Description: Lehman Brothers Commodity Services, Inc submits for acceptance and approval Rate Schedule FERC No. 1 and requests blanket authorization to make wholesale sales of electric power.

Filed Date: 08/31/2005.

Accession Number: 20050906–0041.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2005.

Docket Numbers: ER98–1466–003, ER00–814–004, ER01–2067 004, ER01–2068–004, ER01–332–003, ER00–2924–004, ER02–1638–003.

Applicants: Allegheny Power, Allegheny Energy Supply Company, LLC; Allegheny Energy Supply Gleason Generating Facility, LLC; Allegheny Energy Supply Wheatland Generating Facility, LLC; Allegheny Energy Supply Hunlock Creek, LLC; Green Valley Hydro, LLC; Buchanan Generating, LLC.

Description: Monongahela Power Co. *et al.* dba Allegheny Power submits corrected Original Sheet 12 as an amendment to its 8/11/05 submittal under ER98–1466 *et al.*

Filed Date: 08/31/2005.

Accession Number: 20050901–0168.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2005.

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 and 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4981 Filed 9–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8535–039]

Virginia Hydrogeneration and Historical Society, L.C.; Notice of Availability of Environmental Assessment

September 7, 2005.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR part 380). Commission staff have reviewed an application to surrender the license for the Battersea Project, filed December 20, 2004. The project is located on The Appomattox River, in the City of Petersburg, Virginia.

Commission staff prepared an environmental assessment (EA), analyzing the probable environmental effects of the proposed surrender, and has concluded that approval of the surrender request would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to the Commission order titled "Order Conditionally Accepting Surrender of License," issued September 6, 2005, and is available for review at the Commission's Public Reference Room. A copy of the EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "elibrary" link. Enter the docket number (P–8535) in the docket number field to access the document. For assistance, call (202) 502–8222, or (202) 502–8659 (for TTY).

Magalie R. Salas,

Secretary.

[FR Doc. E5–4990 Filed 9–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

September 8, 2005.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 15, 2005, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda (*Note—Items listed on the agenda may be deleted without further notice.)

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400. (For a recording listing items stricken from or added to the meeting, call (202) 502–8627.)

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

896th—Meeting

Regular Meeting, September 15, 2005, 10 a.m.

Administrative Agenda

A–1
Docket# AD02–1–000, Agency Administrative Matters

A–2
Docket# AD02–7–000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs, and Rates—Electric

E–1
Docket# RM05–25–000, Preventing Undue Discrimination and Preference in Transmission Service

E–2
Docket# RM05–6–000, Commission Authorization to Hold Interlocking Positions

E–3
Docket# ER05–1118–000, Southwest Power Pool, Inc.

E–4
Docket# ER05–1228–000, ER05–1228–001, Sea Breeze Pacific Juan de Fuca Cable, LP

E–5
Docket# ER05–1047–000, ER05–1047–001, ER05–1048–000, ER05–1048–001, Midwest Independent Transmission System Operator, Inc.

E–6
Docket# ER05–1230–000, Midwest Independent Transmission System Operator, Inc.

E–7
Omitted

E–8
Docket# EL05–68–000, TECO–PANDA Generating Company, L.P.
ER05–1164–000, ER05–1164–001, TPGC, LP
ER05–1239–000, TPS Dell, LLC
ER05–1240–000, TPS McAdams, LLC

E–9
Docket# ER05–1217–000, ER05–1217–001, Black Hills Power, Inc.

E–10
Omitted

E–11
Docket# EL05–134–000, Indiana Municipal Power Agency

E–12
Docket# EL02–123–007, Boston Edison Company

E–13
Omitted
E–14
Docket# EL05–5–002, ER03–762–008, ER99–230–008, Alliant Energy Corporate Services, Inc.
E–15.
Docket# EL05–83–000, Aquila Inc.
Docket# ER02–47–004, ER02–47–002, Aquila Long Term, Inc.
Docket# ER02–216–024, ER95–216–025, Aquila Merchant Services, Inc.
Docket# ER03–725–004, ER03–725–005, Aquila Piatt County Power, L.L.C.
Docket# ER03–1079–004, ER03–1079–005, Aquila, Inc.
Docket# ER02–309–004, ER02–309–005, MEP Clarksdale Power, LLC
Docket# ER02–1016–002, ER02–1016–003, MEP Flora Power, LLC
Docket# ER99–2322–004, ER99–2322–005, MEP Investments, LLC
Docket# ER01–905–004, ER01–905–005, MEP Pleasant Hill Marketing, LLC
Docket# ER00–1851–004, ER00–1851–005, Pleasant Hill Market, LLC
E–16.
Omitted
E–17.
Docket# EC05–98–000, PSEG Waterford Energy LLC, American Electric Power Service Corporation and Columbus Southern Power Company
E–18.
Docket# EL05–123–000, *New York Power Authority* v. *Consolidated Edison Company of New York, Inc.*
E–19.
Docket# EL05–135–000, Entergy Arkansas, Inc.
E–20.
Docket# EL05–129–000, EL05–129–001, Lockhart Power Company
E–21.
Omitted
E–22.
Docket# EL05–60–000, PJM Interconnection L.L.C.
E–23.
Omitted
E–24.
Omitted
E–25.
Docket# EL05–49–001, *Exelon Corporation* v. *PPL Electric Utilities Corporation and PJM Interconnection, LLC*
E–26.
Docket# ER05–1050–001, AmerGen Energy Company, LLC
E–27.
Omitted
E–28.
Docket# ER05–531–001, ISO New England, Inc.
E–29.
Docket# ER05–483–003, Cottonwood Energy Company, L.P.
E–30.
Omitted
E–31.
Docket# ER96–2495–025, AEP Power Marketing, Inc.
Docket# ER97–4143–013, AEP Service Corporation
Docket# ER98–542–015, EL04–131–001, Central and South West Service, Inc.
Docket# ER98–2075–019, CSW Energy Services, Inc.
Docket# ER97–1238–020, CSW Power Marketing, Inc.
E–32.
Docket# ER05–109–001, ER05–109–002, ER04–48–012, ER04–48–013, ER05–652–001, ER05–652–002, RT04–1–012, RT04–1–013, Southwest Power Pool, Inc.
E–33.
Omitted
E–34.
Omitted
E–35.
Docket# EL05–76–001, *The United Illuminating Company* v. *Dominion Energy Marketing, Inc.*
E–36.
Docket# EL04–114–001, *City of Santa Clara, California* v. *Enron Power Marketing, Inc.*
E–37.
Omitted
E–38.
Docket# EL05–106–001, Bonneville Power Administration, PacifiCorp, Idaho Power Company
E–39.
Docket# ER02–1656–029, California Independent System Operator Corporation
E–40.
Docket# ER05–215–003, ER05–215–004, Midwest Independent Transmission System Operator, Inc.
E–41.
Docket# ER04–691–037, ER04–691–056, ER04–106–008, ER04–106–013, Midwest Independent Transmission System Operator, Inc.
Docket# EL04–104–053, EL04–104–035, Public Utilities With Grandfathered Agreements in Midwest ISO Region
E–42.
Docket# ER05–319–002, PJM Interconnection, L.L.C.
E–43.
Docket# ER05–428–003, New York Independent System Operator, Inc.
E–44.
Docket# ER04–230–012, ER01–1355–010, ER01–1385–019, EL01–45–018, New York Independent System Operator, Inc.

Markets, Tariffs, and Rates—Miscellaneous

M–1.
Docket# RM05–32–000, Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Act of 2005
M–2.
Docket# RM05–33–000, Revision of Rules of Practice and Procedure Regarding Issue Identification

Markets, Tariffs, and Rates—Gas

G–1.
Docket# OR89–2–016, OR89–2–017, Trans Alaska Pipeline System
Docket# OR96–14–005, OR96–14–006, *Exxon Company, U.S.A.* v. *Amerada Hess Pipeline Corporation*
Docket# OR98–24–000, OR98–24–002, *Tesoro Alaska Petroleum Company* v. *Amerada Hess Pipeline Corporation*
Docket# IS03–137–000, IS03–137–001, BP Pipelines (Alaska) Inc.
Docket# IS03–141–000, IS03–141–001, ExxonMobil Pipeline Company
Docket# IS03–142–000, IS03–142–001, Phillips Transportation Alaska, Inc.
Docket# IS03–143–000, IS03–143–001, Unocal Pipeline Company
Docket# IS03–144–000, IS03–144–001, Williams Alaska Pipeline Company, L.L.C.
G–2.
Docket# PR05–12–000, PR05–12–001, Nicor Gas
G–3.
Docket# RP00–404–017, Northern Natural Gas Company
G–4.
Docket# RP02–335–005, RP02–335–006, ANR Pipeline Company
G–5.
Docket# RP02–99–010, *Shell Offshore Inc.* v. *Transcontinental-Gas Pipe Line Corporation, Williams Gas Processing—Gulf Coast Company, L.P., and Williams Field Services*
G–6.
Docket# RP05–365–001, ANR Pipeline Company
G–7.
Docket# AI05–1–000, Jurisdictional Public Utilities and Licensees, Natural Gas Companies, Oil Pipeline Companies
G–8.
Docket# RP03–623–002, Dominion Transmission, Inc.
G–9.
Omitted
G–10.
Docket# PL05–10–000, Criteria for Reassertion of Jurisdiction Over the Gathering Services of Natural Gas Company Affiliates
G–11.
Docket# RP04–197–000, RP04–197–001, RP04–197–003, RP05–213–000, Dominion Cove Point LNG, LP
G–12.
Docket# OR05–9–000, *Flint Hills Resources Alaska, LLC* v. *ConocoPhillips Alaska, Inc., Exxon Mobil Corporation, Tesoro Alaska Company, BP America Production Company, BP Exploration (Alaska) Inc., OXY USA Inc., Union Oil Company of California, Petro Star Inc., State of Alaska, BP Pipelines (Alaska) Inc., ConocoPhillips Transportation Alaska, Inc., ExxonMobil Pipeline Company, Koch Alaska Pipeline Company, LLC, and Unocal Pipeline Company*

Energy Projects—HYDRO

H–1.
Docket# EL05–73–001, P–459–136, *Duncan's Point Lot Owners Association, Inc., Duncan's Point Homeowners Association, Inc., and Nancy A. Brunson, Juanita Brackens, Helen Davis, and Pearl Hankins, individually* v. *Union Electric Company d/b/a AmerenUE*

Energy Projects—CERTIFICATES

C–1.
Docket# CP05–32–000, CP05–32–001, Northwest Pipeline Corporation
C–2.
Docket# CP03–42–000, Gulf South Pipeline Company, LP

C–3.
Docket# CP05–353–001, El Paso Natural Gas Company
C–4.
Omitted
C–5.
Docket# CP05–55–000, Northern Natural Gas Company

Magalie R. Salas,
Secretary.

The Capitol Connection offers the opportunity for remote listening and viewing of the meeting. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703) 993–3100 as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu and click on "FERC"*.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in Hearing Room 2. Members of the public may view this briefing in the Commission Meeting overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 05–18299 Filed 9–9–05; 3:57 pm]
BILLING CODE 6717–17–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

September 8, 2005.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 15, 2005 (within a relatively short time after the Commission's open meeting on September 15, 2005).

PLACE: 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries, Enforcement Related Matters, and Security of Regulated Facilities.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Kelliher and Commissioners Brownell and Kelly voted to hold a closed meeting on September 15, 2005. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NW., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,
Secretary.
[FR Doc. 05–18300 Filed 9–9–05; 3:57 pm]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EY05–14–001; RM01–10–000]

Standards of Conduct for Transmission Providers; Notice Waiving Record Keeping Requirements

September 7, 2005.

Due to the emergency conditions in the Gulf Coast area of the United States created by Hurricane Katrina, on August 31, 2005, the Commission issued a Notice Granting Extension Of Time To Comply With Posting And Other Requirements. That Notice, among other things, allowed affected transmission providers to delay, until September 30, 2005, compliance with the requirement of section 358.4(a)(2) of the Commission's regulations, 18 CFR 358.4(a)(2)(2005), to report to the Commission and post on the OASIS or Internet website, as applicable, each emergency that resulted in any deviation from the standards of conduct.

Due to the extreme nature of the emergency, the Commission will also waive, until September 16, 2005, the requirement to record and retain a record of each deviation of the standards of conduct. The Commission will consider extending the waiver if it continues to be needed after that date.

Magalie R. Salas,
Secretary.
[FR Doc. E5–4989 Filed 9–12–05; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[SFUND–2004–0014, FRL–7968–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; The 2005 National Survey of Local Emergency Planning Committees, EPA ICR Number 1903.02, OMB Control Number 2050–0162

AGENCY: Environmental Protection Agency.
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a continuing collection. The prior collection for the 1999 National Survey of Local Emergency Planning Committees expired on June 30, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 14, 2005.

ADDRESSES: Submit your comments, referencing docket ID number SFUND–2004–0014, to EPA online using EDOCKET (our preferred method), by e-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mailcode 5202T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kim Jennings, Office of Emergency Management (OEM), OSWER, Mailcode 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7998; fax number: (202) 564–8222; e-mail address: *jennings.kim@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number SFUND–2004–0014, which is available for public viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution

Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epas.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, to submit to view public comments, to access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Affected entitles: Entities potentially affected by this action are those which hold a leadership position on Local Emergency Planning Committees (LEPCs). It is anticipated that the majority of respondents will be LEPC chairs.

Title: National Survey of Local Emergency Planning Committees.

Abstract: The Environmental Protection Agency, Office of Emergency Response (OEM) proposes to conduct a nationwide survey of Local Emergency Planning Committees (LEPCs). The information will be used to assess the general progress, status, and activity level of LEPCs. This collection also addresses reporting requirements under the Government Performance and Results Act (GPRA) of 1993, which stipulates that agencies focus on evaluating their program activities in terms of outputs and outcomes. This ICR is necessary to evaluate whether OEM is successfully providing national leadership and assistance to local communities in preparing for and preventing chemical emergencies.

The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) introduced a fundamental change in the regulation of chemical facilities and the prevention of and preparedness for chemical accidents. This law seeks to improve emergency preparedness and reduce the risk of chemical accidents by providing information to citizens about chemical hazards in their community. EPCRA is premised on the concept that the more informed local citizens are, the more involved they will become in prevention and preparedness activities. For this "informational regulation" to be effective, the public must receive accurate and reliable information that is easy to understand and practical to use.

EPCRA mandates the creation of LEPCs as a means for local government, law enforcement, health officials, and emergency responders to work with chemical facilities, the media and community groups to develop formal plans for responding to chemical emergencies.

LEPC activities include: Receiving chemical hazards data from facilities in their community and providing this information to the local public; developing local emergency response plans, which are annually reviewed, tested, and updated; serving as a point of contact for discussing and sharing information about hazardous substances, emergency planning, and health and environmental risk; and notifying the public of LEPC activities and other pertinent information.

In general, LEPCs provide local citizens an opportunity to participate actively in understanding chemical hazards, planning for emergency response and reducing the risk of chemical emergencies. To be judged effective, LEPCs must be compliant with the requirements of EPCRA and actively carry out these responsibilities. LEPC's level of satisfaction with the information, guidance, and support they receive will heavily influence their ability to fulfill their duties. The 2005 National Survey of LEPCs will collect information to evaluate the status and activity level of these planning bodies and their satisfaction with OEM products and services.

This proposed information collection builds upon previous assessments conducted by OEM. In 1999, a nationwide survey of LEPCs revealed various strengths and weaknesses among LEPCs. Since that time, no systematic nationwide measurement of the progress of LEPCs has been conducted. Over the past five years, local emergency planning has evolved, most notably, in the amount of information that is now available to assist LEPCs in preparing for and preventing chemical emergencies. In June 1999, this information expanded further with the addition of facility specific chemical hazards data and risk management plans made available under amendments to the Clean Air Act in 1990 (section 112(r)—the Risk Management Program Rule for the prevention of chemical accidents).

The primary goals of this research are to: (1) Track the progress of LEPCs by updating the 1999 baseline data on a series of key performance indicators; and (2) probe current LEPC practices and preferences regarding several important sets of issues, including: communications with local citizens, proactive accident prevention efforts, and the effectiveness of selected OEM products and services.

The EPA would like to solicit comments to:

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

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: OEM estimates that there will be 3,300 respondents to this information collection and each respondent will spend 15 minutes completing and submitting an on-line response form, for a total response of 825 hours. Based on an average hourly rate of $30.06 (an average hourly rate, including benefits, of both private and state employees), the survey developers expect that the average per-respondent cost for the pilot survey will be $7.51

and the corresponding one-time total cost to all respondents will be $24,800. Since this information collection is voluntary and does not involve any special equipment, respondents will not incur any capital or operation and maintenance (O&M) costs.

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.

Dated: September 2, 2005.

Deborah Y. Dietrich,

Director, Office of Emergency Management.

[FR Doc. 05–18091 Filed 9–12–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7968–8]

Science Advisory Board Staff Office; Notification To Convene Workgroups of Experts for Rapid Consultative Advice on Scientific and Technical Issues From Hurricane Katrina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces its intent to convene workgroups of experts drawn from the U.S. EPA SAB, the Clean Air Scientific Advisory Committee, and the Advisory Council on Clean Air Compliance Analysis (chartered advisory committees), their standing committees, subcommittees, and advisory panels to provide rapid consultative advice on scientific and technical issues in the aftermath of Hurricane Katrina.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain information about the rapid consultative advice process and projects may contact Dr. Anthony F. Maciorowski, Associate Director for Science, Science Advisory Board Staff Office, by telephone at (202) 343–9983; by e-mail at *maciorowski.anthony@epa.gov;* or by mail at the U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on a technical basis for Agency positions and regulations. The SAB anticipates that the scope and scale of environmental destruction in Mississippi, Louisiana and Alabama will lead EPA Program Offices and Regions to request advice on an array of scientific and technical issues. Rapid consultative advice from nationally recognized scientists and engineers will assist the Agency in developing and implementing timely and scientifically appropriate responses to Hurricane Katrina induced destruction and contamination along the Gulf Coast.

To expedite the development of advice on Hurricane Katrina related issues, the SAB Staff Office will convene workgroups of technical experts drawn from the U.S. EPA SAB, the Clean Air Scientific Advisory Committee, the Advisory Council on Clean Air Compliance Analysis (chartered advisory committees), their standing committees, subcommittees, and advisory panels. Workgroup members will be invited to serve based on their scientific and technical expertise, knowledge, and experience; availability and willingness to serve; absence of financial conflicts of interest; and scientific credibility and impartiality. Due to critical mission and schedule requirements, there is insufficient time to provide the full 15 days notice in the **Federal Register** prior to advisory committee meetings, pursuant to the final rule on Federal Advisory Committee Management codified at 41 CFR 102–3.150. Therefore, information on the workgroup consultations will be posted on the SAB Web site at *http://www.epa.gov/sab* as they are available.

Dated: September 8, 2005.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–18227 Filed 9–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0032; FRL–7965–4]

Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of interim guidance on SIP development.

SUMMARY: The Environmental Protection Agency (EPA) encourages States to consider recent scientific information on the photochemical reactivity of volatile organic compounds (VOC) in the development of State implementation plans (SIPs) designed to meet the national ambient air quality standard (NAAQS) for ozone. This interim guidance summarizes recent scientific findings, provides examples of innovative applications of reactivity information in the development of VOC control measures, and clarifies the relationship between innovative reactivity-based policies and EPA's current definition of VOC. This interim guidance does not change any existing rules.

DATES: This interim guidance is effective on September 13, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2003–0032. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket ID No. OAR–2003–0032, EPA/DC. EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: William L. Johnson, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail code C539–02, Research Triangle Park, NC 27711, telephone (919) 541–5245.; fax number: (919) 541–

0824; e-mail address: *Johnson.WilliamL@epa.gov*.

SUPPLEMENTARY INFORMATION:

Outline

I. General Information

Does This Action Apply to Me?

You may be an entity affected by this interim guidance if you are a State or local air pollution control agency that has, or is currently developing, an ozone SIP containing programs to control VOC emissions. Additionally, you may be impacted if you use or emit VOCs in commercial/industrial/manufacturing operations, as well as other consumer/commercial activities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

This action does not impose any new mandates on States or industry, but rather provides information about options for meeting Clean Air Act mandates that are likely to be more effective, and more cost-effective, than the measures currently employed in most parts of the country.

II. Introduction

Ground level ozone, one of the principal components of "smog," is a serious air pollutant that harms human health and the environment. In April 2004, EPA designated 126 areas of the country as "nonattainment" for the 8-hour ozone national ambient air quality standards (NAAQS). States and tribes are currently revising State Implementation Plans (SIPs) in order to bring air quality into compliance with the 8-hour ozone standard. The Agency has proposed that these SIP revisions must be submitted to EPA by June 15, 2007. Certain areas will need to submit separate reasonably available control technology (RACT) SIP revisions. There is final action pending that the Agency anticipates will require these revisions to be submitted by September 15, 2006. Some of the areas designated as nonattainment under the 8-hour standard have persistent air quality problems and will need to employ as many cost-effective controls as possible to achieve the 8-hour ozone NAAQS as expeditiously as practicable but no later than by their attainment date.

The development of measures to reduce ozone concentrations is complicated by the fact that ozone is not directly emitted. It is formed in the air by chemical reactions of nitrogen oxides (NO_X) and VOCs in the presence of heat and sunlight. Therefore, ozone SIPs must address emissions of these ozone precursors.

There are thousands of individual chemical species of VOCs that can react to form ozone. It is generally understood that not all VOCs contribute equally to ozone formation and accumulation. Some VOCs react slowly and changes in their emissions have limited effects on local or regional ozone pollution episodes. Some VOCs form ozone more quickly, or they may degrade through a series of reactions that generates more ozone than the reaction pathways of other VOCs. Others not only form ozone themselves, but also enhance ozone formation from other VOCs. The photochemical reactivity of a compound is a measure of its potential to form ozone. By distinguishing between more reactive and less reactive VOCs, it should be possible to decrease ozone concentrations further or more efficiently than by controlling all VOCs equally.

Discriminating between VOCs on the basis of their contributions to ozone formation, or reactivities, is not straightforward. Reactivity is not simply a property of the compound itself; it is a property of both the compound and the environment in which the compound is found. The absolute reactivity of a single compound varies with VOC–NO_X ratios, meteorological conditions, the mix of other VOCs in the atmosphere, and the time interval of interest. On the other hand, there are several scientifically valid methods that can be used to develop reactivity "scales" or weighting approaches based on the relative reactivity of different VOCs, and there is a high correlation between these different methods.

The promise of a more efficient VOC control strategy has led the California Air Resources Board (CARB), EPA, and other organizations to invest in reactivity research. This research has produced improved methods for discriminating between VOCs on the basis of reactivity under a variety of conditions. Applying some of the lessons of this research, California and Texas have developed innovative regulations that use VOC reactivity information to improve the efficiency or effectiveness of VOC controls for specific source categories. As States develop their 8-hour ozone SIPs, EPA encourages them to consider how they may incorporate VOC reactivity information to make their future VOC control measures more effective and efficient.

III. Short History of VOC Reactivity Policy and Research

The issue of VOC reactivity was first recognized by EPA in its initial guidance to States on the preparation of ozone SIPs in 1971. In this initial guidance, EPA emphasized the need to reduce the total mass of organic emissions, but also noted that "substitution of one compound for another might be useful where it would result in a clearly evident decrease in reactivity and thus tend to reduce photochemical oxidant formation." EPA encouraged States to promulgate SIPs with organic emission control provisions similar to those outlined in Los Angeles District's Rule 66, which allowed many VOC species thought to have minimal adverse effects to be exempted from control.

The Rule 66 exempt status for many of these organic emission species was questioned a few years later when research results from field studies conducted between 1971–1974 revealed that pollutant transport conditions were capable of enhancing ozone formation such that these "exempt" compounds were now considered significant ozone producers. Thus, in 1977, the EPA issued the "Recommended Policy on Control of Volatile Organic Compounds," offering its own, much more limited list of "negligibly reactive" compounds to be exempted (42 FR 35314, July 8, 1977). As new information about the reactivity of different compounds has become available, EPA has continued to add to the list of negligibly reactive compounds following the logic of the 1977 policy. In 1992, this list of negligibly reactive compounds was explicitly excluded from the definition of VOC when it was codified in 40 CFR 51.100(s) (57 FR 3941, February 3, 1992). Since 1977, EPA has designated approximately 50 compounds or classes of compounds as negligibly reactive and has excluded these compounds from the regulatory definition of VOC.

Beginning in the early 1990s, CARB has pursued the development of regulatory approaches that more fully discriminate VOCs on the basis of reactivity. In 1991, CARB incorporated a reactivity scale for weighting the emissions of individual VOC species in their low emitting vehicle and clean fuels regulation. The scale was designed to account for the differences in the ozone-forming potential of exhausts from gasoline engines and alternative fueled vehicles. The scale adopted by

CARB was the Maximum Incremental Reactivity (MIR) scale, derived using a series of box model simulations with varying VOC composition and VOC-NO_X ratios.[1] The MIR scale is commonly expressed in units of grams of ozone produced per gram of VOC emitted.

Over the course of the 1990s, CARB continued to invest in the development of reactivity scales and to explore their potential regulatory applications. In June 2000, CARB adopted an aerosol coatings regulation that incorporates an updated MIR scale. This regulation is described in more detail below. Currently, CARB is exploring the use of reactivity scales in other programs, including regulations for architectural coatings.

In 1998, EPA participated in the formation of the Reactivity Research Working Group (RRWG), which was organized to help develop an improved scientific basis for reactivity-related regulatory policies.[2] All interested parties were invited to participate. Since that time, representatives from EPA, CARB, Environment Canada, States, academia, and industry have met in public RRWG meetings to discuss and coordinate research that would support this goal. The RRWG has organized a series of research projects that have addressed issues such as:

- The sensitivity of ozone to VOC mass reductions and changes in VOC composition;
- The derivation and evaluation of reactivity scales using photochemical airshed models;
- The development of emissions inventory processing tools for exploring reactivity-based strategies; and
- The fate of VOC emissions and their availability for atmospheric reactions.

This research has led to a number of findings that increase our confidence in the ability to develop approaches that discriminate between VOCs on the basis of reactivity. These findings include:

- State of the art chamber studies at low VOC-NO_X ratios demonstrate that current atmospheric chemistry models generally perform as well under "real world" conditions as under the high concentration scenarios used in their development.[3]
- Substituting emissions of low reactivity compounds for emissions of high reactivity compounds can be effective in reducing 1-hour and 8-hour ozone concentrations. Substitutions based on equal mass, equal carbon, or equal molar concentrations will achieve different levels of ozone reduction depending on the chemicals being substituted. Similar to decreases in mass of VOC emissions, reactivity-based VOC substitution seems to reduce higher concentrations of ozone more than lower concentrations of ozone.[4]
- There are several scientifically valid methods that can be used to calculate reactivity scales, each with different strengths and weaknesses. Although there is a high correlation between the different methods (even the simplest ones), important differences exist in their geographical representativeness and in the amount of spread between low reactivity and high reactivity compounds.[5]
- Using available reactivity scales, it is possible to construct a VOC substitution scenario that will achieve approximately the same ozone reductions as reducing the overall mass of VOC emissions. However, when applied, the substitution scenario may increase ozone in some areas and decrease ozone in others depending on the robustness of the reactivity scale used.[6]
- Several reactivity metrics derived with airshed models (such as the Maximum Ozone Incremental Reactivity to Maximum Incremental Reactivity (MOIR-MIR) and Least Squares Relative Reactivity (LS-RR)) appear to be robust over different regions of the country, meteorological episodes, year of analysis, averaging times, and models.[7]

EPA encourages all interested parties to continue working through the RRWG to improve the scientific foundation of VOC reactivity-based regulations. EPA will continue to update its guidance to States as new information becomes available. In the meantime, EPA encourages States to take advantage of the information that is now available in designing future VOC control strategies.

IV. Use of VOC Reactivity in Developing SIPs

Although the traditional approach to VOC control focused on reducing the overall mass of emissions may be adequate in some areas of the country, an approach that discriminates between VOCs based on reactivity is likely to be more effective and efficient. In particular, reactivity-based approaches are likely to be important in areas for which VOC control is a key strategy for reducing ozone concentrations. Such areas include:

- Areas with persistent ozone nonattainment problems;
- Urbanized or other NO_X-rich areas where ozone formation is particularly sensitive to changes in VOC emissions;
- Areas that have already implemented VOC RACT measures and need additional VOC emission reductions.

In these areas, there are a variety of ways of addressing VOC reactivity in the SIP development process, including:

- *Developing accurate, speciated VOC emissions inventories.* EPA encourages States—and particularly States with persistent ozone problems—to develop emissions inventories that include emission estimates for individual VOC species, as opposed to only estimating total VOC mass. This type of information may be especially useful for identifying emissions of the most reactive VOCs in the most VOC-sensitive areas. Currently, most States collect information on the mass of total VOC emissions. For air quality modeling purposes, this mass is apportioned to individual chemical species using EPA-provided profiles for each source category. Many industries, however, calculate their reported total VOC emissions from detailed speciated information that they routinely gather for other reasons. Where appropriate, States may want to gather such detailed speciated information and compare it to the national default speciation profiles.

States should also consider emerging research on the actual availability of VOCs for atmospheric reaction. In estimating VOC emissions, especially

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[1] Carter, William P. L. "Development of Ozone Reactivity Scales for Volatile Organic Compounds." *Journal of the Air and Waste Management Association* 44 (1994): 881–99.

[2] See *http://www.cgenv.com/Narsto/reactinfo.html*.

[3] Carter, William P.L., D.R. Crocker, III, D.R. Fitz, L.L. Malkina, K. Bumiller, C.G. Sauer, J.T. Pisano, C. Bufalino, and C. Song. "A New Environmental Chamber for Evaluation of Gas-Phase Chemical Mechanisms and Secondary Aerosol Formation." *Atmospheric Environment* accepted for publication, July 15, 2005 (in press).

[4] Arunachalam, S., R. Mathur, A. Holland, M.R. Lee, D. Olerud, and H. Jeffries. "Investigation of VOC Reactivity Assessment with Comprehensive Air Quality Modeling." Report to the U.S. Environmental Protection Agency, 2003, and Carter, William P.L., Gail S. Tonnesen, and G. Yarwood. "Investigation of VOC Reactivity Effects Using Existing Regional Air Quality Models." Report to the American Chemistry Council, Contract SC–20.0–UCR–VOC–RRWG, 2003.

[5] Carter, William P.L., Gail S. Tonnesen, and G. Yarwood. "Investigation of VOC Reactivity Effects Using Existing Regional Air Quality Models." Report to the American Chemistry Council, Contract SC–20.0–UCR–VOC–RRWG, 2003.

[6] *Ibid.*

[7] Hakami, A., M.S. Bergin, and A.G. Russell. "Ozone Formation Potential of Organic Compounds in the Eastern United States: A Comparison of Episodes, Inventories, and Domains." *Environmental Science and Technology* 38 (2004): 6748–59; Hakami, A., M. Arhami, and A.G. Russell. "Further Analysis of VOC Reactivity Metrics and Scales." Report to the U.S. Environmental Protection Agency, 2004; and Derwent, R.G. "Evaluation and Characterization of Reactivity Metrics." Report to the U.S. Environmental Protection Agency, 2004.

from coatings, solvents, and consumer products, it is often assumed that the entire volatile fraction is emitted and available for photochemical reaction, unless captured by specific control equipment. In some situations, however, otherwise volatile compounds may be trapped in liquid or solid phases or adhere to surfaces such that they are not actually released to the atmosphere. Once emitted into the atmosphere, VOCs may also be scavenged by rain, form particles, or deposit on surfaces.[8] Taking this behavior into account should lead to more accurate VOC emissions inventories and photochemical modeling. It may also allow States to consider volatility thresholds or other approaches designed to reflect atmospheric availability in certain types of regulatory programs.

• *Prioritizing control measures using reactivity metrics.* Most States prioritize control measures for implementation based on the cost effectiveness of controlling the total mass of VOCs (*i.e.*, $/ton). Using reactivity metrics and speciated VOC emission information, it is possible to calculate cost effectiveness on the basis of relative ozone formation (*i.e.*, $/ozone decreased). By controlling the most reactive source categories first, a State may be able to decrease the total cost of reaching attainment. For example, Russell, *et al.*[9] found that in Los Angles, selecting VOC controls on the basis of reactivity would decrease the cost of achieving any given level of ozone reduction as compared to a mass-based strategy up to a certain level of reduction. As more controls are required, the cost of strategies optimized on a reactivity basis converge with the cost of mass-based strategies as all the available controls are applied in both cases.

• *Targeting emissions of highly-reactive VOC compounds with specific control measures.* With speciated emissions information, a State may develop control measures that specifically target sources of the most highly reactive VOCs. In the Houston-Galveston area, a comprehensive field study revealed that fugitive or episodic releases of several highly reactive compounds (*e.g.*, ethylene, propylene, 1,3-butadiene, and butenes) from petroleum refining and petrochemical facilities have contributed significantly to exceedances of the ozone NAAQS. In 2002, after consultation with the local industry, the Texas Commission on Environmental Quality (TCEQ) issued rules targeting emissions of these highly reactive VOCs from four processes: fugitive releases, flares, process vents, and cooling towers. These first rules emphasized additional monitoring, record keeping, and enforcement rather than establishing individual unit emission limits. In 2004, TCEQ adopted a cap-and-trade program for ethylene and propylene emissions from flares, vents, and cooling towers in Houston. Under this program, each site is assigned a daily and yearly emissions cap. Non-highly reactive VOC emissions may be used to offset highly reactive VOC emissions up to a limit of 5% of the facility's initial cap. The non-highly reactive VOC emission offsets are discounted based on the ratio of the reactivity of the offsets to the reactivity of propylene. EPA has proposed approval of some facets of the Texas rules for the control and monitoring of highly reactive VOCs (70 FR 17640), and the Agency expects to propose action on other program elements, such as the cap-and-trade program, in the near future. Although EPA has not completed its review of the SIP revisions provided by Texas for the Houston-Galveston area, it does seem clear that targeting these highly reactive compounds for additional control will achieve substantial ozone benefit and is more cost effective than a rule targeting all VOCs.

• *Encouraging VOC substitution and composition changes using reactivity-weighted emission limits.* For some VOC source categories, such as paints, coatings, adhesives, and other formulated products, manufacturers may have the flexibility to change product formulations so as to change the composition as well as the mass of the VOC emissions. In some cases, changing the composition of the VOC emissions may be less costly and allow for better product performance than decreasing the mass of VOC emissions, while also providing greater benefits for ozone control. In 2000, CARB found that manufacturers were having difficulty meeting California's stringent mass-based VOC emission limits for aerosol coatings.[10] After extensive study and consultations with stakeholders, CARB replaced the mass-based emission limits for aerosol coatings with reactivity-weighted emissions limits, using a version of the MIR scale. CARB gathered VOC composition and sales information from manufacturers to create VOC emission profiles for different categories of aerosol coatings products. Using this composition information, CARB calculated the MIR-weighted emission limits that would achieve the same ozone reduction as would have been achieved by the existing mass-based emission limits. To determine compliance with the reactivity-weighted limits, the weight percent of each individual VOC in the product is multiplied by its corresponding MIR value and then summed for all VOCs in the product. All VOCs with MIR values, including those that are considered "negligibly reactive" under the national policy, are included in the calculation. For complex mixtures, such as mineral spirits, CARB performed analyses to assign appropriate MIR values for different mixtures. CARB intends to review and, as appropriate, update the reactivity scale used in the rule to incorporate the latest scientific information. EPA has proposed approval of this rule for inclusion in California's SIP (70 FR 1640, January 7, 2005) and expects to finalize this approval in the near future. EPA and CARB view this rule as an important opportunity to gather additional information about the effectiveness and practical implementation issues associated with a reactivity-based program.

V. Relationship to Existing VOC Exemption Policy

Although a continuous reactivity scale is likely to be the most effective approach for regulating VOCs in many areas of the country, such an approach is more difficult to develop and implement than traditional mass-based approaches because reactivity-based programs carry the extra burden of characterizing and tracking the full chemical composition of VOC emissions. In addition, although most existing VOC control programs do not discriminate between individual VOCs based on reactivity, they continue to provide significant ozone reduction benefits and will remain in place unless and until they are replaced by programs that achieve the same or greater benefits.

Under virtually all existing programs, EPA and States exclude certain negligibly reactive compounds from the regulatory definition of VOC and thus exempt them from regulation as ozone precursors. This exemption policy serves two important purposes:

(1) Because EPA does not give VOC reduction credit for programs that

[8] Reactivity Research Working Group. "Final Proceedings of Workshop on Combining Environmental Fate and Air Quality Modeling." Research Triangle Park, NC, 2000.

[9] Russell, A.G., J.B. Milford, M.S. Bergin, S. McBride, L. McNair, Y. Yang, W.R. Stockwell, and B. Croes. "Urban Ozone Control and Atmospheric Reactivity of Organic Gases." *Science* 269 (1995): 491–95.

[10] California Air Resources Board. "Initial Statement of Reasons for the Proposed Amendments to the Regulation for Reducing Volatile Organic Compound Emissions from Aerosol Coating Products." 2000.

reduce emissions of negligibly reactive compounds, control efforts are focused on emissions that contribute significantly to the formation and accumulation of ozone. The Agency continues to believe that it is not appropriate, and would be misleading, to give VOC reduction credit to States or industries for reducing emissions of compounds that have little or no effect on ozone concentrations.

(2) Because negligibly reactive compounds are not subject to regulation as VOCs, industry has an incentive to use negligibly reactive compounds in place of higher reactivity compounds. The exemption approach also creates a strong incentive for industry to invest in the development of negligibly reactive compounds and low reactivity formulations. The Agency continues to believe that the substitution of "VOC-exempt" compounds for regulated VOCs is an effective ozone control strategy, even though it is not as effective or efficient as the use of a continuous reactivity scale to encourage optimal substitutions in terms of ozone control.

Because the current exemption approach continues to serve these purposes, EPA will continue its efforts to identify negligibly reactive compounds and exclude them from the federal regulatory definition of VOC. The Agency expects that such compounds will also be exempt from state VOC control programs, with exceptions made for specific reactivity-based rules such as the CARB aerosol coatings rule.

Since 1977, EPA has used the reactivity of ethane as the threshold of negligible reactivity. Compounds that are less reactive than or equally reactive to ethane have been deemed negligibly reactive. Compounds that are more reactive than ethane continue to be considered reactive VOCs and subject to control requirements. The selection of ethane is based on a series of smog-chamber experiments that underlies the 1977 policy. In these experiments, various compounds were injected into a smog chamber at a molar concentration that was typical of the total molar concentration of VOCs in Los Angeles ambient air at the time (4 ppmv). NO_X was injected into the chamber at a concentration of 0.2 ppm, and as the chamber was exposed to sunlight, the maximum ozone formed in the chamber was measured. The maximum ozone formed in the chamber was compared to the level of the NAAQS, which at the time was 0.08 ppm of oxidants. Propane was the most reactive compound tested that did not cause a maximum ozone concentration greater than 0.08 ppm. Ethane was somewhat less reactive than propane. Based on these experiments, the Agency determined that ethane should be used as the benchmark for identifying compounds whose potential contribution to ozone formation was below regulatory concern.

A more recent modeling study conducted under the auspices of the RRWG replicated the essence of the 1970s smog chamber experiments using a state-of-the-art airshed model of the eastern United States. In this study, Carter *et al.* replaced all anthropogenic VOC emissions with ethane and found that ozone formation decreased almost as much as when all anthropogenic emissions of VOC were removed. When anthropogenic emissions were removed or when they were replaced with ethane, the model still predicted ozone concentrations greater than the level of the NAAQS due to emissions of NO_X and biogenic VOCs.[11]

The metric used to compare the reactivity of a specific compound to that of ethane has varied over time. The primary metric for comparison has been k_{OH}, the molar rate constant for reactions between the subject compound and the hydroxyl radical (OH). In several cases, EPA has also looked at comparisons of MIR values expressed on both a molar and a mass basis. Comparing MIR values on a molar basis versus a mass basis can lead to different conclusions about whether a compound is less reactive or more reactive than ethane. In two cases, acetone (60 FR 31633, June 16, 1995) and tertiary butyl acetate (69 FR 69293, November 29, 2004), EPA has exempted compounds based on the finding that the compounds are less reactive than ethane when compared using incremental reactivity values expressed on a mass basis, even though they were more reactive on a molar basis.

The molar comparison is more consistent with the original smog chamber experiments, which compared equal molar concentrations of individual VOCs, that underlie the selection of ethane as the threshold. The mass-based comparison is consistent with how MIR values and other reactivity metrics are applied in reactivity-based emission limits. The mass-based comparison is slightly less restrictive than the molar-based comparison in that a few more compounds qualify as negligibly reactive.

Given the two goals of the exemption policy articulated above, the Agency believes that ethane continues to be an appropriate threshold for defining negligible reactivity. Furthermore, in light of the second goal of encouraging environmentally beneficial substitutions, EPA believes that a comparison to ethane on a mass basis strikes the right balance between a threshold that is low enough to capture compounds that significantly affect ozone concentrations and a threshold that is high enough to exempt some compounds that may usefully substitute for more highly reactive compounds.

When reviewing compounds that have been suggested for VOC-exempt status, EPA will continue to compare them to ethane using k_{OH} expressed on a molar basis and MIR values expressed on a mass basis. Consistent with past practice, the Agency will consider a compound to be negligibly reactive as long as it is equal to or less reactive than ethane based on either one of these metrics. The Agency will also consider other reactivity metrics that are provided with adequate technical justification, such as metrics based on airshed modeling. States may also wish to identify VOC exemptions in their SIPs in order to encourage VOC substitutions that would reduce ozone formation.

In the past, concerns have sometimes been raised about the potential impact of a VOC exemption on environmental endpoints other than ozone concentrations, including fine particle formation, air toxics exposures, stratospheric ozone depletion, and climate change. EPA has recognized, however, that there are existing regulatory and non-regulatory programs that are specifically designed to address these issues, and the Agency continues to believe that the impacts of VOC exemptions on environmental endpoints other than ozone formation will be adequately addressed by these programs. The VOC exemption policy is intended to facilitate attainment of the ozone NAAQS, and questions have been raised as to whether the Agency has authority to use its VOC policy to address concerns that are unrelated to ground-level ozone. Thus, in general, VOC exemption decisions will continue to be based solely on consideration of a compound's contribution to ozone formation. However, if the Agency determines that a particular VOC exemption is likely to result in a significant increase in the use of a compound and that the increased use would pose a significant risk to human health or the environment that would not be addressed adequately by existing programs or policies, EPA reserves the

[11] Carter, William P. L., Gail S. Tonnesen, and G. Yarwood. "Investigation of VOC Reactivity Effects Using Existing Regional Air Quality Models." Report to the American Chemistry Council, Contract SC–20.0–UCR–VOC–RRWG, 2003.

right to exercise its judgment in deciding whether to grant an exemption.

In all but one of the past exemption decisions, EPA has exempted negligibly reactive VOCs from recordkeeping and reporting requirements as well as control requirements. Concerns have been raised that even negligibly reactive compounds, if present in sufficient quantities, can contribute significantly to ozone formation over large spatial scales. Without recordkeeping and reporting requirements, States and EPA have no regular mechanism for maintaining adequate emissions inventories of negligibly reactive compounds or tracking their collective contribution to ozone concentrations. One approach for addressing this issue would be to require recordkeeping and reporting of all negligibly reactive VOC emissions. The Agency recognizes, however, that efforts to develop State and local inventories of such emissions are a relatively low priority compared to other activities that are likely to be more important for reducing ozone concentrations. In particular, as noted above, efforts to develop speciated emissions inventories should be focused on highly reactive compounds because programs targeted at controlling emissions of these compounds are likely to be more effective than simply regulating all VOCs equally.

Another approach that would allow policymakers to track potential increases in emissions of negligibly reactive compounds would be to ask manufacturers who are responsible for VOC exemption petitions to provide EPA with periodic estimates of the magnitude and distribution of emissions of the exempted compound. Although such an approach would not provide detailed information about the location of such emissions, this type of spatial definition is relatively unimportant for compounds with negligible reactivity. The Agency believes that parties submitting VOC exemption requests may be able to provide emissions estimates that are sufficient for purposes of tracking the potential effects of VOC-exempt compound emissions on regional air quality. The Agency may consider such an approach in the future.

VI. Summary

EPA encourages States, and particularly those with persistent ozone nonattainment problems, to consider recent scientific information on VOC reactivity and how it may be incorporated into the development of ozone control measures. Using reactivity information, States may be able to improve the effectiveness and efficiency of their VOC control policies. EPA encourages all interested parties to continue to work through the RRWG to improve the scientific foundation for reactivity-based regulatory approaches. Although most existing VOC control programs do not discriminate between individual VOCs based on reactivity, they continue to provide significant ozone reduction benefits and will remain in place unless and until they are replaced by programs that achieve the same or greater benefits. Therefore EPA will continue its policy of granting VOC exemptions for compounds that are negligibly reactive. EPA will continue to evaluate new scientific information regarding VOC reactivity and will update this interim guidance as appropriate. This interim guidance does not change any existing rules.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 25, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 05–18015 Filed 9–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7967–8]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This action announces the availability of EPA decisions identifying water quality limited segments and associated pollutants in Nevada to be listed pursuant to Clean Water Act Section 303(d)(2), and requests public comment. Section 303(d)(2) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On September 1, 2005, EPA partially approved and partially disapproved Nevada's 2004 submittal. Specifically, EPA approved Nevada's listing of 205 water body-pollutant combinations, and associated priority rankings. EPA disapproved Nevada's decisions not to list 98 water body-pollutant combinations. EPA identified these additional water bodies and pollutants along with priority rankings for inclusion on the 2004 Section 303(d) list.

EPA is providing the public the opportunity to review its decisions to add waters and pollutants to Nevada 2004 Section 303(d) list, as required by EPA's Public Participation regulations. EPA will consider public comments in reaching its final decisions on the additional water bodies and pollutants identified for inclusion on Nevada's final lists.

DATES: Comments must be submitted to EPA on or before October 13, 2005.

ADDRESSES: Comments on the proposed decisions should be sent to David Smith, TMDL Team Leader, Water Division (WTR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972–3416, facsimile (415) 947–3537, e-mail *smith.davidw@epa.gov*. Oral comments will not be considered. Copies of the proposed decisions concerning Nevada which explain the rationale for EPA's decisions can be obtained at EPA Region 9's Web site at *http://www.epa.gov/region9/water/tmdl/index.html* by writing or calling Mr. Smith at the above address. Underlying documentation comprising the record for these decisions is available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: David Smith at (415) 972–3416 or *smith.davidw@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each State identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards. For those waters, States are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, Nevada submitted to EPA its listing decisions under section 303(d)(2) on June 2, 2004. Nevada submitted

supplemental data and information on July 9, 2005 and August 25, 2005. On September 1, 2005, EPA approved Nevada's listing of 205 water body-pollutant combinations and associated priority rankings. EPA disapproved Nevada's decisions not to list 98 water body-pollutant combinations. EPA identified these additional waters and pollutants along with priority rankings for inclusion on the 2004 section 303(d) list. EPA solicits public comment on its identification of 98 additional water body-pollutant combinations, for inclusion on Nevada's 2004 Section 303(d) list.

Dated: September 1, 2005.

Alexis Strauss,

Director, Water Division, Region IX.

[FR Doc. 05–18093 Filed 9–12–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Thursday, September 15, 2005

September 8, 2005.

The Federal Communications Commission will hold an Open Meeting on Thursday, September 15, 2005, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC. The meeting will focus on presentations regarding the effects of Hurricane Katrina on communications services in the Gulf Coast states.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Make your request as early as possible; please allow at least 5 days advance notice. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18249 Filed 9–9–05; 1:22 pm]

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 October 7, 2005.

A. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. CB Financial Inc., Carmichaels, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank, N.A., Washington, Pennsylania.

Board of Governors of the Federal Reserve System, September 7, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–18049 Filed 9–12–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (EDT), September 19, 2005.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Telephonic—parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the August 15, 2005, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. FY 2005 expenditures, proposed FY 2006 budget, and FY 2006 estimate.

Parts Closed to the Public

4. Procurement matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: September 8, 2005.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 05–18185 Filed 9–8–05; 4:40 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–05–0314]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5983 and

send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Cycle 7 of the National Survey of Family Growth (NSFG–7)—OMB No. 0920–0314—Reinstatement with change—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Survey of Family Growth (NSFG) has been conducted periodically since 1973 by the CDC's National Center for Health Statistics. The first five cycles were based on in-person interviews with national samples of women 15–44 years of age. Cycle 6, in 2002, was based on interviews with a national sample of 12,571 persons—4,928 men and 7,643 women ages 15–44. Interviews provided national estimates of behavior related to birth and pregnancy rates; marriage, divorce, and adoption; behavior related to the risk of Human Immunodeficiency Virus (HIV) and other sexually transmitted diseases; attitudes toward marriage, childbearing, and parenthood; and men's and women's roles in raising children.

While the content of Cycle 7 will be similar to that of Cycle 6, the interviewing will be conducted over a 4-year period rather than being completed in one year, as in previous cycles. This continuous interviewing design is intended to reduce costs, increase efficiency, and contribute to continuous improvement in the collection, processing, and dissemination of the data. Sample size is expected to increase from 12,571 in Cycle 6 to 17,400 total in the 4 years of data collection in Cycle 7. For this cycle, the "Pretest" will be conducted initially in the first 8 weeks of interviewing and, if no problems are found, those weeks will become part of the Main Study. If operational problems are found in that period, they will be corrected, and the "Main Study" will begin at that point. The burden table represents the survey collection averaged over the first three years of data collection.

Users of the NSFG include: the National Institutes of Health's National Institute of Child Health and Human Development and the Office of Population Affairs; CDC's NCHS, Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion(NCCDPHP); Divisions of HIV/AIDS Prevention, National Center for HIV, STD, & TB Prevention (NCHSTP); and the Department's Office of the Assistant Secretary for Planning and Evaluation, and Administration for Children and Families. There is no cost to respondents other than their time to participate.

ESTIMATED AVERAGE ANNUALIZED HOUR BURDEN

Survey and type of respondents	Number of respondents	Responses per respondent	Avg. burden per response (in hours)	Total burden hours.
Pretest				
Screener	403	1	5/60	34
Males	109	1	1	109
Females	133	1	1.33	177
Main Study				
Screener	7,250	1	5/60	604
Males	1,957	1	1	1,957
Females	2,393	1	1.33	3,183
Total				6,064

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–18056 Filed 9–12–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Financial Status Reporting Form for the Program of State Council on Developmental Disabilities.

OMB No.: 098—0212.

Description: For the program of the State Council on Developmental Disabilities, funds are awarded to State agencies contingent on fiscal requirements in Subtitle B of the Developmental Disabilities Assistance and Bill of Rights Act. The SF–269, ordinarily mandated in the revised OMB Circular A–102, provides no accounting breakouts necessary for proper stewardship. Consequently, the proposed streamlined form will substitute for the SF–269 and will allow compliance monitoring and proactive compliance maintenance and technical assistance.

Respondents: State Councils and Designated State Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Financial Status Reporting Form for program of State Council on Developmental Disabilities	55	1	8	440

Estimated Total Annual Burden Hours: 440.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication:

Dated: September 7, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–18045 Filed 9–12–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0354]

Consumer-Directed Promotion of Regulated Medical Products; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing on direct-to-consumer (DTC) promotion of regulated medical products, including prescription drugs for humans and animals, vaccines, blood products, and medical devices. FDA is particularly interested in hearing the views of individuals and groups most affected by DTC promotion, including consumers, patients, caregivers, health professionals (physicians, physicians' assistants, dentists, nurses, pharmacists, veterinarians, and veterinarian technicians) managed care organizations, and insurers, as well as the regulated industry. FDA is seeking input on a number of specific questions, but is interested in any other pertinent information participants in the hearing would like to share.

Dates and Times: The public hearing will be held on November 1 and 2, 2005, from 9 a.m. to 5 p.m. Submit written or electronic notices of participation by close of business on October 11, 2005. Written and electronic comments will be accepted until February 28, 2006.

Location: The public hearing will be held at the National Transportation Safety Board Boardroom and Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594, 202–314–6421; Metro: L'Enfant Plaza station on the green, yellow, blue, and orange lines; see: *http://ntsb.gov/events/newlocation.htm.* (FDA has verified the Web site address, but FDA is not responsible for any changes to the Web site after this document publishes in the **Federal Register**.)

Addresses: Written or electronic notices of participation should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, or on the Internet at *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm.* Comments about the meeting or comments after the meeting should be submitted to *http://www.fda.gov/dockets/ecomments.* Written or electronic comments can be submitted to *http://www.fda.gov/oc/dockets/ecomments.* A consolidated list of all documents and other information related to the public hearing, such as the **Federal Register** notice, the agenda, public comments, and transcripts will be posted with their links, as the documents are made available, on the Center for Drug Evaluation and Research (CDER) Web site at *http://www.fda.gov/cder/ddmac.*

For further information contact: Rose Cunningham, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852, 301–443–5595, e-mail: *cunninghmar@cder.fda.gov.*

For registration to attend and/or to participate in the meeting: Seating at the hearing is limited. People interested in attending the meeting should register at *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm.* Registration is free and will be accepted on a first-come, first-served basis.

The procedures governing the hearing are found in part 15 (21 CFR part 15). Anyone wishing to make an oral presentation during the hearing must state this intention on the registration form (see *Addresses*). To participate, submit your name, title, business affiliation, address, telephone and fax numbers, and e-mail address.

A written statement also should be submitted at the time of registration for each discussion question to be addressed, with the names and addresses of all individuals who plan to participate, and the approximate time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. Individuals who have registered to make an oral presentation will be notified of the scheduled time for their presentation prior to the hearing. Depending on the number of presentations, FDA may need to limit the time allotted for each presentation. FDA has identified questions and subject matter of special interest in section III of this document, but presentations do not have to be limited to those questions. Presenters should

submit to the agency two copies of each presentation given. All participants are encouraged to attend the entire 2-day meeting.

If special accommodations are needed because of a disability, the registration contact person should be informed at the time of registration.

SUPPLEMENTARY INFORMATION:

I. Background

A. Definition of Terms and Regulatory Requirements

Under the Federal Food, Drug, and Cosmetic Act (the act), FDA has responsibility for regulating the labeling and advertising of prescription drugs and medical devices. If an activity or material is considered to be either advertising or labeling, it must meet certain requirements. The regulatory framework for prescription drug labeling and advertising is both more straightforward and more developed than is the regulatory framework for the labeling and advertising of medical devices.

Under section 201(m) of the act (21 U.S.C. 321(m)), labeling is defined as including "all labels and other written, printed, or graphic" materials "upon" or "accompanying" a regulated product. The term "accompanying" has been broadly defined by the Supreme Court (*Kordel* v. *United States*, 335 U.S. 345, 349–350 (1948)). FDA's regulations give examples of labeling materials, including brochures, mailing pieces, detailing pieces, calendars, price lists, letters, motion picture films, and sound recordings (§ 202.1 (21 CFR 202.1(1)(2))).

FDA regulates the labeling of all drugs and devices under its jurisdiction. Labeling must be truthful and nonmisleading (section 502(a) of the act (21 U.S.C. 352(a)). For human and veterinary prescription drugs, labeling must contain adequate directions/information for use that is the "same in language and emphasis" as the product's approved or permitted labeling (21 U.S.C. 352(f)) and 21 CFR 201.100(d) and 201.105(d)). This requirement is generally fulfilled by including the full approved labeling for the product (the "package insert") with the promotional materials. For devices, the requirement of 21 U.S.C. 352(f) applies as well, and a device is misbranded unless its labeling bears adequate instructions for use. A device that is safe only if used under the supervision of a licensed practitioner and for which adequate instructions for use can therefore not be provided, is exempt from this requirement if, among other things, all of its labeling that purports to furnish information on the use of the device also contains adequate information for such use, including indications, effects, routes, methods, and frequency and duration of administration and any relevant hazards, contraindications, side effects, and precautions, under which licensed practitioners can safely use the device for the purposes for which it is intended.

Although the act does not define what constitutes a prescription drug "advertisement," FDA generally interprets the term to include information (other than labeling) that is issued by, or on behalf of, a manufacturer, packer, or distributor and is intended to promote a product. This includes, for example, "advertisements in published journals, magazines, other periodicals, and newspapers, and advertisements broadcast through media such as radio, television, and telephone communication systems" (§ 202.1(l)(1)).

The act specifies that, in addition to the identity of the product and its quantitative composition, prescription drug advertisements must contain "other information in brief summary relating to side effects, contraindications, and effectiveness * * * " (21 U.S.C. 352(n)). FDA further defines this latter requirement in § 202.1(e). This requirement frequently is fulfilled by including the sections of the approved labeling that discuss the product's adverse event profile, contraindications, warnings, and precautions. In addition, the act and regulations specify that drugs are considered to be misbranded if their labeling or advertising is false or misleading in any particular or fails to reveal material facts (21 U.S.C. 352(a) and section 201(a) of the act (21 U.S.C. 321(n)), and § 202.1(e)).

FDA similarly regulates advertising for restricted devices. A "restricted device" is a device that may be restricted to the sale, distribution, or use only with the written or oral authorization of a licensed practitioner, or in accordance with other conditions if FDA determines that there cannot otherwise be reasonable assurance of its safety and effectiveness (section 502(e) of the act) 21 U.S.C. 360j(e)). Currently, three devices are restricted by regulation. FDA also restricts devices through the approval orders granted to many class III devices (21 U.S.C. 360e(d)(1)(B)(ii)).

According to the act, a restricted device is misbranded if its advertising is false or misleading in any particular (21 U.S.C. 352(q)), or if its advertising does not contain a brief statement of the intended uses of the device and relevant warnings, precautions, side effects and contraindications (21 U.S.C. 352(r)). There are currently no regulations establishing specific requirements for the content or format of the advertisements for restricted devices.

B. History of DTC Promotion

A summary of milestones in the history of DTC promotion, with embedded links to Web sites for additional background information, is given in this section of the document. A consolidated list of these documents and their links is available on the CDER Web site at *http://www.fda.gov/cder/ddmac*.

- In response to early instances of DTC promotion, FDA requested a voluntary moratorium on DTC promotion in a September 2, 1983, policy statement. During the moratorium, FDA sponsored a series of public meetings and conducted research.
- In the **Federal Register** of September 9, 1985 (56 FR 36677), the moratorium was withdrawn in a notice that stated that the current regulations governing prescription drug advertising provide "sufficient safeguards to protect consumers."
- In a July 1993 letter to the pharmaceutical industry, the agency asked drug manufacturers to voluntarily submit proposed DTC promotional material prior to use, allowing FDA the opportunity to review and comment upon proposed materials before they reach consumers.
- In the **Federal Register** of August 16, 1995 (60 FR 42581), FDA announced a part 15 hearing to be held on October 18 and 19, 1995. The agency solicited oral testimony and written responses to a series of questions concerning DTC promotion of prescription drugs. The transcripts of the public meeting are available on the CDER Web site at *http://www.fda.gov/cder/ddmac/meetings.htm*.
- In the **Federal Register** of May 14, 1996 (61 FR 24314), FDA published a notice making it clear that FDA has never required preclearance of consumer-directed prescription product promotion prior to use and also soliciting additional information to help in the development of overall policy related to consumer-directed promotion of prescription products and restricted devices. This notice is available on the CDER Web site at *http://www.fda.gov/cder/ddmac*.
- In the **Federal Register** of August 12, 1997 (62 FR 43171), FDA announced the availability of a draft guidance for industry describing ways in which consumer-directed broadcast

advertisements could make "adequate provision" for the dissemination of the approved or permitted labeling in connection with the broadcast ad. FDA revised the draft guidance and published it as a final guidance on August 9, 1999 (64 FR 43197). The guidance and a document entitled "Consumer-Directed Broadcast Advertisements Guidance: Questions and Answers" is available on CDER's Web site at *www.fda.gov/cder/guidance/index.htm.*

- In February 2004, FDA published a notice of availability and requested public comment on three draft guidances pertaining to consumer-directed promotion of medical products. Comments on these draft guidances are under consideration:

1. "Consumer-Directed Broadcast Advertising of Restricted Devices" available on the Center for Devices and Radiological Health (CDRH) Web site at *http://www.fda.gov/cdrh/comp/guidance/1513.pdf.*
2. "Brief Summary: Disclosing Risk Information in Consumer-Directed Print Advertisements" available on the CDER Web site at *http://www.fda.gov/cder/guidance/index.htm.*
3. "'Help-Seeking' and Other Disease Awareness Communications by or on Behalf of Drug and Device Firms" available on the CDER Web site at *http://www.fda.gov/cder/guidance/index.htm.*

The public comments on these draft guidances are available at *http://www.fda.gov/ohrms/dockets.*

- FDA conducted research to examine how DTC promotion affects the patient-physician relationship. On September 22 and 23, 2003, FDA held a public meeting at which the agency and other persons and organizations presented the results of their research on DTC promotion of prescription drugs through print, broadcast, and other types of media. The agenda, presentations, and transcripts from the public meeting are posted on the CDER Web site at *http://www.fda.gov/cder/ddmac/DTCmeeting2003.html.*
- On November 19, 2004, FDA published the results of its research in a report entitled "Patient and Physician Attitudes and Behaviors Associated with DTC Promotion of Prescription Drugs—Summary of FDA Survey Research Results." The final report is posted on the CDER Web site at *http://www.fda.gov/cder/ddmac/researchka.htm.*

Medical device DTC promotion has not received as much FDA attention because, until recently, there had not been a significant amount of DTC device promotion except in limited areas. To date, FDA has not conducted research specifically on the effects of DTC device promotion. Because of recent increases in DTC device promotion and a growing awareness among consumers that medical devices may give them important choices, FDA wants to use this public hearing as a forum for those interested in, and affected by, DTC promotion of medical devices.

C. Implementation of Current Regulations

There are no regulations that specifically address consumer-directed promotional materials. Therefore, since 1985 FDA has applied the act and the prescription drug advertising regulations to both professional and consumer-directed promotion. Nor does the act distinguish between consumer and professional audiences in its requirement for disclosure of relevant risk information in prescription drug or restricted device advertising. Nonetheless, FDA recognizes and accounts for the differences between healthcare professionals and consumers as recipients of drug promotion, including differences in medical and pharmaceutical expertise, perception of pharmaceutical claims, and information processing. For these reasons, in its regulation of DTC promotion, FDA has tried to ensure that adequate contextual information for benefits and risks is presented and to encourage sponsors to provide such information in language understandable to consumers.

D. Pending Citizen Petitions

We note that FDA has received a number of citizen petitions that address DTC promotion. The positions advocated by these petitions vary considerably. One petition (Docket No. 1991P–0337) requests that FDA ban direct-to-consumer advertising of prescription drugs. A second petition (Docket No. 1991P–0227) requests that FDA not adopt or institute any significant new restrictions to existing regulations nor mandate prior approval of consumer-directed advertising. A third petition (Docket Nos. 1989P–0505 and 1995P–0104), updated and reissued by the petitioner, maintains that consumer-directed prescription drug advertising should not be regulated under § 202.1. It also maintains: (1) That FDA should issue new regulations to address prescription drug advertisements directed to consumers and (2) that until such time as new regulations are established, FDA should issue a policy statement and regulation stating that prescription drug advertisements directed to the general public are exempt from the advertising regulations under § 202.1. Finally, two petitions (Docket No. 1995P–0224/CP1 & CP2) reference and reiterate requests of earlier petitions to stop regulating DTC advertising under § 202.1 and also maintain that such regulations violate the First Amendment. Consistent with 21 CFR 10.30(h)(2), FDA intends to use this public hearing to further explore the issues raised in these citizen petitions and hereby incorporates the records in these citizen petition dockets into this docket.

II. Purpose and Scope of the Hearing

This hearing is intended to provide an opportunity for broad public participation and comment concerning consumer-directed promotion of regulated medical products, including human and animal prescription drugs, vaccines, blood products, and medical devices. FDA is particularly interested in hearing the views and comments from the public as to whether, and if so how, the agency's current regulations and the agency's interpretation of those regulations and actions under them should be modified to better address consumer-directed promotion of regulated products. FDA is holding this hearing because it believes the agency, the industry, and other members of the public now have enough experience with DTC promotion to understand what regulatory issues may need to be addressed in new FDA activities.

III. Issues for Discussion

Part of FDA's mission is to protect public health by helping to ensure that the promotion of medical products directed to professionals and consumers is truthful, not misleading, and contains balanced risk and benefit information. The effects of DTC promotion have been widely discussed. Proponents of DTC promotion argue that it has educational value and will improve the physician-patient relationship, increase patient compliance with drug therapy and physician visits, and generally satisfy consumer interest in obtaining desired drug information. Opponents contend that consumers do not have the expertise to accurately evaluate and comprehend prescription drug advertising; that physicians will feel pressure to prescribe drugs that are not needed; and that DTC promotion will damage the physician-patient relationship and increase drug prices.

The agency invites comment at the public hearing on the general concept of DTC promotion and its role and consequences, positive or negative; on the topics outlined in the following paragraphs; and on any aspect of DTC that is of interest to a presenter.

1. Does current DTC promotion present the benefits and risks of using medical products in an accurate, nonmisleading, balanced, and understandable way?

• *Presentation of information on benefits and the limitations of benefits*

A drug or device's approved use, or indication, is a critical piece of information for a person deciding whether to take a drug product or use a medical device. Products often have important limitations to their use, and these too need to be understood by a potential user. Some products, for example, work only in certain populations, or work with limited success; some products work only in combination with other products, or should only be used if other treatments have failed. FDA is interested in hearing whether the indications of a drug or device can be effectively communicated to a lay audience under the confines of DTC promotion and, in particular, whether the limitations of benefit can be properly communicated. FDA is also specifically interested in whether paying greater attention to the educational component of an advertisement (i.e., devoting more attention to defining the disease and its manifestations) would help consumers better understand the role drug and device therapy may play in treating that disease. More broadly, do DTC promotional ads directed at the nonmedical community need additional educational content about the disease or condition? What is the potential role of reminder ads[1] in all types of consumer promotion, such as broadcast, print, and the Internet?

One important consideration in understanding how to use prescription drugs and medical devices is the risk-benefit tradeoff. Research conducted by FDA and reported on in 2004 on patient and physician views of DTC prescription drug promotion has shown that patients and physicians believe that DTC promotion overemphasizes the benefits of prescription drugs relative to risk information. Moreover, although almost 80 percent of physicians thought that patients understood the benefits of the drug, only 30 percent of physicians believed that patients adequately understood the limitations of drug efficacy. In addition, about 60 percent of patients believed that DTC ads portray the drug as better than it really is, and about 40 percent of patients thought that the ads make it seem like the drug will work for everyone. In the 2002 patient survey, FDA found that 60 percent of patients believed that DTC ads do not provide enough risk information and, in the 2002 physician survey, 60 percent of physicians thought that patients did not understand the risks and possible negative effects of the advertised drug.[2] Despite these negative views of the adequacy of risk information, we know that risk information, as required by the regulations, is present in all compliant full-product advertisements. The agency is interested in hearing why consumers and healthcare providers may believe that risk information is not being communicated as clearly as benefit information, even though that information is present. FDA has not conducted comparable research in the area of device promotion, but part of the purpose of this meeting is to answer questions applicable to devices as well as to drugs.

Consumer audiences include a wide range of specific audiences, such as patients with fatal illnesses, the elderly or children, or caregivers. Although some DTC promotion, such as television ads, is directed to a broad audience, DTC promotion can also be targeted to a specific population. One example of such promotion is a product brochure that a healthcare professional gives to a patient along with a prescription for the product. Some consumer audiences may be more susceptible to being misled by false or misleading promotion. Should the agency take the population targeted by DTC promotion into account as it considers the regulatory framework for DTC promotion? If so, what are the additional issues that FDA should consider with respect to DTC promotion that reaches or targets specific consumer populations?

• *Presentation of risk information*

The prescription drug regulations require that advertisements present a fair balance of benefit and risk information (§ 202.1(e)(5)(ii)). They also specify that risk information be presented with a prominence and readability reasonably comparable to claims about drug benefits (§ 202.1(e)(7)(viii)). Although there are no specific regulations addressing the "fair balance" of device promotion, the requirements in the statute and the regulations for a "brief statement" of intended use and relevant risk information reflect the same concepts as those inherent in the fair balance requirement. In DTC promotion, FDA has interpreted these requirements to mean that a balanced discussion of the risks and benefits should appear in the body of the promotional material, and FDA has encouraged sponsors to provide such information in language understandable by consumers. Balancing information is intended to provide a framework for the consumer to understand and evaluate drug benefit claims in an informed manner. These disclosures also serve to facilitate and focus the physician-patient interaction. How could the content and format of risk information in promotional pieces be better communicated to consumers? Because consumers sometimes lack advanced medical knowledge, how can FDA help ensure that those consumers who are not medical experts understand a product's risks?

The specific forms of presentation in DTC prescription drug ads, particularly in television broadcast ads, may affect consumers' understanding of a product's risks. For example, the ad may continue to present positive scenes of individuals enjoying the benefits of the advertised product during the presentation of risk information, which is usually presented separately from the benefit information. Do such common advertising techniques create barriers to consumers' understanding of risk information?

• *Use of certain standard advertising strategies*

Advertising strategies typically used in nonmedical settings have raised concern when such strategies are applied to prescription drugs or restricted devices. For example, some companies offer consumers coupons, free samples, free trials, and money-back guarantees for prescription drugs in both full-product as well as reminder advertisements (which do not inform the consumer about the benefits or risks associated with the product). Are these approaches appropriate ways to influence consumers?

Another standard marketing technique uses real people, or actors portrayed as real people, to provide positive reports (testimonials) about an advertised product. Applied to medical products, this technique portrays patients who describe how a drug or device helped them manage their medical condition. In rarer instances, healthcare providers, or actors portraying them, vouch for the use of the product. Such approaches plainly do not reflect a data-oriented approach to promotion and may not be recognized by consumers as anecdotes. FDA is interested in whether and how techniques mislead consumers about the risk-benefit tradeoffs of prescription or restricted medical products.

[1] "Reminder ads" and "reminder labeling" contain the name of the drug and other limited information, but exclude all representations or suggestions about the drug(s). See 21 CFR 201.100(f), 202.1(e)(2)(i), and 801.109(d).

[2] The 2004 final report on these surveys can be found at *http://cdernet/ddmac/www-site/researchka.htm.*

• *Use of comparative DTC promotion*

Promotion that compares one product to another or to several others is becoming more common in DTC promotion. Given that this information is often scientific or numerical in nature, how can companies convey this information in a way that is informative to consumers without advanced education, and how well are companies currently doing this? One possibility is that for such promotion to be considered not misleading, it would need to provide greater than usual contextual information about how efficacy is measured; what the side effects of the various drugs, drug classes, and devices are; and whether any advantages of a drug or a device are accompanied by disadvantages.

2. Could changes in certain required prescription drug disclosures—the package insert for print "promotional" labeling and the brief summary for print advertisements—improve the usefulness of this information for consumers?

For prescription drugs, the act requires that labeling bear "adequate directions for use" of the product (21 U.S.C. 352(f)). As previously described in this document, this requirement is generally satisfied by including the entire package insert (approved product labeling) with a promotional labeling piece. However, as the package insert is written in technical language intended for healthcare professionals, its value for consumers is questionable. For promotional labeling, is the current package insert the best way to meet the requirement to bear adequate directions for use in consumer-directed materials? Are there ways to modify the content, format, and language of the package insert that would make this information more easily understood by consumers?

Advertisements that make claims about the product must include a "true statement of * * * other information in brief summary relating to side effects, contraindications, and effectiveness" (21 U.S.C. 352(n)). This statement is known as the "brief summary." This requirement is generally satisfied by reprinting the relevant sections of the package insert as the brief summary and, for this reason, its value for consumers is also questionable. As discussed in section II of this document, FDA has issued a draft guidance entitled "Brief Summary: Disclosing Risk Information in Consumer-Directed Print Advertisements." The draft guidance gives several recommended alternatives to reprinting parts of the package insert as the brief summary for DTC prescription drug print advertisements. FDA is considering the comments that have been submitted to the Docket, but is interested in any additional comments on these brief summary recommendations and on other brief summary alternatives that would make the required disclosure more understandable to consumers.

FDA is currently conducting research on the content and format of the brief summary in DTC print ads for prescription drugs and will make these results available when the research is completed.

3. Could changes in the requirements for disclosure of certain information in broadcast advertising improve the usefulness of this information for consumers?

Advertisements broadcast through media such as television, radio, or telephone communications systems must disclose the product's major risks (i.e., side effects, warnings, precautions, and contraindications) in either the audio or audio and visual parts of the presentation (§ 202.1(e)(1)). This is commonly referred to as the "major statement." The major statement must convey the product's most important risk information and be presented as an integral part of the broadcast advertisement. It is typically presented in language that consumers can understand. Nevertheless, the major statement is a relatively brief disclosure, and many have questioned the ability of consumers to comprehend and process the information.

Broadcast advertisements are, in addition, required to present a brief summary or, alternatively, make "adequate provision * * * for dissemination of the approved or permitted package labeling in connection with the broadcast presentation" (§ 202.1(e)(1)). The latter is referred to as the "adequate provision" requirement. FDA's guidance "Consumer-Directed Broadcast Advertisements" describes an approach that FDA believes fulfills the adequate provision requirement for broadcast advertisements. Are there alternatives that would improve how adequate provision is made for dissemination of labeling to consumers?

The major statement, together with adequate provision for dissemination of the product's approved labeling, provides the information disclosure required for broadcast advertisements.

Is there a way to improve the usefulness of this critical information?

4. Is there a way to make information in DTC promotion of medical devices more useful to consumers?

Many of the act's requirements apply to both drug and device promotion. Hence, many of the principles used to regulate prescription drug advertising also apply to device advertising. Nevertheless, there are no regulations pertaining to restricted device advertising. FDA is committed to ensuring that consumers have accurate and nonmisleading information concerning restricted medical devices.

The act does not distinguish between broadcast and print advertising formats in its requirement for a brief statement of a restricted device's intended use and relevant risk information. There are no regulations that provide specific requirements or interpretation of the statutory requirement regarding advertising of restricted devices. Part of the agency's purpose in holding this hearing is to gather information on whether regulations governing restricted device advertising are necessary and, if so, what aspects of advertising should be addressed.

5. As new communication technologies emerge, they create opportunities for novel approaches to DTC promotion. What issues should the agency consider with regard to the effect of these technologies on DTC promotion?

The current regulations were written at a time when promotion was directed toward physicians and most promotional pieces were static print displays. Not only has the target for these promotions broadened—most notably to include consumers—but the modes of dissemination have changed and continue to evolve. For several years now, DTC promotion has occurred on television and on the radio; both vehicles are quite different from standard print media. In addition, FDA research has shown great increases in the number of people who now use the Internet to search for information about prescription drugs. Drug companies produce video news releases, audio news releases, and print "advertorials," which are disseminated to TV and radio stations. At times, TV and radio stations do not make it clear to consumers that such promotional pieces are generated by regulated industry. The agency is interested in hearing the public's views on these promotional techniques and the issues they raise.

6. What action should FDA take when companies disseminate violative promotional material to consumers?

For most prescription drugs and all devices, there is no requirement that companies submit their promotional materials to FDA before using them, and the U.S. Constitution limits the agency's ability to preclear promotional materials. Rather, companies must submit prescription drug promotional pieces at the time of their initial use in public. Device promotional pieces are not subject to a submission requirement. Under section 502(n) of the act, FDA can require that sponsors obtain preapproval of prescription drug advertisements only in "extraordinary circumstances." As a result, FDA's review of promotional materials is almost wholly post hoc, (i.e., after the materials have already appeared in public). Consequently, any enforcement action that FDA takes will also be post hoc.

Most of FDA's enforcement actions ask sponsors to stop using the violative materials. In some cases, for both professional- and consumer-directed pieces, FDA also asks sponsors to run corrective advertisements or issue corrective promotional materials to remedy misimpressions created by false or misleading materials. The agency is interested in hearing views on this type of enforcement approach for consumer-directed promotional materials as well as other enforcement approaches that might protect the public health.

IV. Notice of Hearing Under Part 15

The Commissioner of Food and Drugs (the Commissioner) is announcing that the public hearing will be held in accordance with part 15. The Commissioner will designate a presiding officer, who will be accompanied by senior management from the Office of the Commissioner, the Center for Biologics Evaluation and Research, CDER, CDRH, and the Center for Veterinary Medicine.

Persons who wish to make an oral presentation during the part 15 hearing must file a written or electronic notice of participation with the Division of Dockets Management (see *Addresses*). To ensure timely handling, any outer envelope or subject heading should be clearly marked with the docket number found in brackets in the heading of this document along with the statement "Consumer-Directed Promotion of Medical Products." Groups should submit two written copies. The notice of participation should contain the person's name; address; telephone number; affiliation, if any; the sponsor of the presentation (e.g., the organization paying travel expenses or fees), if any; a brief summary of the presentation (including the specific discussion questions that will be addressed); and approximate amount of time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. FDA asks that participants set aside both days of the meeting so that the agency can group presentations on similar topics. The agency will let the participants know as soon as possible the time and date the participant is scheduled to present. FDA may also ask participants to rank order presentation topics, and FDA may need to restrict the time allotted to each participant. If time permits, FDA may allow interested persons attending the hearing who did not submit a written or electronic notice of participation in advance to make an oral presentation at the conclusion of the hearing. The hearing schedule will be available at the hearing. After the hearing, the hearing schedule will be placed on file in the Division of Dockets Management under the docket number found in brackets in the heading of this document.

Because of limited seating at the conference facility, FDA requests that organizations restrict their number of attendees at the meeting to five.

Under § 15.30, the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation.

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10, subpart C (21 CFR part 10, subpart C)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b).

Any handicapped persons requiring special accommodations to attend the hearing should direct those needs to the contact person (see *For further information contact*).

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

V. Request for Comments

Interested persons may submit to the Division of Dockets Management (see *Addresses*) written or electronic notices of participation and comments for consideration at the hearing. To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open following the hearing. Persons who wish to provide additional materials for consideration should file these materials with the Division of Dockets Management. You should annotate and organize your comments to identify the specific questions to which they refer (see section III of this document). Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number at 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. Transcripts of the hearing also will be available for review at the Division of Dockets Management.

VI. Transcripts

The transcript of the hearing will be available 30 days after the hearing on the Internet at *http://www.fda.gov/ohrms/dockets*, and orders for copies of the transcript can be placed at the meeting or through the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Dated: September 6, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–18040 Filed 9–9–05; 8:52 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[DHS–2005–0061]

Data Privacy and Integrity Advisory Committee

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The notice announces the date, time, location, and agenda for the next meeting of the Department of Homeland Security Data Privacy and Integrity Advisory Committee. This meeting will include a partially closed session.

DATES: This meeting will be held on Wednesday, September 28, 2005, in Bellingham, Washington.

ADDRESSES: The Department of Homeland Security Data Privacy and Integrity Advisory Committee meeting will be held in the Ballroom at the Hotel Bellwether, One Bellwether Way, Bellingham, Washington, 98225. If you wish to submit comments, you must do so by September 20, 2005. Comments must be identified by DHS–2005–0061 and may be submitted by *one* of the following methods:

- *EPA Federal Partner EDOCKET Web site: http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site.
- *E-mail: PrivacyCommittee@dhs.gov.* Include docket number in the subject line of the message.
- *Fax:* 571–227–4171.
- *Mail:* Ms. Rebecca J. Richards, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Arlington, VA 22202.

Instructions: All submissions received must include the Department of Homeland Security and DHS–2005–0061, the docket number for this action. All comments received will be posted without change to *http://www.epa.gov/feddocket*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.*

ADDRESSES: Persons who are unable to attend or speak at the meeting may submit comments at any time.

- E-mail: PrivacyCommittee@dhs.gov.
- Fax: (571) 227–4171.
- Mail: Rebecca J. Richards, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Arlington, VA 22202.

All comments received will be posted without change to *http://www.dhs.gov/privacy*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Nuala O'Connor Kelly, Chief Privacy Officer, or Rebecca J. Richards, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Arlington, VA 22202 by telephone (571) 227–3813, by facsimile (571) 227–4171, or by e-mail *PrivacyCommittee@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS) Data Privacy and Integrity Advisory Committee (Committee) will be meeting on Wednesday, September 28, 2005, in the Ballroom at the Hotel Bellwether, One Bellwether Way, Bellingham, Washington, 98225. The meeting will begin at 8:30 a.m. and continue until 5 p.m. Although most of the meeting is open to the public, there will be a closed session between 12:30 p.m. and 2 p.m., during which Committee members will receive a sensitive briefing regarding screening programs proposed for the Transportation Security Administration's Secure Flight Program.

In the morning, the Committee will receive a report from the Chief Privacy Officer of DHS, the Federal Privacy Commissioner of Canada, and the Assistant Administrator for the Secure Flight program of the Transportation Security Administration (TSA). Reports from two of the four subcommittees, and a panel presentation about the use of radio frequency identification technology, will conclude the morning session. In the afternoon, the remaining two subcommittees will report to the Committee, and there will be a panel discussion about risk-based analysis and privacy from privacy and technology experts.

Public comments will be accepted during the meeting, between 4:30 p.m. and 5 p.m., All those who wish to testify during this time may register in advance or sign-up on the day of the meeting. In order to allow as many people as possible to testify, witnesses should limit their remarks to three minutes. Due to limited seating, any member of the public who wishes to attend the public session should provide his or her name no later than 12 p.m. E.S.T., Friday, September 23, 2005, to Rebecca J. Richards via email at *PrivacyCommittee@dhs.gov*, or via telephone at (571) 227–3813.

Photo identification will be required for entry on the day of the meeting to verify those individuals who have registered for the public session, and everyone who plans to attend should be present and seated by 8:15 a.m., or 1:45 p.m., if only attending the afternoon session. Registration information required for attendance will be used for verification purposes on the day of the meeting. Attendance information, including names of members of the public attending, may be made public as part of the official meeting minutes.

Persons with disabilities who require special assistance should indicate this in their admittance request and are encouraged to identify anticipated special needs as early as possible.

Although every effort will be made to accommodate all members of the public, seating is limited and will be allocated on a first-come, first-served basis.

Basis for Closure

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended, 86 Stat. 770, the Secretary of Homeland Security has determined that a portion of this Privacy Advisory Committee meeting, as referenced above, is excluded from the Open Meetings requirement pursuant to the authority contained in 5 U.S.C. 552b(c)(9)(B).

Dated: September 9, 2005.

Nuala O'Connor Kelly,

Chief Privacy Officer.

[FR Doc. 05–18264 Filed 9–12–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD07–05–115]

Announcement of Public Hearing Regarding the Shakett Creek Pedestrian Bridge, Nokomis, FL Formerly Known as the Shakett Creek Railroad Bridge

AGENCY: Coast Guard, DHS.

ACTION: Notice of public hearing.

SUMMARY: The U.S. Coast Guard will hold a public hearing at the Venice High School, 1 Indian Avenue, Venice, Florida 34285 to provide the Shakett Creek Pedestrian Bridge owner, waterway users and other interested persons the opportunity to offer evidence and be heard as to whether any alterations of the Shakett Creek Pedestrian Bridge in Nokomis, Florida are necessary to provide reasonably free, safe and unobstructed passage for waterborne traffic.

DATES: The public hearing will be held at 7 p.m., October 12, 2005.

ADDRESSES: The hearing will be held at the Venice High School, 1 Indian Avenue, Venice, Florida 34285. Written comments may be submitted to Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432,

Miami, Florida 33131–3050. Commander (obr) maintains the public docket and comments and material received from the public will become part of docket [CGD07–05–115] and will be available for inspection or copying at the above address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, telephone number 305–415–6743.

SUPPLEMENTARY INFORMATION: The Coast Guard has received numerous comments from the public stating the Shakett Creek Pedestrian Bridge is unreasonably obstructive to navigation. The Coast Guard is conducting a detailed investigation in light of these comments. A public hearing is a required part of the detailed investigation process. All interested parties will have an opportunity to be heard and to present evidence as to whether any alteration of this bridge is needed and, if so, what alterations are needed, giving due consideration to the necessities of free and unobstructed water navigation.

Written statements and exhibits may be submitted in place of or in addition to oral statements and will be made part of the hearing record. Such written statements and exhibits may be delivered at the hearing or mailed to Chief, Bridge Operations Section, Seventh District Bridge Branch 909 SE 1st Avenue, Room 432, Miami, Florida 33131–3050.

Dated: August 30, 2005.

W.E. Justice,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 05–18148 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22418]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of teleconference meeting.

SUMMARY: The Licensing Implementation Working Group of the Towing Safety Advisory Committee (TSAC) will meet to discuss matters relating to specific issues of towing safety. The meeting will be open to the public.

DATES: The Licensing Implementation Working Group will meet via teleconference on Friday, September 16, 2005 from 10:30 a.m. to approximately 12 noon EDT. Written material and requests to make oral presentations should reach the TSAC working group Chairperson on or before September 14, 2005.

ADDRESSES: The Working Group will meet via conference call only. Contact Ms. Jennifer Carpenter, working group Chairperson, or her assistant, Ms. Amy Hewett at 703–841–9300 for the conference call telephone number and access code. Send written material and requests to make oral presentations to Ms. Jennifer Carpenter; American Waterways Operators; 801 North Quincy Street, Suite 200; Arlington, VA 22209 or *jcarpenter@vesselalliance.com*. This notice and related documents are available on the Internet at *http://dms.dot.gov* under the docket number USCG–2005–22418.

FOR FURTHER INFORMATION CONTACT: For general TSAC information you may also contact Mr. Gerald Miante, Assistant Executive Director of TSAC, telephone 202–267–0214, fax 202–267–4570, or e-mail *gmiante@comdt.uscg.mil*. If you plan to participate in this meeting, please notify both Mr. Miante and either Ms. Carpenter or Ms. Hewett by September 14, 2005.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended).

Agenda of Working Group Meeting

The agenda for the Licensing Working Group tentatively includes the following items:

(1) Time frame flexibility—

- Credit apprentice mate/steersman time at higher rate if individual is carried as an extra person;
- Model course;

(2) Combine inland and Western Rivers routes;

(3) Ability to upgrade from tonnage-limited Master of Towing Vessels to Master of Towing Vessels without tonnage limitation;

(4) Require towing endorsement for Master of Steam or Motor Vessels of Not More Than 500 Gross Tons. (Current regs allow Master 500 to operate towing vessels if he/she has either a towing endorsement or a completed Towing Officer's Assessment Record (TOAR);

(5) Clarify how Master of Towing Vessels can obtain a Standards of Training, Certification and Watchkeeping (STCW) certificate if needed;

(6) Reconcile apparent discrepancies between licensing regulations and Navigation and Vessel Inspection Circular (NVIC) 4–01, *Licensing and Manning for Officers of Towing Vessels*, regarding TOAR format;

(7) Clarify TOAR requirements for harbor tug operators. Can certain items be marked "Not Applicable" (N/A)?;

(8) Reconsider elements that may prolong time needed to complete a TOAR (e.g., operate in high water, high wind);

(9) Work with the Coast Guard to develop a communications plan aimed at mariners; and

(10) Proposed changes to NVIC 4–01. A letter proposing changes is available in the docket; the NVIC can be found on-line at: *http://www.uscg.mil/hq/g-m/nvic/index00.htm#2001*.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the working group Chairperson (as provided above in **ADDRESSES**) no later than September 14, 2005. Written material for distribution at the meeting should reach the Chairperson no later than September 14, 2005.

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 Ms. Carpenter or Ms. Hewett at the number listed in **ADDRESSES** as soon as possible.

Dated: September 8, 2005.

R.J. Petow,

Captain, U.S. Coast Guard, Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–18147 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3214–EM]

Alabama; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Alabama (FEMA–3214–EM), dated August 28, 2005, and related determinations.

EFFECTIVE DATE: August 28, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 28, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Alabama, resulting from Hurricane Katrina beginning on August 28, 2005, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, I declare that such an emergency exists in the State of Alabama.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect public health and safety, and property or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Ron Sherman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared emergency:

The counties of Baldwin, Choctaw, Clarke, Mobile, Sumter, and Washington for Public Assistance Categories A and B (debris removal and emergency protective measures), including direct Federal assistance, at 75 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–18097 Filed 9–12–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3215–EM]

Arkansas; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Arkansas (FEMA–3215–EM), dated September 2, 2005, and related determinations.

EFFECTIVE DATE: September 2, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 2, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Arkansas, resulting from the influx of evacuees from states impacted by Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, I declare that such an emergency exists in the State of Arkansas.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance, at 100 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Gary Jones, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared emergency:

All 75 counties in the State of Arkansas for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–18098 Filed 9–12–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3224–EM]

Colorado; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Colorado (FEMA–3224–EM), dated September 5, 2005, and related determinations.

EFFECTIVE DATE: September 5, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 5, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Colorado, resulting from the influx of evacuees from states impacted by Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, I declare that such an emergency exists in the State of Colorado.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program, at 100 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Douglas A. Gore, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Colorado to have been affected adversely by this declared emergency:

All 63 counties in the State of Colorado for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–18107 Filed 9–12–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1602–DR]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1602–DR), dated August 28, 2005, and related determinations.

EFFECTIVE DATE: September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 28, 2005:

Collier, Franklin, Okaloosa, and Walton Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–18095 Filed 9–12–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3220–EM]

Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3220–EM), dated September 5, 2005, and related determinations.

EFFECTIVE DATE: September 5, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 5, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Florida, resulting from the influx of evacuees from states impacted by Hurricane Katrina beginning on August 29, 2005, and continuing, is of

sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, I declare that such an emergency exists in the State of Florida.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program, at 100 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justin DeMello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared emergency:

All 67 counties in the State of Florida for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–18103 Filed 9–12–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3218–EM]

Georgia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Georgia (FEMA–3218–EM), dated September 5, 2005, and related determinations.

EFFECTIVE DATE: September 5, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 5, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Georgia, resulting from the influx of evacuees from states impacted by Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, I declare that such an emergency exists in the State of Georgia.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program, at 100 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Paul Fay, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared emergency:

All 159 counties in the State of Georgia for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–18101 Filed 9–12–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1604–DR]

Mississippi; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1604–DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended

to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 29, 2005:

Yazoo County for Individual Assistance and debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

The counties of Alcorn, Benton, Bolivar, Calhoun, Carroll, Coahoma, DeSoto, Grenada, Holmes, Humphreys, Issaquena, Lafayette, Leflore, Marshall, Montgomery, Panola, Pontotoc, Prentiss, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, and Yalobusha for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

The counties of Adams, Attala, Claiborne, Choctaw, Clarke, Copiah, Covington, Franklin, Hinds, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Neshoba, Newton, Noxubee, Oktibbeha, Rankin, Scott, Simpson, Smith, Warren, Wayne, and Winston for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–18096 Filed 9–12–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3222–EM]

North Carolina; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of North Carolina (FEMA–3222–EM), dated September 5, 2005, and related determinations.

EFFECTIVE DATE: September 5, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 5, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of North Carolina, resulting from the influx of evacuees from states impacted by Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, I declare that such an emergency exists in the State of North Carolina.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program, at 100 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Paul Fay, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared emergency:

All 100 counties in the State of North Carolina for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–18105 Filed 9–12–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3219–EM]

Oklahoma; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Oklahoma (FEMA–3219–EM), dated September 5, 2005, and related determinations.

EFFECTIVE DATE: September 5, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 5, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Oklahoma, resulting from the influx of evacuees from states impacted by Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, I declare that such an emergency exists in the State of Oklahoma.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program, at 100 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Carlos Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared emergency:

All 77 counties in the State of Oklahoma for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–18102 Filed 9–12–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3217–EM]

Tennessee; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Tennessee (FEMA–3217–EM), dated September 5, 2005, and related determinations.

EFFECTIVE DATE: September 5, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 5, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Tennessee, resulting from the influx of evacuees from states impacted by Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Tennessee.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program, at 100 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Paul Fay, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared emergency:

All 95 counties in the State of Tennessee for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–18100 Filed 9–12–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3216–EM]

Texas; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Texas (FEMA–3216–EM), dated September 2, 2005, and related determinations.

EFFECTIVE DATE: September 2, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 2, 2005, the President

declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Texas, resulting from the influx of evacuees from states impacted by Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Texas.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program, at 100 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Gary Jones, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared emergency:

All 254 counties in the State of Texas for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–18099 Filed 9–12–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3223–EM]

Utah; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Utah (FEMA–3223–EM), dated September 5, 2005, and related determinations.

EFFECTIVE DATE: September 5, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 5, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Utah, resulting from the influx of evacuees from states impacted by Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, I declare that such an emergency exists in the State of Utah.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program, at 100 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Douglas A. Gore, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Utah to have been affected adversely by this declared emergency:

All 29 counties in the State of Utah for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048. Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–18106 Filed 9–12–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3221–EM]

West Virginia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of West Virginia (FEMA–3221–EM), dated September 5, 2005, and related determinations.

EFFECTIVE DATE: September 5, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 5, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of West Virginia resulting from the influx of evacuees from states impacted by Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of West Virginia.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program, at 100 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Patricia G. Arcuri, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared emergency:

All 55 counties in the State of West Virginia for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–18104 Filed 9–12–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–C–03A]

Notice of HUD's Fiscal Year (FY) 2005 Notice of Funding Availability Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Community Development Technical Assistance NOFA; Competition Reopening Announcement

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs; Community Development Technical Assistance (CD–TA) NOFA; competition reopening announcement.

SUMMARY: On March 21, 2005, HUD published its Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA) Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. The CD–TA NOFA competition, which was included in the SuperNOFA, closed on June 1, 2005. This document announces the reopening of the CD–TA NOFA competition.

DATES: The new application submission date for the CD–TA is October 13, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis Shanks, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7218, Washington, DC 20410–7000; telephone 202–708–3176, extension 4626 (this is not a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On March 21, 2005 (70 FR 13575), HUD published its FY2005 SuperNOFA. The CD–TA, which was included in the SuperNOFA, made available approximately $30.1 million in HUD assistance. According to the SuperNOFA, the application submission date for the CD–TA NOFA was June 1, 2005. On May 11, 2005 (70 FR 24835), HUD published additional guidance to the General Section, which included a link to Frequently Asked Questions, located at *http://www.grants.gov/ForApplicants#*. Frequently asked questions can also be found on the HUD Web site at *http://www.hud.gov/offices/adm/grants/egrants/grantsgovfaqs.pdf*.

For the FY2005 CD–TA competition, HUD noted a significant decrease from previous funding competitions in the number of CD–TA applications submitted. The decrease also demonstrated a considerable reduction in the geographic diversity of applications. HUD understands that many eligible applicants may have had difficulty submitting their applications. Therefore, in order to give all NOFA applicants sufficient time to submit completed applications and ensure Grants.gov registration is complete, this notice published in today's **Federal Register** reopens the CD–TA NOFA competition. The new application submission date for the CD–TA NOFA competition is October 13, 2005.

Applicability of SuperNOFA General Section and CD–TA NOFA Requirements to Reopened Competition

Please note that the CD–TA NOFA competition description, application submission information, and application review information were published in the FY2005 SuperNOFA on March 21, 2005 (70 FR 13575). All requirements listed in the SuperNOFA General Section and in the CD–TA NOFA are applicable to this reopened competition except for those requirements explicitly changed by this notice (such as the due date and requirement for electronic submission).

Submission Instructions

If you have already submitted an application electronically through Grants.gov, you do not need to resubmit another application. If you submitted a paper application, however, without first obtaining a waiver from the electronic submission requirement, you must resubmit your application electronically or by paper submission. For the competition reopening, a waiver will not be required for paper submission, however electronic submissions are the preferred method.

An applicant that has already submitted its application does not need to resubmit another application. However, if an applicant chooses to make any changes to an application that has already been submitted, it must download a new application from Grants.gov, complete the application, and resubmit by the new deadline date. For the purpose of rating and ranking, HUD will review the most recent application and disregard any previously submitted application. If an applicant decides to resubmit an application, the newly submitted application must be complete. HUD will not accept partial amendments to applications that were previously submitted.

Applicants are encouraged to submit their applications through Grants.gov as described in the SuperNOFA. In addition, for this FY2005 reopened funding opportunity, an applicant may submit a paper application without requesting a waiver from this requirement. HUD does not intend to accept paper applications in the future without a waiver.

An applicant that chooses to submit a paper application must submit an original and two copies to: HUD Headquarters; Robert C. Weaver Federal Building; 451 Seventh Street, SW., Room 7218; Washington, DC 20410, Attention: CD–TA.

As described in section IV.F.5.b of the General Section, an applicant submitting a paper application must use the United States Postal Service (USPS) to submit its application to HUD. An applicant must take its application to a post office to get a receipt of mailing that provides the date and time the package was submitted to the USPS. USPS rules now require that large packages must be brought to a postal facility for mailing. In many areas, the USPS has made a practice of returning to the sender, large packages that have been dropped in a mail collection box. Paper copy applications submitted to the USPS by the submission date and time and received by HUD no later than 15 days after the established submission date will receive funding consideration. If the USPS does not have a receipt with a digital time stamp, HUD will accept a receipt showing USPS Form 3817, Certificate of Mailing with a dated postmark. The proof of submission receipt provided by the Postal Service must show receipt no later than the application submission deadline. An applicant whose application is determined to be late, that cannot furnish HUD with a receipt from the USPS that verifies the package was submitted to the USPS prior to the submission due date and time will not receive funding consideration. An applicant may use any type of mail service provided by the USPS to have their application package delivered to HUD in time to meet the submission requirements.

HUD will not accept hand delivery of applications.

Dated: September 6, 2005.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. E5–4971 Filed 9–12–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Devils River Minnow Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the approved recovery plan for the Devils River Minnow (*Dionda diaboli*). The Devils River minnow is known to occur in streams in Kinney and Val Verde Counties, Texas, and Coahuila, Mexico. The threats facing the species include: Habitat loss due to declining surface water flows from springs, pollution to streams, and impacts from nonnative species. The recovery plan outlines the necessary criteria, objectives and tasks to reduce these threats and accomplish the goal of delisting the Devils River minnow.

ADDRESSES: A copy of the final recovery plan may be requested by contacting Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758, or on the Internet at *http://www.fws.gov/endangered/recovery/*.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Austin Ecological Services Field Office, at the above address; telephone (512) 490–0057, facsimile (512) 490–0974.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service considers all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and others also take these comments into account in the course of implementing recovery plans.

The Devils River minnow (*Dionda diaboli*) was listed as threatened on October 20, 1999, under authority of the Act. A draft of the Devils River Minnow Recovery Plan was issued on February 23, 2005, and public comments and peer reviewer comments were received until April 11, 2005 (70 FR 8818). The Service received 10 responses during the comment period from interested parties. Of these, 6 provided substantive comments. We also received comments from 5 peer reviewers. The recovery plan was updated to address many of the comments and specific responses for the most substantive comments are summarized in Appendix D of the final recovery plan.

The recovery plan describes the goals, objectives, criteria, strategies, and specific tasks necessary for achieving recovery of the Devils River minnow. The goal is to improve the status of the species so that it may be removed from the list of species protected under the Act. Generally, the Devils River Minnow Recovery Plan describes the needs for conservation of the existing habitat (including conserving groundwater aquifers and surface water flows and preventing local pollution), control of non-native species, and possibly restoring an additional population within the historic range of Devils River minnow at Las Moras Creek. The recovery plan describes the specific criteria for delisting and the necessary recovery actions to accomplish that goal based on the best available scientific information.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 10, 2005.

Nancy J. Gloman,

Acting Regional Director.

[FR Doc. 05–18055 Filed 9–12–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–05–1020–PH]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the Western Montana Resource Advisory Council will meet as indicated below.

DATES: The next regular meeting of the Western Montana RAC will be held October 13, 2005 at the Dillon Field Office, 1005 Selway Drive, Dillon, Montana beginning at 9 a.m. The public comment period will begin at 11:30 a.m. and the meeting is expected to adjourn at approximately 3 p.m.

FOR FURTHER INFORMATION CONTACT: For the Western Montana RAC, contact Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At the October 13 meeting, topics we plan to discuss include: The Butte Resource Management Plan travel management and a presentation on Montana economics and how it relates to public land management. We will also have a briefing on the recent White House Conservation Conference.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

Dated: September 6, 2005.

Richard Hotaling,

Acting Field Manager.

[FR Doc. 05–18046 Filed 9–12–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1310PP–ARAC]

Notice of Public Meeting, Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, Oct. 13–14, 2005, at the Campbell Creek Science Center in Anchorage, Alaska, beginning at 9 a.m. The public comment period will begin at 1:30 p.m. on Friday, Oct. 14.

FOR FURTHER INFORMATION CONTACT: Danielle Allen, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271–3335 or e-mail *Danielle_Allen@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics we plan to discuss include:

- National Petroleum Reserve-Alaska planning;
- Invasive weeds/species;
- Subsistence;
- 17b easement status and land conveyance update;
- Other topics the Council may raise;

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact BLM.

Dated: September 7, 2005.

Henri R. Bisson,

State Director.

[FR Doc. 05–18197 Filed 9–12–05; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–912–1820–AL–241A]

Arizona State Office Public Room Temporary Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary office closure to the public.

SUMMARY: This notice announces a temporary closure of the Bureau of Land Management Arizona State Office Public Room for October 5–12, 2005. The five-day closure is for the purpose of relocating the land and mineral records, office furniture and electronic equipment to a new location in the Phelps Dodge Tower at 1 North Central Avenue in downtown Phoenix, Arizona. The Public Room will be reopened to the public for regular business hours—9 a.m. to 4 p.m., starting on Thursday, October 13, 2005. The phone number to the Public Room, (602) 417–9200, will remain the same in the new location.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Joan B. Losacco,

Acting Arizona State Director.

[FR Doc. 05–18044 Filed 9–12–05; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–5853–EU]

Correction to Notice of Realty Action: Competitive Sale of Public Lands in Clark County, NV; Termination of Recreation and Public Purposes Classification and Segregation; Withdrawal of the Formerly Classified Lands by the Southern Nevada Public Land Management Act

AGENCY: Bureau of Land Management, USDI.

ACTION: Correction notice.

SUMMARY: This notice amends the Notice of Realty Action for Competitive Sale of Public Lands in Clark County, Nevada; Termination of Recreation and Public Purposes Classification and Segregation; Withdrawal of the formerly classified lands by the Southern Nevada Public Land Management Act printed in the **Federal Register:** Vol. 70, No. 159 Thursday, August 18, 2005. The number of parcels being offered for sale is corrected to read, 87 parcels. This sale includes parcel N–78217 which was omitted from the original notice.

Under the section entitled **DATES**, the correct acres for the proposed SNPLMA sale in the Las Vegas Valley is 3,197.00 acres.

Under the section entitled **SUPPLEMENTARY INFORMATION**, the following corrections are made:

The first sentence after the legal descriptions is corrected to read "87 parcels". In the first and second sentences after the legal descriptions, all references to the North Las Vegas "parcel" should read "parcels", and the second sentence is to also include (N–78217 and N–79580).

In the second full paragraph after the legal descriptions, regarding BLM reservation/conveyance of the mineral interests, N–78217 is added to the parcels referenced.

Under the section entitled "Terms and Conditions of Sale", the following corrections are made:

No. 7. should read, "Unless otherwise stated herein, maps delineating the individual proposed sale parcels and current appraisals for each parcel are available for public review at the BLM LVFO."

No. 8. (a), should read, "Parcels N–78217 and N–79580 will be put up for purchase and sale together at the oral auction. A sealed bid for these parcels will not be accepted. If these parcels are not sold at the oral auction, they will *not* be offered later on an online Internet auction."

No. 11., the last sentence should read, "For parcels N–78217 and N–79580, arrangements may be made for Electronic Fund Transfer (EFT) of the required, combined 20 percent deposit for both parcels by notifying BLM no later than October 31, 2005 of your intent to use EFT."

No. 14., second sentence should read, "For parcels N–78217 and N–79580 each prospective bidder will be required to present a certified check, postal money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management for an amount of money which shall be no less than 20 percent of the combined federally approved FMV for both designated parcels, in order to be eligible to bid on them."

Under the section entitled "Additional Information", the following corrections are made:

Paragraph one, the second sentence should read, "Unsold parcels, with the exception of parcels N–78217 and N–79580, may be offered for sale in a future online Internet auction."

Paragraph three should read, "*Parcel N–78217.* Potential bidders for parcels N–78217 and N–79580 should be aware of the content of a document entitled, "A Conservation Agreement for the Management of Special Resources on the Bureau of Land Management Parcels Nominated for Disposal by the City of North Las Vegas" entered into by BLM, the U.S. Fish and Wildlife Service, the Nevada Division of Forestry and the City of North Las Vegas (the "Conservation Agreement"). Under the Conservation Agreement, BLM retains ownership of approximately 300 acres partially surrounded by parcel N–78217 for protection and preservation of certain special plant and paleontological resources. BLM makes no warranty or representation that this Conservation Agreement is the full extent of federal or state requirements that may impact parcel N–78217.

Dated: August 29, 2005.

Juan Palma,

Field Manager.

[FR Doc. 05–18198 Filed 9–12–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 20, 2005. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280. Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 28, 2005.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

ARIZONA

Mohave County

Oatman Drug Company Building, 1 Main St., Oatman, 05001064

ARKANSAS

Boone County

Duncan House, 610 W. Central Ave., Harrison, 05001065

Cleburne County

Cleburne County Farm Cemetery, SE. corner jct. Plantation Dr. E., & Deer Run, Heber Springs, 05001066

Cleveland County

Old U.S. 79, Kingsland Segment, (Arkansas Highway History and Architecture MPS) Cty. Rd. 22 between U.S. 79 & Kight Rd., Kingsland, 05001067

Drew County

Jerome Elementary School No. 22, N. Louisiana Bvd., Jerome, 05001068

Faulkner County

Ealy, Richard and Mettie, House, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 280 Solomon Grove Rd., Twin Groves, 05001069

Garrison, Dennis and Christine, House, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 105 Garrison Rd., Greenbrier, 05001070

Merritt House, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 139 N. Broadview, Greenbrier, 05001071

Robins, Reuben W., House, 508 Locust St., Conway, 05001072

Franklin County

Singleton Family Cemetery, AR 22, Charelston, 05001074

Hot Spring County

Malvern Rosenwald School, 836 Acme St., Malvern, 05001075

Jefferson County

Lone Star Baptist Church, 620 Sheridan Rd., Redfield, 05001076

Watson, John Brown, Memorial Library Building, 1200 N. University Dr., Pine Bluff, 05001073

Nevada County

Prescott City Jail, Alley behind City Hall at 118 W. Elm St., Prescott, 05001077

Ouachita County

Arkansas Highway 57 Bridge, (Historic Bridges of Arkansas MPS) AR 57 over Union Pacific RR., Stephens, 05001078

Pike County

Shelton—Lockeby House, Springhill Church Rd., Murfreesboro, 05001079

Poinsett County

Judd Hill Cotton Gin, (Cotton and Rice Farm History and Architecture in the Arkansas Delta MPS) AR 214 E. of Bridgewood Rd., Judd Hill, 05001080

Union County

Scotland Cemetery, U.S. 167, 3 mi. W. of Junction City, Junction City, 05001081

Van Buren County

Chrisco, Melvin, House, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 237 Alvin Brown Rd., Damascus, 05001082

White County

Herring Building, (White County MPS) 601–603 E. 1st. St., McRae, 05001083

CALIFORNIA

Humboldt County

Cottrell, John A., House, 1228 C St., Eureka, 05001084

Imperial County

Calexico Public Library, (California Carnegie Libraries MPS) 420 Heber Ave., Calexico, 05001085

Santa Clara County

Ainsley, John Colpitts, House No. 3, 300 Grant St., Campbell, 05001086

COLORADO

Denver County

Doud, John and Elvira, House, 750 Lafayette St., Denver, 05001087
First Baptist Church of Denver, 230 E. 14th Av.—1373 Grant St., Denver, 05001088

FLORIDA

Broward County

Williams House, 119 Rose Dr., Fort Lauderdale, 05001089

MISSOURI

Cape Girardeau County

Kage School, 3110 Kage Rd., Cape Girardeau, 05001090
Old Lorimer Cemetery, 500 N. Fountain, Cape Girardeau, 05001091
St. Vincent's College Building, 201 Morgan Oak St., Cape Girardeau, 05001092

St. Louis Independent City

Crunden, Frederick M., Branch Library, 1506 E. 14th St., St. Louis, 05001093
Moon Brothers Carriage Company Building, 1706 Delmar Bvd., St. Louis, 05001094
Washington Metropolitan African Methodist Episcopal Zion Church, 613 N. Garrison Ave., St. Louis, 05001095

NEW MEXICO

Taos County

Couse, Eanger Irving, House and Studio—Sharp, Joseph Henry, Studios, 146 Kit Carson Rd. Taos, 05001096

NORTH CAROLINA

Ashe County

Worth's Chapel, 175 Three Top Rd., Creston, 05001097

PUERTO RICO

Ponce Municipality

Casa de la Masacre, Marina St. No. 32, Ponce, 05001098

SOUTH CAROLINA

Bamberg County, Bamberg City Hall, 3069 Main Hwy, Bamberg, 05001099

Greenville County

Cannon Building, 100 N. Main St., Fountain Inn, 05001100

Marion County

Dillard Barn, (Flue-Cured Tobacco Production Properties TR) 719 Virginia Dr., Mullins, 05001101

Richland County

Columbia Township Auditorium, (Segregation in Columbia, South Carolina MPS) 1703 Taylor St., Columbia, 05001104
Harden Street Substation, (Segregation in Columbia, South Carolina MPS) 1901 Harden St., Columbia, 05001103
Williams, A.P., Funeral Home, (Segregation in Columbia, South Carolina MPS) 1808 Washington St., Columbia, 05001102

TEXAS

Marion County

Stilley—Young House, 405 Moseley St., Jefferson, 05001105

UTAH

Cache County

McMurdie—White Farmstead, 395 W. 9000 S., Paradise, 05001106

Salt Lake County

First Security Bank Building, 405 S. Main St., Salt Lake City, 05001107

VIRGINIA

Richmond Independent City

Jackson Ward Historic District (Boundary Increase), ½-17 E. Marshall St.; 0–24 W. Marshall St., Richmond, 05001108

WISCONSIN

Milwaukee County

Nohl, Mary L., Art Environment, 7328 N. Beach Rd., Fox Point, 05001109

[FR Doc. 05–18041 Filed 9–12–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 27, 2005. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 28, 2005.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

AMERICAN SAMOA

Eastern District

Satala Cemetery, W of Satala, Lalopua, 05001110

ARIZONA

Cochise County

Evergreen Cemetery, Old Douglas Rd., Bisbee, 05001111

CALIFORNIA

Monterey County

Marsh, G.T., and Sons, 599 Fremont St., Monterey, 05001113

San Diego County

Salk Institute for Biological Studies, 10010 N. Torrey Pines Rd., San Diego, 05001114

San Francisco County

Veterans Affairs Medical Center—San Francisco, California, 4150 Clement St., San Francisco, 05001112

COLORADO

Larimer County

Swanson, Gustav and Annie, Farm, 1932 N. CO 287, Bethoud, 05001116

FLORIDA

Alachua County

Shady Grove Primitive Baptist Church, 804 S.W. Fifth St., Gainesville, 05001115

Miami-Dade County

Cadillac Hotel, 3925 Collins Ave, Miami Beach, 05001117

Sarasota County

Maine Colony Historic District, Bounded by Swift Rd. Ashton Rd., Portland Wy. and Grafton St., Sarasota, 05001118

MISSOURI

Jackson County

Old Town Historic District (Boundary Increase II), 136 Main St., Kansas City, 05001119
St. Louis Independent City, Tiffany Neighborhood Historic District (Boundary Decrease), Roughly bounded by 39th St., Lafayette Ave., Vandeventer Ave. and Folsom Ave., St. Louis (Independent City), 05001120

NEVADA

Washoe County

Kind, J. Clarence, House, 751 Marsh Ave., Reno, 05001121

White Pine County

US Post Office, Ely, Nevada, (US Post Offices in Nevada MPS) 415 Fifth St., Ely, 05001122

NEW YORK

Broome County

Your Home Library, 107 Main St., Johnson City, 05001138

Cayuga County

Belt—Gaskin House, 77 Chapman Ave., Auburn, 05001135
Sennett Federated Church and Parsonage, 777 Weedsport—Sennett Rd., Sennett, 05001130

Chenango County

Guilford Center Cemetery, Cty Rte. 36, Guilford Center, 05001129
Rockdale Community Church, NY 8, Rockdale, 05001128

Madison County

Morrisville Public Library, 87 East Main St., Morrisville, 05001126
Seventh Day Baptist Church, Utica St., DeRuyter, 05001136

Montgomery County

Bragdon—Lipe House, 17 Otsego St., Canajoharie, 05001123
Gray—Jewett House, 80 Florida Ave., Amsterdam, 05001127

Nassau County

Vaisbeg, Samuel, House, 257 W. Olive St., Long Beach, 05001137

Oswego County

Pleasant Lawn Cemetery, NY 69A, Parish, 05001125

St. Lawrence County

United Presbyterian Church, 26 Church St., Lisbon, 05001124

Suffolk County

Babylon Town Hall, 47 W. Main St., Babylon, 05001131
Camp Quinepet, 78 Shore Rd., Shelter Island Heights, 05001133
First National Bank of Port Jefferson, Main and East Main Sts., Port Jefferson, 05001134

Washington County

Easton Friends North Meetinghouse, NY 40, Schaghticoke—Middle Falls Rd., Middle Falls, 05001132

NORTH CAROLINA

Chowan County

Princeton Graded School, 601–611 W. Edwards St., Princeton, 05001139

NORTH DAKOTA

Barnes County

Ladbury Church, 6 mi. E of Dazey on ND 26, N 3 mi. then 0.25 mi. W, Dazey, 05001140

McIntosh County

Wishek City Hall, Old, 21 Centennial St., Wishek, 05001141

OHIO

Butler County

Scott, John, Barn and Granary, 3681 Hamilton-New London Rd., Shandon, 05001142

Cuyahoga County

Alta Public Library, 12510 Mayfield Rd., Cleveland, 05001143

Greene County

Emery Hall, Central State University Campus, Wilberforce, 05001144

Lucas County

B'nai Israel Synagogue, Address Restricted, Toledo, 05001145

Summit County

Werner, Edward P., House, 258 W. Market St., Akron, 05001146

OREGON

Multnomah County

Jones Cash Store, (Portland Eastside MPS) 111 S.E. Belmont St., Portland, 05001148
McAvinney Fourplex, 2004 NE 17th Ave., Portland, 05001147
Palestine Lodge, 6401 S. E. Foster Rd., Portland, 05001149
Pipes, Wade H., House, 3045 N. E. 9th Ave., Portland, 05001150
Portland Garden Club, 1132 SW Vista Ave., Portland, 05001151

RHODE ISLAND

Washington County

Lewis-Card-Perry House, 12 Margin St., Westerly, 05001152

SOUTH CAROLINA

Dillon County

Hayes, John, Farmstead, 1251 SC 38 W, Latta, 05001153

Greenville County

East Park Historic District, Roughly bounded by East Park Ave., Bennett St., Harcourt Dr., and Rowley St., Greenville, 05001157
Monaghan Mill, 201 Smythe St., Greenville, 05001159
Richland Cemetery, Hilly St. and Sunflower St., Greenville, 05001155
Springwood Cemetery, Main St. and Elford St., Greenville, 05001156

Horry County

Derham, John P., House, 1076 Green Sea Rd., Green Sea, 05001154

Spartanburg County

Arcadia Mill No. 2, 100 W. Cleveland St., Spartanburg, 05001158

VIRGINIA

Northumberland County

ELVA C (Deck Boat), 504 Main St., Reedville, 05001160

[FR Doc. 05–18042 Filed 9–12–05; 8:45 am]
BILLING CODE 4312–J1–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Besser Museum for Northeast Michigan, Alpena, MI

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Besser Museum for Northeast Michigan, Alpena, MI. The human remains and associated funerary objects were removed from Alpena, Ionia, Oceana, Ottawa, and Wayne Counties, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Besser Museum for Northeast Michigan professional staff in consultation with representatives of the Saginaw Chippewa Indian Tribe of Michigan.

In 1944, human remains representing a minimum of three individuals were removed from Henry Ford's property near Dearborn, Wayne County, MI, by Gwynn Cushman. Mr. Cushman was an avocational archeologist who collected from the southern part of lower Michigan. Notes made at the time of the excavation indicate that the human remains were part of several bundle burials. No known individuals were identified. No associated funerary objects are present.

Prior to 1950, human remains representing a minimum of one individual were removed from an undesignated site in southeastern Michigan, but most likely in Alpena County, as part of road construction activity. The road crew sent the human remains to Gerald Haltiner of Alpena, MI, an archeologist and collector of Native American artifacts from Michigan. No known individual was identified. No associated funerary objects are present.

Prior to 1950, human remains representing a minimum of one individual were removed from an

undesignated mound site near Port Sheldon, Ottawa County, MI, by Mr. Cushman. No known individual was identified. The two associated funerary objects are an animal tooth and a piece of sponge-like material.

In 1954, human remains representing a minimum of one individual were removed from the Hilltop Fort site near Lyons, Ionia County, MI, by Mr. Cushman. Notes taken at the time of excavation indicate that the site was on the north side of the Grand River. No known individual was identified. The 331 associated funerary objects are 94 ceramic sherds and 237 lithic flakes.

Prior to 1955, human remains representing a minimum of one individual were removed from an undesignated site in Oceana County, MI, by Mr. Cushman. No known individuals were identified. The 31 associated funerary objects are 16 ceramic sherds, 14 pieces of charcoal, and 1 lithic flake.

At an unknown date, human remains representing a minimum of two individuals were removed from an undesignated site in southern Michigan by Mr. Cushman. No known individuals were identified. No funerary objects are present.

In 1956, Mr. Haltiner acquired Native American human remains, artifacts, and archeological material from Mr. Cushman in addition to those that had been acquired by Mr. Haltiner himself. In 1969, the Jesse Besser Museum acquired all of the above mentioned human remains and cultural items as part of the "Haltiner Collection".

In 2005, the Jesse Besser Museum became the Besser Museum for Northeast Michigan.

Based on the location of the human remains, their state of preservation, and the type of objects found with them, all of the above mentioned individuals have been determined to be Native American. All of the human remains and associated funerary objects are believed to have been removed from sites within the aboriginal territory of the Chippewa, Ottawa, Wyandot, and Potawatomi tribes as codified in treaties with the United States on November 17, 1806, September 24, 1819, August 29, 1820, and March 28, 1836. The present-day Indian tribes that resided within those aboriginal lands at the time the treaties were signed include the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Huron Potawatomi, Inc., Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan. Consultation with tribal representatives indicate that the above mentioned Indian tribes have a relationship of shared group identity with the human remains and associated funerary objects. The Saginaw Chippewa Indian Tribe of Michigan has made a request for repatriation of the human remains and associated funerary objects.

Officials of the Besser Museum for Northeast Michigan have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of nine individuals of Native American ancestry. Officials of the Besser Museum for Northeast Michigan also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 362 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Besser Museum for Northeast Michigan have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Huron Potawatomi, Inc., Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Richard Clute, Curator of Anthropology, Besser Museum for Northeast Michigan, 491 Johnson Street, Alpena, MI 49707, telephone (989) 356–2202, before October 13, 2005. Repatriation of the human remains and associated funerary objects to the Saginaw Chippewa Indian Tribe of Michigan may proceed after that date if no additional claimants come forward.

The Besser Museum for Northeast Michigan is responsible for notifying the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Huron Potawatomi, Inc., Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan that this notice has been published.

Dated: August 3, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–18081 Filed 9–12–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: California State University, Sacramento, Department of Anthropology, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the California State University, Sacramento, Department of Anthropology, Sacramento, CA. The human remains were removed from sites along the shoreline of Lake Britton, Shasta County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the California State University, Sacramento, Department of Anthropology professional staff in consultation with representatives of the Pit River Tribe, California.

In 1969, human remains representing a minimum of eight individuals were removed from sites CA-SHA–385, CA-SHA–395, CA-SHA–396, and CA-SHA–409 or "J 37", along the shoreline of Lake Britton, Shasta County, CA, by California State University, Sacramento, Department of Anthropology personnel during the course of an archeological site survey for Pacific Gas &Electric. No known individuals were identified. No associated funerary objects are present.

The exposed human remains were salvaged from site surfaces that were being eroded by wave action caused by water ski boats and water releases at Lake Britton. The concern was to remove the human remains from an area where pot-hunters were active to prevent illegal collection from along the artificial lake shores. Sites CA-SHA–385, CA-SHA–395, CA-SHA–396, and CA-SHA–409 are prehistoric in age and are not currently identified to specific temporal periods. Based on the condition of the human remains, it is estimated that they are approximately 500 years of age and are Native American. Determination of cultural affiliation is based on testimony in Indian Claims Commission proceedings (7 ICC 815 [1959]), which states that the Pit River Tribe, California can be divided into 11 autonomous bands, one of which have occupied the area around Lake Britton since time immemorial.

Officials of the California State University, Sacramento, Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of the California State University, Sacramento, Department of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Pit River Tribe, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. M. Elizabeth Strasser, Department Chair, Department of Anthropology, California State University, 6000 J Street, Sacramento, CA 95819, telephone (916) 278–6452, before October 13, 2005. Repatriation of the human remains to the Pit River Tribe, California may proceed after that date if no additional claimants come forward.

California State University, Sacramento, Department of Anthropology is responsible for notifying the Alturas Indian Rancheria, California; Pit River Tribe, California; Redding Rancheria, California; Round Valley Indian Tribes of the Round Valley Reservation, California; and Susanville Indian Rancheria, California that this notice has been published.

Dated: August 1, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–18085 Filed 9–12–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Robert S. Peabody Museum of Archaeology, Andover, MA. The human remains and associated funerary objects were removed from Bartow and Murray Counties, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina: Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Thlopthlocco Tribal Town, Oklahoma; and United Keetowah Band of Cherokee Indians in Oklahoma.

Between 1925 and 1928, human remains representing a minimum of 99 individuals were removed from the Etowah site, Bartow County, GA, by Warren King Moorehead of the Robert S. Peabody Museum of Archaeology. No known individuals were identified. The 21,468 associated funerary objects are 5,116 miscellaneous beads, 10,725 tubular beads, 3,036 ovoid beads, 188 freshwater periwinkles, 6 sea turtle shell beads, 1 ceramic bead, 3 ceramic bowls, 1 ceramic fragment, 1 ceramic handle, 4 ceramic jars, 1 ceramic pipe, 314 textile fragments (some with copper attached), 315 copper fragments, 69 matting fragments, 76 headdress fragments, 4 flint pieces, 59 copper hair ornaments, 64 potsherds, 325 wood fragments (some with copper attached), 32 modified animal bone and animal bone fragments, 1 basketry fragment, 2 columella ornament fragments, 1 freshwater shell, 1 strombus shell, 402 shells, 12 shell gorgets, 1 shell spoon fragment, 1 axe, 3 bone bayonets, 2 charcoal samples, 4 galena pieces, 2 kaolin cores, 1 leather fragment, 2 Whelk fragments, 1 tooth, 6 stone celts, 166 stones, 1 soil sample, 402 shell and stone discoidals, 1 mineral ore sample, 80 mica fragments, 6 Busycon cups and fragments, and 22 repousse copper plates.

The Etowah site, situated on the Etowah River, was occupied circa A.D. 880–1550 with two breaks in occupation, one circa A.D. 1200–1250 and the other circa A.D. 1400–1450. The first occupation of Etowah was during the Wilbanks Phase (A.D. 1250–1375). The inhabitants of the first occupation were culturally affiliated, possibly ancestrally, to the people who re-occupied the site after A.D. 1450 during the Brewster Phase (A.D. 1450–1550).

Specific cultural practices, such as the use of black drink, Whelk (Busycon) bowls, and repousse copper plates, which are identified with the first occupation of Etowah are still evident in Creek communities today. The building of earthen works, such as those found at Etowah, are considered by Creek communities to be an important part of their historic practice and are echoed today in modern Creek architecture.

In its second phase, Etowah and the geographic areas surrounding it are recognized by modern Muscogee speakers as "daughter" towns, subject to the Coosa chiefdom, which controlled smaller polities throughout the region. The term Coosa applies to the core town, the local "province" and the extended region subject to the control of the core town. A "mother" town is a town from which other towns emerge. "Daughter" towns are created when a mother town becomes too large; they are politically and culturally linked to the mother town, but geographically separate. Linguistic evidence, using historical documents, also links the

place name of Etowah to the Muscogee language.

Between 1927 and 1928, human remains representing a minimum of five individuals were removed from the Little Egypt site in Murray County, GA, by Warren King Moorehead of the Robert S. Peabody Museum of Archaeology. The Little Egypt site is 5 hectares and contains two or three platform mounds, which were utilized through the mid–16th century. No known individuals were identified. No associated funerary objects are present.

The Little Egypt site is located at the eastern edge of the Coosa chiefdom where the Coosawattee River enters the Great Valley. The name Coosa applies to the core town, local province, and extended region, and was the most politically important chiefdom in southeastern North America in the 1500s during the time of occupation of the Little Egypt site [Hally et. al., 1989]. The oral tradition of Muscogee speakers recognizes two ancestral mother towns, Tukabatchee and Coosa, and particular individuals in present day Creek communities identify themselves as descendants of the mother towns. Muscogee oral tradition and historic documents indicate the area in and around Little Egypt as the paramount chiefdom of Coosa, home to the chief and the core town. Although it cannot be definitively stated that Little Egypt was the core town, size and other attributes single it out as an important site in the Coosa political landscape.

The decline in archeological evidence of settlements, including public works and burial goods, in the Coosa area in the early 17th century suggests population decline and movement, perhaps the result of disease. The increase in settlements and the rise of a brushed pottery style that appears to be the melding of several Creek styles suggests that the inhabitants of 16th and early 17th century communities in the Coosa River drainage, as well as those along the Coosawatte and Etowah rivers, including the inhabitants at the Little Egypt site, probably moved southwest to the Lower Coosa River during the late 17th century [Smith, 1987]. Historic documentation indicates that Muscogee speakers were living along the Lower Coosa River at the turn of the 18th century and were likely the descendants of the inhabitants of the Little Egypt site.

Present-day Creek communities are the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma.

Officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 104 individuals of Native American ancestry. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 21,468 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony. Lastly, officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Victoria Cranner, Senior Collections Manager, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810, telephone (978) 749–4490 before October 13, 2005. Repatriation of the human remains and associated funerary objects to the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma may proceed after that date if no additional claimants come forward.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Thlopthlocco Tribal Town, Oklahoma; and United Keetowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: August 4, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–18073 Filed 9–12–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: School of American Research, Santa Fe, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the School of American Research, Santa Fe, NM. The human remains and associated funerary objects were removed from Santa Fe County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the School of American Research professional staff in consultation with representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Between 1970 and 1974, human remains representing a minimum of 283 individuals were removed from the Arroyo Hondo Pueblo site (LA 12), Santa Fe County, NM, during archeological investigations led by Dr. Douglas Schwartz, School of American

Research staff. The excavations were funded primarily through grants from the National Science Foundation and the National Geographic Society. The site was originally owned by the School of American Research and donated to the Archaeological Conservancy in February 2003. The collection from the project, including 120 burials and 163 isolated human remains, are cared for at the School of American Research, except for 425 tree ring samples kept at the Laboratory of Tree Ring Research, University of Arizona, Tucson, AZ. No known individuals were identified. The 217 lots of associated funerary objects are 6 groups of beads, 20 groups of pottery sherds or ceramic items, 75 deteriorated remains of textiles and/or hides, 6 groups of bark fragments, 39 yucca-fiber mats, 9 lots of faunal bone artifacts, 7 lots of corncobs, 21 groups of lithics, 10 groups of wooden objects fragments, 3 basket fragment groups, 6 lots of vegetal material, 2 lots of combined yucca mats and textiles/hides, 1 lot of combined corncob and wood ornament, 1 lot of combined corncob and basketry fragment, and 11 groups of unidentifiable organic materials.

The Arroyo Hondo Pueblo site was founded circa A.D. 1300. Adobe roomblocks were built forming great plazas. By A.D. 1330, the Arroyo Hondo Pueblo site had 24 roomblocks constructed around ten wholly or partially enclosed plazas. By A.D. 1345, possibly due to changes in the annual precipitation, the pueblo was virtually abandoned, occupied by a small remnant and possibly seasonal population. This phase of settlement is referred to as the Component I occupation of Arroyo Hondo Pueblo site. In the 1370s, building on top of the ruins of the site, another phase of settlement began, which is referred to as Component II. Soon after A.D. 1410, the region was again affected by drought and the site was largely abandoned. In circa A.D. 1420, a fire destroyed a large part of the village, and within a few years the second and final occupation of the Arroyo Hondo Pueblo site came to an end.

The site is within the northern Rio Grande area and located near the pueblo sites of Pecos, San Cristobal, and Pindi. However, no oral traditions affiliate one specific Pueblo with the Arroyo Hondo Pueblo site. Physical anthropolgy, archeological investigations, and architecture indicate it was a northern Rio Grande Pueblo site, which potentially links the site to all contemporary Pueblo and Tewa-Hopi groups.

Extensive literature published by the School of American Research Press in eight separate volumes on the Arroyo Hondo Pueblo site, and in Ann M. Palkovich's Pueblo Population and Society: The Arroyo Hondo Skeletal and Mortuary Remains, James Mackey in Appendix G, "Arroyo Hondo Population Affinities", affiliates the Arroyo Hondo site with the Tewa-Tano linguistic group based on statistical analysis of measurable features of the human remains compared with other contemporary populations. While the biological studies possibly indicate a Tewa-Tano linguistic group, it is certainly possible that the Arroyo Hondo Pueblo site, which is within the larger Rio Grande Pueblo tradition and the population movements after the occupation dates, may be linked to any or all of the contemporary Pueblo and Tewa-Hopi groups with whom the School of American Research consulted.

The pottery and other material goods reflect a northern Rio Grande tradition. The Arroyo Hondo Pueblo site is a Rio Grande Pueblo site due to the nature of its construction and use of plaza spaces and kivas. Similarities can be seen between the Arroyo Hondo Pueblo site and other contemporary sites in the northern Rio Grande.

Pueblo and Tewa-Hopi groups are represented today by the federally recognized Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Officials of the School of American Research have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 283 individuals of Native American ancestry. Officials of the School of American Research also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 217 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the School of American Research have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Kathleen Whitaker, School of American Research, PO BOX 2188, Santa Fe, NM 87504, telephone (505) 954–7205, before October 13, 2005. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

School of American Research is responsible for notifying the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of

Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: August 3, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–18082 Filed 9–12–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Missouri-Columbia, Museum of Anthropology, Columbia, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Missouri-Columbia, Museum of Anthropology, Columbia, MO. The human remains and associated funerary objects were removed from Vernon County, MO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the University of Missouri-Columbia, Museum of Anthropology professional staff in consultation with the Osage Tribe, Oklahoma.

In 1963, human remains representing a minimum of one individual were removed from the Hayes/Coal Pit site (23VE4), Vernon County, MO, during excavations conducted by University of Missouri-Columbia professional staff and supervised field school students. Other excavations at the site did not produce any evidence of human remains or burial areas. No known individuals were identified. The seven associated funerary objects are 3 silver ear bobs/tinklers, 3 small silver band fragments, and 1 small soil sample.

Based on oral tradition, types of associated funerary objects, and historical documents this individual has been determined to be Native American. The Hayes/Coal Pit site has been identified as a Little Osage village with occupation approximately A.D. 1675 to A.D. 1806. Little Osage village is a village site of the Little Osage tribe based on the presence of trade objects, historical documents, oral tradition, and archeological evidence. Members of the federally recognized Osage Tribe, Oklahoma are the present-day descendants of the Little Osage tribe.

Officials of the University of Missouri-Columbia, Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the University of Missouri-Columbia, Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the seven objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Missouri-Columbia, Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Osage Tribe, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Michael O'Brien, Director, Museum of Anthropology, 317 Lowry Hall, University of Missouri-Columbia, Columbia, MO 65211, telephone (573) 882–4421, before October 13, 2005. Repatriation of the human remains and associated funerary objects to the Osage Tribe, Oklahoma may proceed after that date if no additional claimants come forward.

University of Missouri-Columbia, Museum of Anthropology is responsible for notifying the Osage Tribe, Oklahoma that this notice has been published.

Dated: August 3, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–18083 Filed 9–12–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Missouri-Columbia, Museum of Anthropology, Columbia, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Missouri-Columbia, Museum of Anthropology, Columbia, MO. The human remains and associated funerary objects were removed from Vernon County, MO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the University of Missouri-Columbia, Museum of Anthropology professional staff in consultation with the Osage Tribe, Oklahoma.

In 1963, human remains representing a minimum of three individuals were removed from the Brown site (23VE3), Vernon County, MO, during excavations conducted by University of Missouri-Columbia professional staff and supervised field school students. Other excavations at the site did not produce any evidence of human remains or burial areas. No known individuals were identified. The 237 associated funerary objects are identified as 200 faunal bones, 3 pottery fragments, 1 brass tinkler, 2 glass fragments, 14 metal fragments that include kettle parts, 1 brass trigger guard, 1 iron screw, 2 glass beads, 4 sandstone abraders (2 conical), 1 hematite fragment, and 8 chert scrapers/modified spalls.

The analysis sheet lists the following artifacts associated with this provenience and catalog number that to date have not been located: 1 deer antler tool, 2 arrow point fragments or gun flints, 1 scraper, 1 sandstone mold, and 4 pieces of debitage (4 flakes).

Based on oral tradition, types of associated funerary objects, and

historical documents, the human remains have been determined to be Native American. Based on oral tradition, archeological evidence, presence of trade objects, and historical documents, the Brown site has been identified as a Great Osage village of the Great Osage tribe with occupation approximately A.D. 1675 to A.D. 1777. The federally recognized Osage Tribe, Oklahoma are the present-day descendants of the Great Osage tribe.

Officials of the University of Missouri-Columbia, Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the University of Missouri-Columbia, Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 237 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Missouri-Columbia, Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Osage Tribe, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Michael O'Brien, Director, Museum of Anthropology, 317 Lowry Hall, University of Missouri-Columbia, Columbia, MO 65211, telephone (573) 882–4421, before October 13, 2005. Repatriation of the human remains and associated funerary objects to the Osage Tribe, Oklahoma may proceed after that date if no additional claimants come forward.

University of Missouri-Columbia, Museum of Anthropology is responsible for notifying the Osage Tribe, Oklahoma that this notice has been published.

Dated: August 3, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–18084 Filed 9–12–05; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–522]

In the Matter of Certain Ink Markers and Packaging Thereof; Notice of Commission Decision Not To Review an Initial Determination Finding a Violation of Section 337; Schedule for Written Submissions on Remedy, Bonding, and the Public Interest

AGENCY: International Trade Commission (ITA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 30) issued by the presiding administrative law judge ("ALJ") finding a violation of section 337 in the above-captioned investigation. The Commission has set forth a schedule for submitting written submissions on the issues of remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3095. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This trademark-based section 337 investigation was instituted by the Commission based on a complaint filed by Sanford, L.P. of Freeport, Illinois ("Sanford" or "complainant"). 69 FR 52029 (August 24, 2004). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink markers and packaging thereof by reason of infringement of U.S. Trademark Registration Nos. 807,818 and 2,721,523 and also by reason of infringement of trade dress. The notice of investigation identified 12 respondents. On November 10, 2004, the ALJ granted a motion to add three respondents to the investigation. The Commission determined not to review the ID. 69 FR 75342 (December 16, 2004). Each respondent was accused of violating Section 337 by infringing Sanford's trade dress. Certain respondents were also accused of infringing one or more of complainant's registered trademarks.

Between November 15, 2004, and June 1, 2005, the ALJ issued several IDs terminating various respondents on the basis of settlement agreements or consent orders. During that time period other IDs were issued finding several other respondents in default. No petitions for review of any of these IDs were filed, and the Commission determined not to review any of them, thereby allowing them to become the Commission's determinations.

On April 19, 2005, Sanford filed a motion seeking a summary determination of violation and issuance of a general exclusion order and a cease and desist order. On July 25, 2005, the ALJ issued Order No. 30, an initial determination (ID) finding violations of Section 337 and recommending a general exclusion order and a cease and desist order. The ALJ also recommended the issuance of a general exclusion order. He further recommended that the bond permitting temporary importation during the Presidential review period be set at 100 percent of the value of the infringing imported product.

On August 5, 2005, Sanford filed a petition for review of one aspect of Order No. 30. Specifically, Sanford sought review of the ID's finding that complainant had failed to show importation with respect to defaulted respondent LiShui Laike Pen Co., Ltd. ("LiShui Laike"). The Commission investigative attorney (IA) opposed Sanford's petition for review. On August 25, 2005, complainant filed a motion for leave to file a reply to the IA's petition for review. The Commission has determined to deny that motion.

The Commission has determined not to review Order No. 30, thereby allowing it to become the Commission's final determination.

In connection with the final disposition of this investigation, the Commission may issue an order that could result in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be

ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, it should so indicate and provide information establishing that activities involving other types of entry are either adversely affecting it, or are likely to do so. For background, see In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider in this investigation include the effect that an exclusion order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the ALJ's July 25, 2005, recommended determinations on the issues of remedy and bonding. Complainant and the Commission's investigative attorney are also requested to submit proposed orders for the Commission's consideration. Complainant is further requested to state the HTSUS numbers under which the infringing goods are imported. Main written submissions and proposed orders must be filed no later than close of business on September 16, 2005. Reply submissions, if any, must be filed no later than the close of business on September 23, 2005. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons that the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.42 and 210.50 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42 and 210.50.

Issued: September 8, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–18139 Filed 9–12–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–825 and 826 (Review)]

Polyester Staple Fiber From Korea and Taiwan

AGENCY: International Trade Commission (ITC).

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on polyester staple fiber from Korea and Taiwan.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on polyester staple fiber from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Dana Lofgren (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On July 5, 2005, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (70 FR 41427, July 19, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after

publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on December 13, 2005, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on January 17, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 9, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 11, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is December 22, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is January 26, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before January 26, 2006. On February 23, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 27, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 7, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–18132 Filed 9–12–05; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure.

ACTION: Notice of proposed amendments and open hearings.

SUMMARY: The Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure have proposed new rules and amendments to the following rules:

Appellate Rule: 25;

Bankruptcy Rules: 1014, 3001, 3007, 4001, 6006, 7007.1, and new Rules 6003, 9005.1, and 9037;

Civil Rule: New Rule 5.2, and Illustrative Forms; and

Criminal Rules: 11, 32, 35, 45, and new Rule 49.1.

Public hearings are scheduled to be held on the amendments to:

- Appellate Rules in Phoenix, Arizona, on January 9, 2006;
- Bankruptcy Rules in Phoenix, Arizona, on January 9, 2006;
- Civil Rules in Chicago, Illinois, on November 18, 2005; and in Washington, DC, on December 2, 2005; and
- Criminal Rules in Phoenix, Arizona, on January 9, 2006.

Those wishing to testify should contact the Secretary at the address below in writing at least 30 days before the hearing. All written comments and suggestions with respect to the proposed amendments and new rules must be placed in the hands of the Secretary as soon as convenient and not later than February 15, 2006. They can be sent by one of the following three ways: by mail to Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544; by electronic mail at *http://www.uscourts.gov/rules*; or by facsimile to Peter G. McCabe at (202) 502–1766. In accordance with established procedures all comments submitted are available for public inspection.

The text of the proposed rules amendments and the accompanying Committee Notes can be found at the United States Federal Courts' Home page at *http://www.uscourts.gov/rules.*

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 2, 2005.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 05–18062 Filed 9–12–05; 8:45 am]
BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: October 24–25, 2005.

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

ADDRESSES: Vintners Inn, 4350 Barnes Road, Santa Rosa, California.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 2, 2005.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 05–18063 Filed 9–12–05; 8:45 am]
BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: October 27–28, 2005.

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

ADDRESSES: Vintners Inn, 4350 Barnes Road, Santa Rosa, California.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 2, 2005.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 05–18064 Filed 9–12–05; 8:45 am]
BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States; Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: November 14, 2005.

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

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 2, 2005.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 05–18065 Filed 9–12–05; 8:45 am]
BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States; Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: January 6–7, 2006.

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

ADDRESSES: The Hermosa Inn, 5532 North Palo Cristi Road, Scottsdale, Arizona.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 2, 2005.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 05–18066 Filed 9–12–05; 8:45 am]
BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States; Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: March 9–10, 2006.

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

ADDRESSES: University of North Carolina School of Law, Ridge Road, Van Hecke-Wettach Hall, Chapel Hill, North Carolina.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 2, 2005.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 05–18067 Filed 9–12–05; 8:45 am]
BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IPC—Association Connecting Electronics Industries

Notice is hereby given that, on August 12, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IPC—Association Connecting Electronics Industries ("IPC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since September 14, 2004,

IPC has published 9 Standards, undertaken 17 New Standard Setting Activities, and continues with 56 Standard Setting Activities as Works in Progress. For further information on these activities, please go to IPC's Web site: *http://www.ipc.org/status.*

On September 14, 2004, IPC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 21, 2004 (69 FR 61868).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–18043 Filed 9–12–05; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–133]

NASA Advisory Council, Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces an open meeting of the NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness (IOR).

DATES: Tuesday, September 27, 2005, 1 p.m.–2 p.m. eastern standard time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 7U22, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Todd F. McIntyre, Office of External Relations, (202) 358–4621, National Aeronautics and Space Administration, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. Five seats will be reserved for members of the press. The agenda for the meeting is as follows:

—To assess the operational readiness of the International Space Station to support a new crew.

—To assess the Russian flight team's preparedness to accomplish the Expedition Twelve mission.

—To assess the health and flight readiness of the Expedition Twelve crew.

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees should provide identifying information in advance by contacting Todd F. McIntyre via e-mail at *Todd.McIntyre-1@nasa.gov* or by telephone at (202) 358–4621 by September 23, 2005.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: September 6, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–18138 Filed 9–12–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

Fingerprint Submission Requirements

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Notice of approval.

Authority: 42 U.S.C. 14616.

SUMMARY: Pursuant to 28 CFR part 901, the National Crime Prevention and Privacy Compact Council (Compact Council), established by the National Crime Prevention and Privacy Compact Act of 1998 (Compact), has approved a Federal Emergency Management Agency (FEMA) proposal to access the Interstate Identification Index (III) System on a delayed fingerprint submission basis when conducting pre-employment criminal history record checks on FEMA emergency workers during times of natural disasters and catastrophic emergencies. (See FEMA's request, attached) FEMA is authorized access to criminal history record information to conduct background checks on applicants for federal employment pursuant to title 28 United States Code section 534 and Executive Order 10450.

The FEMA's request was submitted by letter dated October 19, 2004, and approved by the Compact Council on November 4, 2004, pursuant to 28 CFR 901.2 and 901.3. Access to the III System to conduct name-based criminal history record checks, followed by fingerprint submissions, provides a responsive and timely avenue to support FEMA's need for expeditious pre-employment screening during exigent circumstances. An example of such need arose during 2004 when several hurricanes struck the southeastern portion of the United States causing the FEMA to hire large numbers of emergency workers in a short period of time. FEMA intends to enlist the services of the Federal Protective Service or another criminal justice agency with authorized direct access to the III System to conduct the preliminary III name checks on behalf of FEMA. Such name-based checks will be followed by submission of the applicant's fingerprints to the FBI within 5 working days.

FOR FURTHER INFORMATION CONTACT: Todd C. Commodore, FBI CJIS Division, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Telephone (304) 625–2803; e-mail *tcommodo@leo.gov;* Fax number (304) 625–5388.

SUPPLEMENTARY INFORMATION: See attached proposal.

Dated: August 24, 2005.

Donna M. Uzzell,

Compact Council Chairman.

BILLING CODE 4410–02–P

U.S. Department of Homeland Security
500 C Street, SW
Washington, DC 20472

FEMA

October 19, 2004

Compact Council
C/o Mr. Todd Commodore
1000 Custer Hollow Road
Module C-3
Clarksburg, WV 26306

Dear Mr. Commodore:

Last month, as a response to the spate of devastating hurricanes that made landfall in the continental United States, FEMA Safety and Security Branch requested the Department of Justice (DOJ) use of the Interstate Identification System (III) for pre-employment screening. While we are cognizant that this is not the intended use of the III system, the screening enabled FEMA to process emergency workers in an expeditious fashion. We have found that the traditional time frame for processing fingerprint cards is 3-4 days, whereas name checks via the III system are instantaneous. As specified in the guidelines of the DOJ waiver, FEMA did not make any hiring decisions, based upon a III check, prior to the receiving the results of a fingerprint-based criminal history check conducted by the FBI.

In order to better prepare for this type of occurrence in the future, we are requesting a permanent III access for pre-employment screening for exigent, catastrophic emergencies. As with the recent hurricanes, activation of this emergency capability would be prompted by the potential hiring of large numbers of emergency workers. If the permanent status concerning III pre-employment checks is granted, we would be amenable to providing notification concerning the start and duration of the verification period. In all cases, fingerprint submissions will be forwarded to the FBI within five working days of the name based check.

It should be noted that FEMA is taking other measures to reduce the processing time for newly hired emergency workers. Ten new electronic fingerprint machines have been purchased that will greatly assist in the processing of fingerprint charts. The fingerprint machines will possess connectivity with databases at OPM and the FBI, thereby effectively screening out less desirable applicants. For this reason, future requests to employ an III check pertaining to pre-employment screening would be limited and never used as routine procedure.

We greatly appreciate your consideration of our request. We will look forward to hearing from you concerning this matter.

Sincerely,

Gregory R. Cooper
Chief
Safety and Security Branch

www.fema.gov

[FR Doc. 05–18006 Filed 9–12–05; 8:45 am]
BILLING CODE 4410–02–C

NATIONAL TRANSPORTATION SAFETY BOARD

Meeting Notice

TIME AND DATE: 9:30 a.m., Tuesday, September 20, 2005.

PLACE: NTSB Board Room, 429 L'Enfant Plaza, S.W., Washington, DC 20594.

STATUS: The one item is Open to the Public.

MATTER TO BE CONSIDERED:

5299R—Most Wanted Safety Recommendations Program—2005 Update on State Issues.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, September 16, 2005.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: September 9, 2005.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 05–18294 Filed 9–9–05; 3:57 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

DATE: Weeks of September 12, 19, 26, October 3, 10, 17, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 12, 2005

There are no meetings scheduled for the Week of September 12, 2005.

Week of September 19, 2005—Tentative

There are no meetings scheduled for the Week of September 19, 2005.

Week of September 26, 2005—Tentative

There are no meetings scheduled for the Week of September 26, 2005.

Week of October 3, 2005—Tentative

There are no meetings scheduled for the Week of October 3, 2005.

Week of October 10, 2005—Tentative

There are no meetings scheduled for the Week of October 10, 2005.

Week of October 17, 2005—Tentative

Tuesday, October 18, 2005

9:30 a.m.—Briefing on Decommissioning Activities and Status (Public Meeting).

This meeting will be webcast live at the Web address *http://www.nrc.gov.*

*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/what-we-do/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, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on request 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: September 8, 2005.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 05–18191 Filed 9–9–05; 10:33 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 19, 2005, to August 31, 2005. The last biweekly notice was published on August 30, 2005 (70 FR 51378).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards

consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: August 11, 2005.

Description of amendments request: The proposed change would revise Technical Specification (TS) Surveillance Requirement (SR) 3.6.1.3.9 with respect to the allowed leakage rate through each Main Steam Isolation Valve (MSIV). Specifically, the limit is revised from an allowable leakage rate of less than or equal to 11.5 standard cubic feet per hour (scfh) through each MSIV to less than or equal to 100 scfh through each main steam line (MSL) with the combined leakage of the four MSLs being less than or equal to 150 scfh. Also, changes to TS 3.3.7.1, "Control Room Emergency Ventilation (CREV) System Instrumentation," are also included to incorporate new automatic initiation functions for the CREV system to support the MSIV leakage rate change proposal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

The proposed change revises SR 3.6.1.3.9 with respect to the allowed leakage rate through each MSIV. Specifically, the limit is revised from an allowable leakage rate of less than or equal to 11.5 scfh per MSIV to less than or equal to 100 scfh for any one MSL with the combined leakage of the four MSLs being less than or equal to 150 scfh. Also, to support the MSIV leakage rate change, additional automatic initiation functions for the CREV system will be implemented. The associated changes to TS 3.3.7.1, "Control Room Emergency Ventilation (CREV) System Instrumentation," are also made.

The proposed change to the MSIV leakage limit does not involve physical change to any plant structure, system, or component. As a result, no new failure modes of the MSIVs has been introduced. The CREV system initiation logic is being modified; however, this system performs a mitigating function and has no impact on any initiating event frequency. Therefore, the proposed changes cannot increase in the probability a previously evaluated accident.

A plant-specific radiological analysis has been performed to assess the effects of the proposed increase in MSIV leakage acceptance criteria in terms of offsite doses and control room doses. The analysis shows the dose contribution from the proposed increase in leakage acceptance criteria is acceptable compared to dose limits prescribed in 10 CFR 50.67(b)(2)(i) for the exclusion area, 10 CFR 50.67(b)(2)(ii) for the low population zone, and 10 CFR 50.67(b)(2)(iii) for control room personnel. The CREV system initiation logic modification will result in automatic initiation of the CREV system based on signals from the secondary containment isolation logic as an input to each division of the CREV control logic. This change is made to ensure that doses to control room personnel remain within the requirements of 10 CFR 50.67(b)(2)(iii) in the event of a loss-of-coolant-accident [LOCA].

2. Does not create the possibility of a new or different type of accident from any accident previously evaluated.

Response: No.

The proposed change to the MSIV leakage limit will not adversely impact MSIV functionality and will not create a failure of the MSIVs of a different kind than previously considered. The CREV system initiation logic is being modified to initiate automatically using signals from the secondary containment isolation logic. This provides redundant/diverse protection for control room operators in the event of a LOCA. The required logic modifications will be performed such that faults originating in the CREV logic cannot affect either the secondary containment isolation logic or the functions which initiate secondary containment isolation.

3. Does not involve a significant reduction in the margin of safety.

Response: No.

The allowable leak rate specified for the MSIVs is used to quantify a maximum amount of leakage assumed to bypass containment. The results of the re-analysis supporting these changes were evaluated against the dose limits contained in 10 CFR 50.67(b)(2)(i) for the exclusion area, 10 CFR 50.67(b)(2)(ii) for the low population zone, and 10 CFR 50.67(b)(2)(iii) for control room personnel. Sufficient margin relative to the regulatory limits is maintained even when conservative assumptions and methods are utilized. The CREV system initiation logic is being modified to initiate automatically using signals from the secondary containment isolation logic. This provides redundant/diverse protection for control room operators in the event of a LOCA.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Michael L. Marshall, Jr.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: August 11, 2005.

Description of amendments request: The proposed change would revise Technical Specification (TS) 5.5.12, "Primary Containment Leakage Rate Testing Program," by removing an exception that allows for compensation of flow meter instrument inaccuracies in accordance with ANSI [American National Standards Institute]/ANS [American Nuclear Society]–56.8–1987 rather than meeting the instrument accuracy requirements in ANSI/ANS–56.8–1994. The exception is no longer necessary due to the availability of test instruments capable of satisfying the instrument accuracy requirements of ANSI/ANS–56.8–1994.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This request has been evaluated against the standards in 10 CFR 50.92, and has been determined to not involve a significant hazards consideration. In support of this conclusion, the following analysis is provided:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed removal, from Technical Specification 5.5.12, of an exception that allows for compensation of instrumentation inaccuracies in accordance with ANSI/ANS–56.8–1987, rather than ANSI/ANS–56.8–1994, does not involve physical changes to any plant structure, system, or component. Furthermore, removal of the exception allowing for the accounting for containment leakage rate test instrumentation accuracy using ANSI/ANS–56.8–1987 has no impact on the initiating frequency for any previously evaluated accident. Therefore, the proposed change cannot increase the probability of a previously evaluated accident.

The consequences of a previously evaluated accident are dependent on the initial conditions assumed for the analysis, the behavior of the fuel during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the evaluated event, and the setpoints at which these actions are initiated. Use of leakage rate test instruments that meet the accuracy provisions of ANSI/ANS–56.8–1994 complies with NEI [Nuclear Energy Institute] 94–01, Revision 0, "Industry Guideline for Implementing Performance-Based Option of 10 CFR 50 Appendix J," and Regulatory Guide 1.163, "Performance-Based Containment Leak—Test Program," September 1995, and ensures that measured containment leakage rates are maintained within specified limits. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors to that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. The proposed change regarding containment leakage test instrument accuracy does not involve installation of any new or different equipment. No installed equipment is being operated in a different manner than currently evaluated. No new initiating events or transients will result from the use of more accurate containment leakage test instruments. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does not involve a significant reduction in the margin of safety.

The proposed removal, from Technical Specification 5.5.12, of an exception that allows for compensation of instrumentation inaccuracies in accordance with ANSI/ANS–56.8–1987 rather than ANSI/ANS–56.8–1994 does not alter the assumptions of the accident analyses or the Technical Specification Bases. The margin of safety is established through the design of the plant structures, systems, and components; through the parameters within which the plant is operated; through the establishment of setpoints for actuation of equipment relied upon to respond to an event; and through margins contained within the safety analyses. The use of industry standard ANSI/ANS–56.8–1994, rather than ANSI/ANS–56.8–1987, in accounting for the accuracy of containment leakage rate testing instrumentation will not adversely impact the performance of plant structures, systems, components, and setpoints relied upon to respond to mitigate an accident or transient. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Michael L. Marshall, Jr.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of amendment request: June 27, 2005.

Description of amendment request: The proposed amendments would change the SSES 1 and 2 technical specifications for reactor protection system and control rod block instrumentation, oscillation power range monitor (OPRM) instrumentation, recirculation loops operating, shutdown margin test—refueling, and the core operating limits report. The proposed changes involve the modification of the existing power range neutron monitor system (PRNM) by installation of the General Electric Nuclear Measurement Analysis and Control PRNM system. The modification of the PRNM system would replace analog technology with a more reliable digital upgrade.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability (frequency of occurrence) of DBAs [design-basis accidents] occurring is not affected by the PRNM system, as the PRNM system does not interact with equipment whose failure could cause an accident. Compliance with the regulatory criteria established for plant equipment will be maintained with the installation of the upgraded PRNM system. Scram setpoints in the PRNM system will be established so that all analytical limits are met.

The unavailability of the new system will be equal to or less than the existing system and, as a result, the scram reliability will be equal to or better than the existing system. No new challenges to safety-related equipment will result from the PRNM system modification. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change will replace the currently installed and NRC approved OPRM Option III long-term stability solution with an NRC approved Option III long-term stability solution digitally integrated into the PRNM equipment. The PRNM hardware incorporates the OPRM Option III detect and suppress solution reviewed and approved by the NRC in the References 1, 2, 3 and 4 Licensing Topical Reports, the same as the currently installed separate OPRM system. The OPRM meets the GDC [general design criterion] 10, "Reactor Design," and 12, "Suppression of Reactor Power Oscillations," requirements by automatically detecting and suppressing design basis thermal-hydraulic oscillations prior to exceeding the fuel MCPR [minimum critical power ratio] Safety Limit. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

Based on the above, the operation of the new PRNM system and replacement of the currently installed OPRM Option III stability solution with the Option III OPRM function integrated into the PRNM equipment will not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The components of the PRNM system will be supplied to equivalent or better design and qualification criteria than is currently required for the plant.

Equipment that could be affected by PRNM system has been evaluated. No new operating mode, safety-related equipment lineup, accident scenario, or system interaction mode was identified. Therefore, the upgraded PRNM system will not adversely affect plant equipment.

The new PRNM system uses digital equipment that has "control" processing points and software controlled digital processing compared to the existing PRNM system that uses mostly analog and discrete component processing (excluding the existing OPRM). Specific failures of hardware and potential software common cause failures are different from the existing system. The effects of potential software common cause failure are mitigated by specific hardware design and system architecture. Failure(s) on the system has the same overall effect. No new or different kind of accident is introduced.

Therefore, the PRNM system will not adversely effect plant equipment.

The current OPRM Option III plant design is replaced with an OPRM function digitally integrated into the PRNM. The currently installed Power Range Monitor system is replaced with a PRNM system that performs all of the existing PRNM functions plus OPRM. Failure of neither the APRM [average power range monitor] nor OPRM functions in the replacement system can cause an accident of a kind not previously evaluated in the SAR [safety analysis report].

Based on the above, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The upgraded PRNM system will not involve a reduction in a margin of safety, as loads on plant equipment will not increase, and reactions to, or results of transients and hypothetical accidents, will not increase from those presently evaluated.

No change has been made to the Analytical Limits or Technical Specification Allowable Values. The present system characteristics such as drift, calibration setpoint, and accuracy envelop the new system requirements.

The upgraded PRNM system response time and operator information is either maintained or improved over the current Power Range Neutron Monitor system. The upgraded PRNM system has improved channel trip accuracy compared to the current system.

The current safety analyses demonstrate that the existing OPRM Option III related Technical Specification requirements are adequate to detect and suppress an instability event. There is no impact on the MCPR Safety Limit identified for an instability event. The replacement OPRM system integrated into the new PRNM equipment implements the same functions per the same requirements as the currently installed system and has equivalent Technical Specification requirements. Therefore, the margin of safety associated with the MCPR Safety Limit is still maintained.

Based on the above, the proposed change will not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Richard J. Laufer.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: July 15, 2005.

Description of amendment requests: The amendments are for the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, operating licenses, but they will involve Unit 1, which is not an operating nuclear plant and is in the process of being decommissioned. The amendments would revise License Condition 2.B.(6) for both SONGS, Units 2 and 3 by (1) deleting the sentence "Transhipment of Unit 1 fuel between Units 1 and [2 or 3] shall be in accordance with SCE [Southern California Edison] letters to U.S. Nuclear Regulatory Commission dated * * * and in accordance with the Quality Assurance requirements of 10 CFR Part 71" and (2) adding the phrase "and by the decommissioning of San Onofre Nuclear Generating Station Unit 1" to the remaining sentence in the license condition. This change would recognize that Unit 1 is now in the stage of decommissioning and that in the future any radioactive waste water produced in the further decommissioning of Unit 1 would be released from the San Onofre site by transferring the waste water from Unit 1 to Units 2 and 3. The processing (if required) and discharging of this waste water would be using the Units 2 and 3 radioactive waste system and ocean outfall discharge line.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No. The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated because there is no increase in the total San Onofre Nuclear Generating Station (SONGS) Unit 1 radioactive wastewater created by this change.

The yard drain sump and all interconnecting piping will be entirely within the SONGS owner-controlled area. The new design will have more above ground piping, which presents an increase in [pipe] break probability. However, the system design complies with guidelines provided in NRC [Nuclear Regulatory Commission] Regulatory Guide 1.26 for nuclear service and with American National Standards Institute (ANSI) B31.1. Failure of the above ground piping is bounded by the Postulated Radioactive Releases Due to Liquid Tank failures, as described in the Updated Final Safety Analysis Report (UFSAR) Safety Analyses.

The proposed change will allow wastewater produced and currently being discharged at Unit 1[, using approved programs and procedures as allowed by the SONGS Unit 1 license,] to be discharged through the SONGS [Unit] 2 or 3 ocean outfall using the established systems, programs, and procedures [as allowed by the SONGS, Units 2 and 3 licenses]. [Unit 1 is not operating and is in the process of being decommissioned.] There will be no increase in the total radioactivity or quantity of wastewater released from the site as a result of the change. The existing SONGS[, Units] 2 and 3 radioactive effluent control program as required by Technical Specification 5.5.2.3 will still be met.

Therefore, the probability or consequences of any accident previously evaluated [for Units 2 and 3] is not [significantly] increased.

(2) Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No. The transfer of the SONGS Unit 1 sump discharge to the SONGS [Unit] 2 or 3 outfall does not create a new or different kind of accident. Within SONGS[, Unit] 2 and 3, the new piping will be constructed and supported consistent with the mechanical design standards for radioactive service water piping. These standards ensure design adequacy for intended function and service. The pipe routing is away from any plant system credited for either Unit's safe shutdown, so a pipe rupture cannot impact the safe operation of SONGS[, Units] 2 and 3. The yard areas are already analyzed for postulated radioactive pipe rupture from the SONGS[, Units] 2 and 3 radwaste discharge piping. The addition of the Unit 1 yard sump pipeline that traverses SONGS[, Units] 2 and 3 does not create a new or different kind of accident.

Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created [for Units 2 and 3].

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed change will allow radioactive or potentially radioactive waste water produced and currently being discharged at Unit 1 using approved programs and procedures as allowed by the SONGS Unit 1 license, to be discharged through the SONGS[, Units] 2 and 3 ocean outfalls using the approved programs and procedures as allowed by the SONGS[, Units] 2 and 3 licenses. A pipe rupture at SONGS[, Units] 2 and 3 will not significantly reduce the margin of safety. Any water from a rupture in this pipe will be collected and diverted to the yard drains, where it will mix with the SONGS [Unit] 2 or 3 outfalls.

The discharge of the waste water from Unit 1 through either Unit 2 or 3 outfall will be performed in accordance with existing programs and procedures. In addition, the radiation monitor and its interlocks will be used to control the release from the yard drain sump. The concentration at the outfall will be below the regulatory limits in 10 CFR 20 Appendix B. The requirements of the radioactive effluent control program as required by Technical Specification 5.5.2.3 will continue to be met.

Therefore, a significant reduction in a margin of safety is not involved [for Units 2 and 3].

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California

Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770 NRC Section Chief: Daniel S. Collins, Acting.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: August 12, 2005.

Brief description of amendment request: The proposed amendments would revise the Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Technical Specifications (TS) 5.5.9, "Steam Generator (SG) Tube Surveillance Program," on a one-time basis, to incorporate changes in the SG inspection scope fro VEGP, Unit 2 during Refueling Outage 11 and the subsequent operating cycle. The proposed changes are applicable to Unit 2 only for inspections during Refueling Outage 11 and for the subsequent operating cycle. The proposed changes modify the inspection requirements for portions of SG tubes within the hot leg tubesheet region of the SGs. The license for VEGP, Unit 1 is affected only due to the fact that Units 1 and 2 use common TSs.

Date of publication of individual notice in ***Federal Register:*** August 22, 2005 (70 FR 48985).

Expiration date of individual notice: September 21, 2005.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: February 14, 2005, as supplemented by letter dated July 13, 2005.

Brief description of amendment: The amendment revises the surveillance requirements (SR) for the station batteries as specified in SR 3.8.4.5, battery service test, and SR 3.8.4.6, battery performance test in TS 3.8.4, DC Sources—Operating.

Date of issuance: August 25, 2005.

Effective date: August 25, 2005.

Amendment No.: 206.

Renewed Facility Operating License No. DPR–23: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 24, 2005 (70 FR 29787). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 2005.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: January 19, 2005.

Brief description of amendments: The amendments revised the Technical Specifications 5.6.7.b, "Core Operating Limits Report (COLR)," to add the topical report DPC–NE–1005P–A, "Duke Power Nuclear Design Methodology Using CASMO–4/SIMULATE–3 MOX." This report has been previously approved by the Nuclear Regulatory Commission.

Date of issuance: August 23, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 230 and 212.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 1, 2005 (70 FR 9990).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 23, 2005.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: September 23, 2004, as supplemented by letter dated April 19, 2005.

Brief description of amendment: The amendment revises the Technical Specifications to allow revision of reactor operational limits, as specified in the River Bend Station Core Operating Limits Report, to compensate for the inoperability of the End of Cycle Recirculation Pump Trip Instrumentation.

Date of issuance: August 25, 2005.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 146.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 10, 2005 (70 FR 24650). The supplement dated April 19, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: December 14, 2004.

Brief description of amendment: The amendment changed Technical Specifications (TSs) to reflect surveillance frequency improvements. Specifically, the amendment removed the additional requirement to perform functional testing of the average power range monitor (APRM) and anticipated transient without scram recirculation pump trip alternate rod insertion instrumentation on each startup, when the nominally-required quarterly testing is current. Additionally, performance of the APRM High Flux heat balance calibration was modified to apply only after 12 hours at > 25% power. Additional editorial clarifications related to TS Tables 4.2.A through 4.2.G, Note 2 and associated Table references were also included.

Date of issuance: August 29, 2005.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 217.

Facility Operating License No. DPR–35: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** March 1, 2005 (70 FR 9991).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 29, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: October 5, 2004, as supplemented on April 22, 2005.

Brief description of amendment: The amendment revised Technical Specification (TS) 6.7.C "Primary Containment Leak Rate Testing Program," to allow a one-time extension to the 10-year interval for performing the next Type A containment integrated leak rate test (ILRT). Specifically, the change would allow the test to be performed within 15 years from the last ILRT which was performed in April 1995.

Date of Issuance: August 31, 2005.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 227.

Facility Operating License No. DPR–28: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** December 21, 2004 (69 FR 76492). The supplement contained clarifying information only, and did not change the initial no significant hazards consideration determination or expand the scope of the initial **Federal Register** notice.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 31, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: January 21, 2005.

Brief description of amendments: The amendments modify the Isolation Condenser System heat removal capability surveillance requirement (SR) by adding a note to the technical specification section SR 3.5.3.4. This note allows a delay of 12 hours after adequate reactor power is achieved to perform the test.

Date of issuance: August 25, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 215,207.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 24, 2005.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 25, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: May 20, 2004, as supplemented by letters dated February 18 and July 13, 2005.

Brief description of amendments: The amendments revised the Limerick Generating Station Units 1 and 2 Technical Specifications (TSs) 2.2.1, "Reactor Protection System Instrumentation Setpoints," TS 3/4.3.1, "Reactor Protection System Instrumentation," TS 3/4.3.6, "Control Rod Block Instrumentation," TS 3/4.4.1, "Recirculation System," and TS 6.9.1, "Routine Reports," and the associated TS Bases. The amendments support activation of the trip outputs of the oscillation power range monitor portion of the power range neutron monitoring system.

Date of issuance: August 26, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 177 and 139.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the TSs.

Date of initial notice in ***Federal Register:*** October 26, 2004 (69 FR 62474). The supplements dated February 18 and July 13, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 2005.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: August 24, 2004, as supplemented August 10, 2005.

Brief description of amendment: This amendment revises Technical Specifications (TSs) related to the surveillance requirements for the emergency feedwater system.

Date of issuance: August 16, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 173.

Renewed Facility Operating License No. NPF–12: Amendment revises the TSs.

Date of initial notice in ***Federal Register:*** October 12, 2004 (69 FR 60685).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 2005.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: June 30, 2004, as supplemented by letters dated December 2, 2004, May 27, 2005, and July 18, 2005.

Brief description of amendments: The proposed changes revise Technical Specification 5.5.2.15, "Containment Leakage Rate Testing Program," to include a one-time extension of the 10-year period of the performance-based leakage rate testing program for Type A tests as prescribed by the Nuclear Energy Institute (NEI) 94–01, Revision 0, "Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, Appendix J."

Date of issuance: August 24, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 198 and 189.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 3, 2004 (69 FR 46589). The supplemental letters dated December 2, 2004, May 27, and July 18, 2005, provided information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 2005.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to

issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: August 21, 2005, as supplemented August 22, 2005.

Description of amendment request: The amendments revise Technical Specification Limiting Condition for Operation 3.8.1, Condition C.2.1, to permit a one-time extension of 96 hours of the Completion Times for Keowee Hydro Unit 2.

Date of issuance: August 23, 2005.

Effective date: August 23, 2005.

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

Amendment Nos.: 347, 349, and 348.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revises the technical specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated August 23, 2005.

Dated at Rockville, Maryland, this 1st day of September, 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–17888 Filed 9–12–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Clearance of a Revised Information Collection: Declaration for Federal Employment; Optional Form 306, OMB No. 3206–0182

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit a request to the Office of Management and Budget (OMB) for review of a revised information collection. The Optional Form (OF) 306, Declaration for Federal Employment, is completed by applicants who are under consideration for Federal or Federal contract employment.

The OF 306 requests that the applicant provide personal identifying data, including, for example, general background information, information concerning retirement pay received or requested and information on Selective Service registration and military service. The revision is to make needed administrative updates.

It is estimated that 474,000 individuals will respond annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 118,500 hours.

Comments are particularly invited on:

• Whether this collection of information is necessary for the proper performance of functions of OPM and its Center for Federal Investigative Services, which administers background investigations;

• Whether our estimate of the public burden of this collection is accurate and based on valid assumptions and methodology;

• Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology;

• Ways in which we can enhance the quality, utility and clarity of the information to be collected.

For copies of this proposal, contact Mary Beth Smith-Toomey, OPM Forms Officer, at (202) 606–8358, FAX (202) 418–3251 or *mbtoomey@opm.gov.* Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Kathy Dillaman, Deputy Associate Director, Center for Federal Investigative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5416, Washington, DC 20415.

For information regarding administrative coordination contact: Mary-Kay Brewer—Program Analyst, Standards and Evaluation Group, Center for Federal Investigative Services, U.S. Office of Personnel Management, (202) 606–1042.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 05–18140 Filed 9–12–05; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Sumission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: SF 3102

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of a revised information collection. SF 3102, Designation of Beneficiary (FERS), is used by an employee or an annuitant covered under the Federal Employees Retirement System to designate a beneficiary to receive any lump sum due in the event of his/her death.

Approximately 2,893 SF 3102 forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 723 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Pamela S. Israel, Chief, Operations Support Group, Retirement Services Programs, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415; and

Brenda Aguilar, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 05–18141 Filed 9–12–05; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of an Information Collection: RI 25–49

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of an information collection. RI 25–49, Verification of Full-Time School Attendance, is used to verify that adult student annuitants are entitled to payments. OPM must confirm that a full-time enrollment has been maintained.

Approximately 10,000 RI 25–49 forms are completed annually. The form takes approximately 60 minutes to complete.

The annual estimated burden is 10,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Pamela S. Israel, Chief, Operations Support Group, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415; and

Brenda Aguilar, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623. U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 05–18142 Filed 9–12–05; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Federal Salary Council will meet at the time and location shown below. The Council is an advisory body composed of representatives of Federal employee organizations and experts in the fields of labor relations and pay policy. The Council makes recommendations to the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) about the locality pay program for General Schedule employees under section 5304 of title 5, United States Code. The Council's recommendations cover the establishment of modification of locality pay areas, the coverage of salary surveys, the process of comparing Federal and non-Federal rates of pay, and the level of comparability payments that should be paid.

The Council will review the results of pay comparisons and formulate its recommendations to the President's Pay Agent on pay comparison methods, locality pay area boundaries for 2007. The Council anticipates it will complete its work for this year at this meeting and has not scheduled any additional meetings for 2005. The public may submit written materials about the locality pay program to the Council at the address shown below. The meeting is open to the public.

DATES: October 3, 2005, at 10 a.m.

LOCATION: Office of Personnel Management, 1900 E Street, NW., Room 5303 (Pendleton Room), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, 1900 E Street, NW., Room 7H31, Washington, DC 20415–8200. Phone (202) 606–2838; FAX (202) 606–4264; or e-mail at *pay-performance-policy@opm.gov*.

For The President's Pay Agent.

Linda M. Springer,

Director.

[FR Doc. 05–18133 Filed 9–12–05; 8:45 am]

BILLING CODE 6325–39–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Revision and Extension: Rule 203A–2; SEC File No. 270–501; OMB Control No. 3235–0559

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA") the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collection of information discussed below.

Rule 203A–2(f), which is entitled "Internet Investment Advisers," exempts from the prohibition on Commission registration an Internet investment adviser who provides investment advice to all of its clients exclusively through computer software-based models or applications termed under the rule as "interactive websites."[1] These advisers generally would not meet the statutory thresholds set out in section 203A of the Advisers Act—they do not manage $25 million or more in assets and do not advise registered investment companies.[2] Eligibility under rule 203A–2(f) is conditioned on an adviser maintaining in an easily accessible place, for a period of not less than five years from the filing of Form ADV relying on the rule,[3] a record demonstrating that the adviser's advisory business has been conducted through an interactive website in accordance with the rule.

This record maintenance requirement is a "collection of information" for PRA purposes. The Commission believes that approximately 25 advisers are registered with the Commission under rule 203A–2(f), which involves a recordkeeping requirement manifesting in approximately four burden hours per year per adviser and results in an estimated 100 of total burden hours (4×25) for all advisers.

This collection of information is mandatory, as it is used by Commission staff in its examination and oversight program in order to determine continued Commission registration eligibility of advisers registered under this rule. Responses generally are kept confidential pursuant to section 210(b) of the Advisers Act.[4] 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 Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must

[1] 17 CFR 275.203A–2(f). Included in rule 203A–2(f) is a limited exception to the interactive website requirement which allows these advisers to provide investment advice to no more than 14 clients through other means on an annual basis. 17 CFR 275.203A–2(f)(1)(i). The rule also precludes advisers in a control relationship with the SEC-registered Internet adviser from registering with the Commission under the common control exemption provided by rule 203A–2(c) [17 CFR 275.203A–2(c)]. 17 CFR 275.203A–2(f)(1)(iii).

[2] 15 U.S.C. 80b–3a(a).

[3] The five-year record retention period is the same recordkeeping retention period for all advisers imposed under rule 204–2 of the Adviser Act. *See* rule 204–2 [17 CFR 275.204–2].

[4] 15 U.S.C. 80b–10(b).

be submitted to OMB within 30 days of this notice.

Dated: September 6, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4977 Filed 9–12–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–19; SEC File No. 270–148; OMB Control No. 3235–0133

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 approval of extension on the following rule: 17 CFR 240.17a–19 and Form X–17A–19 of the Securities Exchange Act of 1934.

Rule 17a–19 requires National Securities Exchanges and Registered National Securities Associations to file a Form X–17A–19 with the Commission within 5 days of the initiation, suspension or termination of a member in order to notify the Commission that a change in designated examining authority may be necessary.

It is anticipated that approximately eight National Securities Exchanges and Registered National Securities Associations collectively will make 1,800 total annual filings pursuant to Rule 17a–19 and that each filing will take approximately 15 minutes. The total burden is estimated to be approximately 450 total annual hours.

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.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 6, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4978 Filed 9–12–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52376A; File No. SR–NASD–2005–102]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Allow Members To Report Certain Trades in Exchange-Listed Securities Through the Execution Services of the Nasdaq Market Center

September 7, 2005.

Correction

On September 1, 2005, the Commission issued notice on a proposed rule change by the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq").[1] The proposed rule text in the first paragraph of NASD Rule 4720 should state as follows below. Proposed new language is in italics; proposed deletions are in brackets.

Subject to the conditions set forth below, members may utilize the Nasdaq Market Center to report trades in Nasdaq Market Center eligible securities required or eligible to be reported to Nasdaq pursuant to the Rule 4630, 4640, 4650, [and] 6100 *and 6400* Series."

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4979 Filed 9–12–05; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* Exchange Act Release No. 52376 (September 1, 2005).

[2] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52385; File No. SR–NASD–2005–082]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Clarify the Listing Standards Applicable to Companies in Bankruptcy Proceedings

September 7, 2005.

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 June 22, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("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 prepared by Nasdaq. On August 23, 2005, Nasdaq 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 amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to clarify the listing standards applicable to companies in bankruptcy proceedings. Nasdaq will implement the proposed rule immediately upon approval.

The text of the proposed rule change is set forth below. Proposed new language is italicized.[4]

4340. Application for Re-inclusion by Listed Issuers

(*a*) Reverse Mergers. An issuer must apply for initial inclusion following a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq made a non-substantive correction to the text of the proposed rule and a correction to the stated purpose of the proposed rule change.

[4] Changes to NASD Rule 4340 are marked to the rule text, which the Commission recently approved in Securities Exchange Act Release No. 52342 (August 26, 2005), 70 FR 52456 (September 2, 2005) (SR–NASD–2004–125). Changes to NASD Rule 4350 are marked to the current version of the rule text. No other pending rule filings would affect the text of these rules. Telephone conversation of September 7, 2005, between Arnold Golub, Associate Vice President, Nasdaq and David Michehl, Attorney, Division of Market Regulation, Commission.

issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a "Reverse Merger"). In determining whether a Reverse Merger has occurred, Nasdaq shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq shall also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity.

(b) Bankruptcy. Nasdaq may use its discretionary authority under Rule 4300 to deny listing to an issuer that has filed for protection under any provision of the federal bankruptcy laws or comparable foreign laws, even though the issuer's securities otherwise meet all enumerated criteria for continued inclusion in Nasdaq. In the event that Nasdaq determines to continue the listing of such an issuer during a bankruptcy reorganization, the issuer shall nevertheless be required to satisfy all requirements for initial inclusion, including the payment of initial listing fees, upon emerging from bankruptcy proceedings.

4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships

(a)—(h) No change.

(i) Shareholder Approval

(1)—(6) No change.

(7) Shareholder approval shall not be required for any share issuance by a company if such issuance is part of a court-approved reorganization under the federal bankruptcy laws or comparable foreign laws.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

When a Nasdaq-listed issuer files for protection under the bankruptcy laws, Nasdaq staff generally notifies the company that its securities are subject to delisting.[5] The company is afforded an opportunity to request review of that decision before a Nasdaq Listing Qualifications Hearing Panel ("Panel"), which stays its delisting. On occasion, Panels have allowed companies to retain their listing through the bankruptcy proceeding, provided they demonstrate: their ability to maintain compliance with the continued listing standards throughout the proceeding; a likelihood that the current equity holders will maintain a significant position in the post-bankruptcy company; and, a likelihood to emerge from the bankruptcy proceedings in the reasonably near term, such as may be the case in a "pre-packaged" bankruptcy plan.[6] Nonetheless, upon emerging from bankruptcy, these companies are often substantially changed, including new board members, management, financial structure, and shareholders. As such, Nasdaq believes that the reorganization could potentially lead to an entity that is effectively a new issuer. These concerns are the same ones presented when considering whether a transaction is a reverse merger and, in those cases, the company is required to reapply and meet the initial inclusion standards.[7] Nasdaq therefore believes that a reorganized company should be required to apply for listing and meet all initial inclusion criteria upon discharge from bankruptcy proceedings.

Nasdaq also proposes to clarify that any securities issued by a Nasdaq-listed issuer pursuant to a court-approved plan of reorganization are exempt from Nasdaq's shareholder approval rules. In such cases, the bankruptcy court has jurisdiction over the protection of shareholders, and it would be inconsistent with the overarching federal bankruptcy policy to give shareholders an ability to contradict the court's approval of a plan of reorganization that involves the issuance of shares. This approach would be consistent with that taken in Section 1145 of Chapter 11 of the Bankruptcy Code,[8] which exempts securities issued in bankruptcy reorganizations from Section 5 of the Securities Act of 1933.[9]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[10] in general, and with Section 15A(b)(6) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, protect investors and the public interest. Nasdaq believes that the proposed rule change is consistent with these requirements in that it is designed to remove ambiguity surrounding the standards applicable to companies involved in bankruptcy proceedings and requires such companies to meet the heightened initial inclusion standards upon emerging from bankruptcy, thereby protecting investors and the public interest.

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 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 self-regulatory organization consents, the Commission will:

[5] Nasdaq's delisting notice generally is based on one or more of the following concerns: (i) Public interest concerns raised by the bankruptcy filing; (ii) concerns regarding the residual equity interest of the existing listed securities holders; or (iii) concerns about the company's ability to sustain compliance with all requirements for continued listing.

[6] In that regard, the Commission recently approved rules that would limit a Panel's discretion to grant exceptions to the listing standards to 90 days. See Securities Exchange Act Release No. 51268 (February 28, 2005), 70 FR 10716 (March 4, 2005) (SR–NASD–2004–125).

[7] See NASD Rule 4330(f), which was recently renumbered in SR–NASD–2004–125 as NASD Rule 4340.

[8] 11 U.S.C. 1145.

[9] 15 U.S.C. 77e.

[10] 15 U.S.C. 78*o*–3.

[11] 15 U.S.C. 78*o*–3(b)(6).

A. By order approve such proposed rule change; or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-NASD–2005–082 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR-NASD–2005–082. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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–NASD–2005–082 and should be submitted on or before October 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4980 Filed 9–12–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5188]

Culturally Significant Objects Imported for Exhibition Determinations: "Elizabeth Murray"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, "Elizabeth Murray," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, New York, from on or about October 23, 2005, to on or about January 9, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/453–8052, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: September 7, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–18127 Filed 9–12–05; 8:45 am]

BILLING CODE 4710–08–P

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5189]

Culturally Significant Objects Imported for Exhibition Determinations: "Pompeii: Stories from an Eruption"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, "Pompeii: Stories from an Eruption," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Field Museum, Chicago, Illinois, from on or about October 22, 2005, to on or about March 26, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/453–8052, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: September 7, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–18126 Filed 9–12–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 5187]

Culturally Significant Objects Imported for Exhibition Determinations: "Ewer"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition, "Ewer," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art, New York, New York, from on or about September 30, 2005, to on or about September 30, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 453–8052, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: September 7, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–18109 Filed 9–12–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Changes to Advisory Circular 27–1B, Certification of Normal Category Rotorcraft, and Advisory Circular 29–2C, Certification of Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Advisory Circular (AC) changes.

SUMMARY: This notice announces the availability of changes to AC 27–1B, Certification of Normal Category Rotorcraft, and AC 29–2C, Certification of Transport Category Rotorcraft for AC paragraphs 27.351 and AC 29.351B, Yawing Conditions. These AC paragraphs are final and replace the existing AC paragraphs dated 9/30/99. These AC paragraphs will be included in the upcoming Change 2 update.

FOR FURTHER INFORMATION CONTACT: Kathy L. Jones, Regulations Group, FAA, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, TX 76193–0111; telephone (817) 222–5359; fax (817) 222–5961; e-mail: *http://www.Kathy.L.Jones@FAA.GOV.*

SUPPLEMENTARY INFORMATION: This notice announces the availability of AC changes. You can get electronic copies of these changes from the FAA by logging on to *http//www.faa.gov/aircraft/draft_docs/.* If you do not have access to the Internet, you may request a copy by contacting the person named under the caption **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, on September 2, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–18152 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Dayton for the Dayton International Airport under the provisions of 49 U.S.C. 47501 *et seq.* Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: The effective date of the FAA's determination on the noise exposure maps is August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Davidson, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, (734) 229–2900.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Dayton International Airport are in compliance with applicable requirements of part 150, effective August 29, 2005.

Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the City of Dayton. The documentation that constitutes the "noise exposure maps" as defined in § 150.7 of part 150 includes: Noise Exposure Map Existing Conditions (2004) (volume 3, exhibit V–1) and Noise Exposure Map Future (2009) Baseline (volume 3, exhibit V–2). The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on August 29, 2005. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable

from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration Detroit Airports District Office 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174.

City of Dayton Department of Aviation, 3600 Terminal Drive, Suite 300, Vandalia, Ohio 45377.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Romulus, Michigan on August 29, 2005.

Irene R. Porter,

Manager, Detroit Airport District Office, Great Lakes Region.

[FR Doc. 05–18151 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Financing Reauthorization

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The current taxes and fees paid into the Aviation Trust Fund, which provide funding for the National Aviation System, are only authorized through September 30, 2007. Since there is only a small and declining balance in the Trust Fund, it is critical that the financing not be allowed to lapse. The new financing structure should generate stable and predictable revenue, maintain the appropriate levels of service, and enable FAA to make long-term investments and tie revenues raised for the system to the infrastructure and operational costs of the system. The FAA has developed a series of data packages in examining FAA costs, paid for through the Trust Fund, from a managerial reporting standpoint. These packages will advance everyone's understanding of FAA costs and what the Agency faces as it considers a range of future funding options. They are available at *http://www.faa.gov/about/office_org/headquarters_offices/aep/aatf/.*

FOR FURTHER INFORMATION CONTACT: Robert E. Robeson, Manager, Systems and Policy Analysis Division, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

In April 2005, the FAA hosted a Trust Fund Forum with major aviation stakeholders. A variety of ideas on options to fund the FAA were discussed. At the Trust Fund Forum, FAA began the dialogue on the need to reauthorize the Airport and Airway Trust Fund. The current taxes and fees are only authorized through September 30, 2007 and since there is only a small and declining balance in the Trust Fund, it is critical that financing not be allowed to lapse.

The new financing structure should generate stable and predictable revenue, maintain the appropriate levels of service, and enable the FAA to make long-term investments not only in modernization but also in the Next Generation Air Transportation System. The funding mechanism chosen should tie revenues raised for the system to the infrastructure and operational costs of the system. It should also create incentives for the FAA to become increasingly productive.

The FAA spent the last several months analyzing cost and activity data as well as funding options. While this analytical work has reached a fairly mature level, it is expected to continue through the fall. FAA is examining the contributions of various stakeholder groups to the Trust Fund under the current tax structure, as well as the impact of different funding mechanisms on the FAA, the flying public, and those stakeholder groups.

One major component of this work is an ongoing study that would allocate FAA's air traffic control costs to users of the system. This ongoing study uses cost accounting data from fiscal year 2004, which is the best available data at this time. While the FAA's cost accounting system will provide detailed source data in this effort, fiscal year 2004 cost reports apply allocation rules to this data to produce managerial reports so that ATO management can understand costs at the national and facility levels. It is important to note that the cost accounting system continues to improve, so that fiscal year 2006 managerial reports will be based on more refined allocations. Another set of allocation rules would be required to support analysis to determine the most viable proposal to fund the system. In developing these allocation rules, the FAA seeks stakeholder input in order to fully consider principles such as marginal system use, use of congested space and scarce resources, aircraft weight, distance, and other criteria. The allocation rules, of course, must be applied with transparency and would need to be validated by the user community.

In addition, the FAA's Safety and Airports organizations have identified areas where services can be matched to the revenue needed for those programs. Because the FAA cost accounting system will not deliver such reports for these organizations until the middle of 2006, the FAA will use data from its Labor Distribution Reporting system, annual budgets, and grants issued to help develop options for future funding in the meantime.

The Administration's intention is to develop a proposal that has stakeholder support. On September 6, 2005, the FAA Administrator sent a package to key stakeholders. Besides a cover letter that contained the information summarized above, the package also contains questions for stakeholders and the data packages developed to use in examining FAA costs from a managerial reporting standpoint. These packages will advance the understanding of FAA costs and what the Agency faces as it considers a range of future funding options.

The stakeholder package available on the FAA's Web site contains data packages on the Air Traffic Organization including technical background and supporting detail, Airports, Aviation Safety, and International Aviation. Also included are questions regarding:

1. Providing the Right Types of ATC Services.
2. Revisions to Current Tax System.
3. Other Funding Alternatives for Cost Recovery of ATC Services and Cost Allocation.
4. General Fund Questions.
5. Airport Related Issues.
6. Charging for Certification and Other FAA Services.
7. Lessons Learned from Other Countries.

Issued in Washington, DC, on September 7, 2005.

Robert E. Robeson,

Manager, Systems and Policy Analysis Division, Office of Aviation Policy and Plans.

[FR Doc. 05–18145 Filed 9–8–05; 2:45 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 147 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment.

DATES: The meeting will be held September 29, 2005 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 147 meeting. The agenda will include:

- September 29:
- Opening Session (Welcome and Introductory Remarks, Review/Approve meeting agenda for 60th meeting, Review/Approve Summary of Previous Meeting, Review of Open Action Items).
- SC–147 Activity Reports.
- Surveillance Working Group: Hybrid Surveillance MOPS.
- Operations Working Group: "Adjust Vertical Speed, Adjust" Ras.
- Requirements Working Group (RWG).
- Resolution of final comments and approval of the RWG Report: "*Safety Analysis of Proposed Change to TCAS RA Reversal Logic*".*
- Closing Session (Future Actions/ Activities, Date and Place of Next Meeting, Adjourn).

*Contact RTCA for a copy of the Final Review and Comment draft of the RWG report, which has been distributed to SC–147 members prior to the meeting. Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 30, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–18156 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Washington, DC

AGENCIES: U.S. Federal Highway Administration, District of Columbia Division; District of Columbia, Department of Transportation.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The U.S. Federal Highway Administration (FHWA) in coordination with the District of Columbia Department of Transportation (DDOT) in Washington, DC is issuing this notice to advise agencies and the public that a Draft Environmental Impact Statement (DEIS) will be prepared to asses the impacts of the proposed transportation improvements to the 11th Street Bridges.

FOR FURTHER INFORMATION CONTACT: Federal Highway Administration, District of Columbia Division: Mr. Michael Hicks, Environmental/Urban Engineer, 1900 K Street, Suite 510, Washington, DC 20006–1103, (202) 219–3513; or Mr. John Deatrick, Deputy Director/Chief Engineer, District of Columbia, Department of Transportation, 64 New York Avenue, NE., Washington, DC 20005, (202) 671–2800.

SUPPLEMENTARY INFORMATION: The environmental review of transportation improvement alternatives for the 11th Street Bridges will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4371, *et seq.*), Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), FHWA Code of Federal Regulations (23 CFR 771.101–771.137, *et seq.*), and all applicable Federal, State, and local government laws, regulations, and policies.

Public Scoping Meetings: DDOT will solicit public and agency comments through public scoping, including scoping meetings, on the proposed action. To ensure that the full range of issues is identified early in the process, comments are invited from all interested and/or potentially affected parties. The location and time for each meeting will be publicized in local newspapers and elsewhere. Written comments will be accepted throughout this process and can be forwarded to John Deatrick at the address provided above.

Meeting dates, times, and locations will be announced on the project Web site accessible at *http://www.11thStreetBridgesEIS.com* and in the following newspapers: The Washington Post, The Washington Times, The Hill Rag, and East of the River.

Scoping materials will be available at the meetings and may also be obtained in advance of the meetings by contacting Mr. John Deatrick. Scoping materials will be made available on the project Web site. Oral and written comments may be given at the scoping meetings. Comments may also be sent to the address above.

Description of Primary Study Area and Transportation Needs

The existing 11th Street Bridges cross the Anacostia River in the southeast quadrant of the District of Columbia. They connect the Southeast Freeway (I-395) and the Anacostia Freeway (I-295) and they connect to local streets on both sides of the river. Existing ramps provide only partial movement between the freeways. The project area includes both interchanges, both bridges, and the associated ramps.

The purpose of the 11th Street Bridges project is to improve connectivity across the Anacostia River to serve local traffic reaching residential, employment, and commercial centers on opposite sides of the river and to serve regional traffic moving between the major employment center of downtown Washington, DC and residential communities in Maryland and Virginia. The DDOT proposes to improve this traffic flow by replacing or reconstructing the pair of one-way bridges and completing the now missing traffic movements to the Anacostia Freeway and the 11th Street Bridges.

The 11th Street Bridges project, as defined in the Anacostia Waterfront

Initiative (AWI) Framework Plan, is intended to provide better access to waterfront areas east and west of the river, including Anacostia Park, separate local traffic from regional commuter traffic, and better serve historic Anacostia, and near southeast neighborhoods. It will connect the Southeast Freeway with traffic to and from both directions of the Anacostia Freeway. The AWI seeks to restore the river's water quality, reclaim the waterfront as a magnet of activity, and stimulate sustainable development in waterfront neighborhoods. The improvement of traffic flow across the 11th Street Bridges is a step in the reinvestment and reclamation process.

(Catalog of Federal Domestic Assistance Program Number 20.205 Highway Planning and Construction. The regulations and implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: September 7, 2005.

Gary L. Henderson,

Division Administrator, District of Columbia Division, Federal Highway Administration.

[FR Doc. 05–18047 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket MARAD–2005–22416]

Lykes Lines Limited, LLC; Request For Comments Regarding the Proposed Purchase of CP Ships Limited by TUI AG and Its Impact on the Maritime Security Program (MSP)

By letter dated August 22, 2005, CP Ships USA, LLC (CP USA), successor in interest to Lykes Lines Limited, LLC (Lykes), has advised the Maritime Administration (MARAD) that TUI AG (TUI) is acquiring CP Ships Limited (CP Ships), the parent company of CP USA, through a stock purchase. Lykes has been awarded five new MSP Operating Agreements, Nos. MA/MSP–74 through 78, respectively, to the vessels CP NAVIGATOR (ex-LYKES NAVIGATOR), CP DISCOVERER (ex-LYKES DISCOVERER), CP LIBERATOR (ex-LYKES LIBERATOR), CP MOTIVATOR (ex-LYKES MOTIVATOR) and CP YOSEMITE (ex-TMM YUCATAN) for the participation of those vessels in the MSP beginning October 1, 2005. CP USA became the successor to Lykes on May 30, 2005, through reorganization and renaming of various components of Canadian Pacific Lines, Limited, which itself was renamed CP Ships.

TUI is a German corporation and parent of the German vessel operator Hapag-Lloyd AG. Neither TUI, nor Hapag-Lloyd presently has any connection to the MSP. Implementation of the proposed purchase will bring the ultimate control of CP USA's five MSP Fleet vessels under the ownership of TUI.

The purchase of CP Ships by TUI will, in effect, transfer ultimate ownership of CP USA from one foreign corporate entity to another. The transaction requires MARAD approval under CP USA's MSP Operating Agreements Nos. MA/MSP–74 through 78. This notice is being published as a matter of discretion. MARAD will consider all comments submitted in a timely fashion on this particular application, and the topic of the transfer of MSP Operating Agreements in general, and will take such action thereto as may be deemed appropriate.

A redacted copy of this proposal will be available for inspection at the Department of Transportation (DOT) Dockets Facility and on the DOT Dockets Web site (address information follows). Any person, firm or corporation having an interest in this proposal, and desiring to submit comments concerning the transaction, may file comments as follows. You should mention the docket number that appears at the top of this notice in any submission. Written comments should be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit/*. You may call Docket Management at (202) 366–9324. You may visit the docket room to inspect and copy comments at the above listed address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*. Comments must be received by close of business September 23, 2005.

This notice is published as a matter of discretion, and the fact of its publication should in no way be considered a favorable or unfavorable decision on the proposed transaction, as filed, or as it may be amended.

Dated: September 7, 2005.

By Order of the Maritime Administration.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–18150 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2005–21383; Notice 2]

Equistar Chemicals, LP, Grant of Petition for Decision of Inconsequential Noncompliance

Equistar Chemicals, LP (Equistar) has determined that certain brake fluid that was manufactured in 2004 and that Equistar distributed does not comply with S5.1.7 of 49 CFR 571.116, Federal Motor Vehicle Safety Standard (FMVSS) No. 116, "Motor vehicle brake fluids." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Equistar has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of a petition was published, with a 30-day comment period, on June 9, 2005, in the **Federal Register** (70 FR 33769). NHTSA received no comments.

Affected are a total of approximately 170,000 gallons of DOT–3 brake fluid designated as Lot 630 and manufactured by Oxid, LP in September 2004. FMVSS No. 116, S5.1.7, "Fluidity and appearance at low temperature," requires that when brake fluid is tested as specified in the standard at storage temperatures of minus 50 ±2 °C,

(a) The fluid shall show no sludging, sedimentation, crystallization, or stratification; [and]

(b) Upon inversion of the sample bottle, the time required for the air bubble to travel to the top of the fluid shall not exceed 35 seconds * * *

NHTSA's compliance tests, conducted by ABIC Testing Laboratories, Inc. (ABIC), found that at minus 50 °C, the noncompliant brake fluid freezes, therefore showing crystallization and failing the requirements of S5.1.7(a). NHTSA's compliance tests also found that at minus 50 °C, upon inversion of the sample bottle, the time required for the air bubble to travel to the top of the fluid exceeds 35 seconds, therefore failing the requirements of S5.1.7(b).

Equistar believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Equistar stated the following:

Equistar asked Oxid, LP [the brake fluid manufacturer] to supply a copy of its data reporting the results of the tests it had previously conducted for * * * [the brake] fluid pursuant to the test requirements of S6.7 * * *. The data show that [the brake fluid] unconditionally passed the tests required by the applicable standard, including the minus 50 °C test.

Equistar stated that it had the noncompliant brake fluid further tested by another testing center, Case Consulting Laboratories, Inc. (Case), and that:

The samples tested by Case passed all of the required tests, including the minus 50 °C air bubble and appearance test, except that the tested sample * * * began to form crystals. It bears note that the bubble travel time on this sample was 2.7 seconds against the standard's requirement of 35 seconds maximum. Further, the appearance of the sample after testing at minus 50 °C was the same as before the testing.

Equistar stated that "the crystals and globules" in the brake fluid "would not pose a threat to the operation of the brake fluid." Case certified that the globules formed at minus 50 °C were of a nonabrasive nature and fall back into solution upon slight agitation and warming. ABIC confirmed informally to NHTSA that Case's statement is correct.

In its petition, Equistar referred to two prior NHTSA grants of inconsequential noncompliance petitions which it claims are similar. These are Dow Corning Corporation (59 FR 52582, October 18, 1994) and First Brands Corporation (59 FR 62776, December 6, 1994). Equistar stated that NHTSA should grant its petition based on the same rationale as it used to grant the previous two petitions.

NHTSA agrees with Equistar that the noncompliance is inconsequential to motor vehicle safety. Both Case and ABIC determined that that the globules which formed at minus 50 °C were of a nonabrasive nature and fell back into solution upon slight agitation and warming. In granting both the Dow Corning and First Brands petitions referenced above, NHTSA determined that the type of crystallization which is of a nonabrasive nature and will readily disperse under slight agitation or warming ought not have an adverse effect upon braking. Therefore the cases are analogous. However, NHTSA wants to be clear that it maintains a distinction, which it established in granting the Dow Corning and First Brands petitions, between crystals which are of a nonabrasive nature and fall back into solution upon slight agitation and warming, as opposed to crystals that are abrasive or do not fall back into solution, and that may have the potential to clog brake system components. Brake fluid which exhibits the latter characteristics do not fall under the Dow Corning and First Brands precedent.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Equistar's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: September 7, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–18149 Filed 9–12–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Ex Parte No. 333]

Sunshine Act Meeting

TIME AND DATE: 9 a.m., September 15, 2005.

PLACE: The Board's Hearing Room, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

STATUS: The Board will meet to discuss among themselves the following agenda items. Although the conference is open for public observation, no public participation is permitted.

MATTERS TO BE CONSIDERED: STB Docket No. WCC–101, Government of the Territory of Guam v. Sea-Land Service, Inc., American President Lines, LTD., and Matson Navigation Company, Inc.

STB Finance Docket No. 34505, *East Brookfield & Spencer Railroad, LLC—Lease and Operation Exemption—CSX Transportation, Inc.*

STB Docket No. AB–441 (Sub-No. 4X), *San Pedro Railroad Operating Company, LLC—Abandonment Exemption—in Cochise County, AZ.*

STB Docket No. AB–976X, *Pittsburg & Shawmut Railroad, LLC—Abandonment Exemption—in Armstrong and Jefferson Counties, PA.*

STB Docket No. AB–600, *Yakima Interurban Lines Association—Adverse Abandonment—in Yakima County, WA.*

STB Finance Docket No. 34746, *Konsos & Oklohomo Roilroad, Inc.—Acquisition Exemption—Rail Line of Union Pacific Roilroad Company.*

STB Finance Docket No. 34694 (Sub-No. 1), *Union Pocific Railroad Company—Temporary Trackage Rights Exemption—BNSF Roilway Company.*

FOR FURTHER INFORMATION CONTACT: A. Dennis Watson, Office of Congressional and Public Services, Telephone: (202) 565–1596 FIRS: 1–800–877–8339.

Dated: September 8, 2005.

Vernon A. Williams,

Secretary.

[FR Doc. 05–18131 Filed 9–8–05; 1:51 pm]

BILLING CODE 4915–01–P

Corrections

Federal Register

Vol. 70, No. 176

Tuesday, September 13, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/ General Management Plan: Ebey's Landing National Historical Reserve, Island County, WA; Notice of Availability

Correction

In notice document 05–17483 beginning on page 52444 in the issue of Friday, September 2, 2005, make the following correction:

On page 52445, in the first column, in the last paragraph, at the bottom of the page, the first sentence should read as follows: "All written comments must be postmarked or transmitted not later than December 1, 2005".

[FR Doc. C5–17483 Filed 9–12–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
September 13, 2005

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Southern California Distinct Vertebrate Population Segment of the Mountain Yellow-Legged Frog (*Rana muscosa*); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU30

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Southern California Distinct Vertebrate Population Segment of the Mountain Yellow-Legged Frog (*Rana muscosa*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the endangered southern California distinct vertebrate population segment (DPS) of the mountain yellow-legged frog (*Rana muscosa*) pursuant to the Endangered Species Act of 1973, as amended (Act). We have determined that approximately 8,770 ac (3,549 ha) of land containing features essential to the conservation of the mountain yellow-legged frog exist in Los Angeles, San Bernardino, and Riverside Counties, CA. We are proposing to designate approximately 8,283 acres (ac) (3,352 hectares (ha)) of streams and riparian areas as critical habitat within 3 units in southern California, further divided into subunits: Unit 1 (7 subunits) in the San Gabriel Mountains (Los Angeles and San Bernardino counties); Unit 2 (3 subunits) in San Bernardino Mountains (San Bernardino County); and Unit 3 (4 subunits) in the San Jacinto Mountains (Riverside County). Lands being proposed as critical habitat are under Federal, local/state, and private ownership; no tribal lands are included in this proposed designation. This proposed designation includes areas currently known to be occupied by the southern California DPS of the mountain yellow-legged frog, as well as several areas that were historically occupied, but are currently unoccupied. We are proposing to exclude critical habitat from approximately 487 ac (197 ha) of non-Federal lands within existing Public/Quasi Public (PQP) lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Area under section 4(b)(2) of the Act.

DATES: We will accept comments from all interested parties until November 14, 2005. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by October 28, 2005.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92011.

2. You may hand-deliver written comments to our Office, at the above address.

3. You may send comments by electronic mail (e-mail) to [*FW1CFWO_MYLFPCH@fws.gov*]. Please also include "Attn: mountain yellow-legged frog" in your e-mail subject header and see the Public Comments Solicited section below for file format and other information about electronic filing.

1. You may fax your comments to (760) 431–9624.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92011 (telephone (760) 431–9440).

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92011, (telephone (760) 431–9440; facsimile (760) 431–9624).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Specific information on the southern California distinct vertebrate population segment (DPS) of the mountain yellow-legged frog: *i.e.*, the locations of known occurrences of individuals or subpopulations, the dispersal behavior and distances of adults, juveniles and tadpoles, the developmental time of tadpoles and their habitat requirements throughout the year, genetic information in the mountain yellow-legged frog, recreation impacts, impacts of non-native predators;

(2) Specific information as to whether the physical and biological features we have identified essential to its conservation are accurate and whether they exist on those areas we have identified as occupied;

(3) If those unoccupied areas proposed to be designated are all essential to the conservation to the species;

(4) The proposed exclusion of habitat on non-Federal lands within existing Public/Quasi Public (PQP) lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) under section 4(b)(2) of the Act. Please provide information demonstrating the conservation benefits of including these lands exceed the benefits of excluding these lands. If the Secretary determines the benefits of including the lands outweigh the benefits of excluding them, they will not be excluded from critical habitat;

(5) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(6) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(7) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES**). Please submit Internet comments to [*FW1CFWO_MYLFPCH@fws.gov*] in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: mountain yellow-legged frog" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760/431–944. Please note that the Internet address [*FW1CFWO_MYLFPCH@fws.gov*] will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the U.S. Fish and Wildlife Service (Service) has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs). The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

In this current proposed critical habitat rule, we have determined that the identification and conservation of unoccupied habitat is necessary for the long-term persistence of the mountain yellow-legged frog. In the case of this species, because we have determined it necessary to propose critical habitat in unoccupied areas, the critical habitat designation will provide a benefit to the species.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, of the 1,253 listed species in the U.S. under the jurisdiction of the Service, only 471 species (38 percent) have designated critical habitat. We address the habitat needs of all 1,253 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process; the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent Ninth Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*, has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. In response, on December 9, 2004, the Director issued guidance to be used in making section 7 adverse modification determinations. This critical habitat designation does not use the invalidated regulation in our consideration of critical habitat's benefits.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

Please refer to the final listing rule published in the **Federal Register** on July 2, 2002 (67 FR 44382) for a detailed discussion on the taxonomic history and description of the southern California distinct vertebrate population segment (DPS) of the mountain yellow-legged frog (*Rana muscosa*), hereafter referred to as the mountain yellow-legged frog. It is our intent in this document to reiterate and discuss only those topics directly relevant to the development and designation of critical habitat or relevant information obtained since the final listing.

The mountain yellow-legged frog is in the family of true frogs, Ranidae, which consists of frogs that are more closely tied to water bodies for breeding and foraging than other frog or toad species. Mountain yellow-legged frogs are diurnal frogs, occupying rocky and shaded streams with cool waters originating from springs and snowmelt. Many of the streams in which they historically occurred have a relatively steep gradient with large boulders in the streambeds (Stebbins 1951).

Historically, mountain yellow-legged frogs in southern California were documented over a wide elevation range, from 1,214 ft to 7,513 ft (370 m

to 2,290 m) (Jennings and Hayes 1994a), and in a wide variety of wetland habitats, including lakes, rivers, creeks, ponds, and marshes (Zweifel 1955, Mullally 1959, Schoenherr 1976, Jennings 1994a, b, Vredenburg *et al.* 2005).

Mountain yellow-legged frogs historically occurred in streams on both the desert and coastal slopes of the San Gabriel, San Bernardino, San Jacinto, and Palomar Mountains in Los Angeles, San Bernardino, Riverside, and San Diego counties (Zweifel 1955). Despite the close proximity of the Transverse Mountain Ranges to highly populated areas such as Los Angeles, Riverside, and San Diego, the vertebrate fauna has been relatively little studied, particularly in the San Gabriel Mountains (Jennings 1994). Over 40 years ago, Schoenherr (1976) and Zweifel (1955) described the distribution of frogs in the region, but their studies were not encompassing; *e.g.* in the San Gabriel Mountains, their works were conducted in the southern and western areas. Little to no observations were collected in the 1980's, but during the 1990's, Jennings (1993, 1994, 1995, 1998, 1999) surveyed for the mountain yellow-legged frog extensively in the region. This work was subsequently resumed by USGS, who has conducted annual surveys for mountain yellow-legged frog in southern California since 2000.

In the most recent USGS survey report on the mountain yellow-legged frog in southern California, Backlin *et al.* (2004) used historical records to compare the locations of where frogs previously were found to the locations of the current, extant populations and concluded that between the 1900's and today, it is evident that the mountain yellow-legged frog has disappeared from nearly all of its former range in southern California. Between 2000 and 2003, USGS, USFS, and CDFG conducted extensive surveys for mountain yellow-legged frogs at their historical locations and other areas with suitable habitat. Backlin *et al.* (2004) gave the overall survey results: mountain yellow-legged frogs are currently known to occur in only 8 areas in southern California, and all were located in isolated headwater streams (Backlin *et al.* 2004). Most of these populations occur above (upstream of) a barrier, natural or artificial, which limits upstream movement by fish (cf. Backlin *et al.* 2004; A. Backlin, USGS, *pers. comm.* 2005). In the Palomar Mountains, where mountain yellow-legged frog previously occurred, no recent, exhaustive surveys have been conducted (Backlin *et al.* 2004). Additional surveys need to be conducted in areas with suitable aquatic habitat that includes streams, creeks and pools, but also springs, seeps marshes, and small tributaries, so that undocumented populations are not inadvertently overlooked (Backlin *et al.* 2004).

The final listing rule (67 FR 44382) described the mountain yellow-legged frog as occupying five streams in the San Gabriel Mountains: (1) Bear Gulch-East Fork San Gabriel River (referred to in this rule as San Gabriel River, East Fork, Bear Gulch); (2) Vincent Gulch-East Fork San Gabriel River (referred to in this rule as San Gabriel River, East Fork, Vincent Gulch); (3) South Fork-Big Rock Creek (referred to in this rule as Big Rock Creek, South Fork); (4) Little Rock Creek, and (5) Devil's Canyon-West Fork San Gabriel River. The final listing rule also recognized one population within the San Bernardino Mountains (City Creek-East Fork), and one population in the San Jacinto Mountains (Fuller Mill Creek (referred to in this rule as San Jacinto River, North Fork, Fuller Mill Creek)). The mountain yellow-legged frog is believed to be extirpated from Palomar Mountain (Jennings and Hayes 1994a).

In the proposed and final rules listing the southern California DPS of the mountain yellow-legged frog as endangered, we identified additional streams where the DPS had previously been known to occur, but were not found in surveys conducted in 2001 (64 FR 71714; 67 FR 44382). These streams where mountain yellow-legged frogs had been observed included: Alder Gulch-East Fork San Gabriel River in the San Gabriel Mountains (referred to in this rule as San Gabriel River, East Fork, Alder Gulch), where they were last seen in 1998 (Jennings 1998); the North Fork of San Jacinto River, last seen in 1999; Hall Canyon (referred to in this rule as Indian Creek at Hall Canyon), last seen in 1995; and Dark Canyon in the San Jacinto Mountains, where frogs have been observed in 2005. The population in Dark Canyon was recently rediscovered in 2003 by biologists from the California Department of Fish and Game (CDFG) and the San Bernardino National Forest (Backlin *et al.* 2004). Prior to the rediscovery of this population, the last observation of the mountain yellow-legged frog in Dark Canyon was in 1999.

Barton Creek and Day Canyon were known to be occupied by the mountain yellow-legged frog prior to the listing in 2002, but were not discussed in either the proposed or final listing rules. Approximately 50 individual adults were observed in Barton Creek, East Fork in 1993 (CNDDB 2005), when water flowed well in the creek (R. McKernan, dir. San Bernardino County Museum, pers. comm. 2005). Mountain yellow-legged frogs were first observed in Day Canyon in 1959 (Los Angeles County Museum), and re-sighted there in 1994 (CNDDB 2005). In 2003, the USGS conducted a single visit survey of a portion of Day Canyon, and did not locate any mountain yellow-legged frogs, but did note the occurrence of rainbow trout (Onchorhynchus mykiss) (Backlin *et al.* 2004).

In summary, we identified the following streams as occupied at the time of listing: (a) *In the San Gabriel Mountains*: the East Fork of the San Gabriel River including Bear Gulch (67 FR 44382), Prairie Creek (64 FR 71714), Vincent Gulch (64 FR 71714, 67 FR 44382), Alder Creek—East Fork (64 FR 71714; referred to here as Alder Gulch), Devil's Canyon (64 FR 71714, 67 FR 44382), Big Rock Creek (67 FR 44382) and Little Rock Creek (64 FR 71714, 67 FR 44382); (b) *In the San Bernardino Mountains:* the East Fork, City Creek (64 FR 71714, 67 FR 44382) which is currently assumed to be unoccupied; (c) *In the San Jacinto Mountains:* four tributaries in the upper reaches of the North Fork, San Jacinto River on Mount San Jacinto: Dark Canyon (64 FR 71714, 67 FR 44382), Hall Canyon (64 FR 71714, 67 FR 44382; referred to here as Indian Creek at Hall Canyon), Fuller Mill Creek (64 FR 71714, 67 FR 44382), and the main North Fork, San Jacinto River (64 FR 71714).

Subsequent to listing the species, we identified the following additional streams as also occupied: (a) *In the San Gabriel Mountains:* the East Fork of the San Gabriel River: the main stem of the San Gabriel River, East Fork at the confluence of Fish Fork to below the confluence of Iron Fork, the lower reaches of the tributaries Iron Fork and Fish Fork, and Day Canyon in San Bernardino National Forest; (b) *in the San Bernardino Mountains:* the East Fork of Barton Creek (San Bernardino National Forest), and the East Fork of City Creek, and; (c) *in the San Jacinto Mountains:* an unnamed side tributary of the North Fork of the San Jacinto River in Dark Canyon.

This rule also proposes some streams that were historically occupied and currently assumed to be unoccupied, because we believe these streams are essential to the conservation of the species. These are: (a) *In the San Gabriel Mountains (Angeles National Forest):* Bear Creek (located north of the West Fork of the San Gabriel River), and the East Fork of Iron Fork, a tributary to the East Fork of the San Gabriel River; (b) *In the San Bernardino Mountains:* the

upper reaches of the North Fork of Whitewater River (San Bernardino National Forest); and (c) *In the San Jacinto Mountains (San Bernardino National Forest):* Tahquitz Creek (uppermost reaches, including Willow Creek tributary), and Andreas Creek (uppermost reaches) both within the San Jacinto Wilderness area.

As discussed in the final listing rule (67 FR 44382), Jennings and Hayes (1994) estimated that mountain yellow-legged frogs have been extirpated from more than 99 percent of their previously documented range in southern California. The mechanisms causing the declines of ranid frogs in the western United States are not well understood and are certain to vary somewhat among species. The two most common and well-supported hypotheses for widespread extirpation of western ranid frogs are: (1) Past habitat destruction related to activities such as logging, mining, and habitat conversions for water development, irrigated agriculture, and commercial development (Hayes and Jennings 1986, 61 FR 25813); and (2) non-native predators and competitors such as introduced trout and bullfrogs (Hayes and Jennings 1986, Bradford 1989, Knapp 1996, Kupferberg 1997). There is now a growing body of evidence that the mountain yellow-legged frog is incompatible with non-native trout, bullfrog and crayfish (Hayes and Jennings 1986, Bradford 1989, Bradford *et al.* 1994, Knapp and Matthews 2000, Knapp et al 2003, Backlin *et al.* 2004, Vredenburg 2004).

Studies of the distributions of introduced salmonids (rainbow trout and brook trout *Salvelinus fontinalis*) and mountain yellow-legged frogs have shown that introduced trout have had negative impacts on mountain yellow-legged frogs over much of the Sierra Nevada (Bradford 1989, Knapp 1996, Knapp and Matthews 2000). Vredenburg (2002) demonstrated that this is due primarily to predation on tadpoles. Trout are known predators of ranid frogs (Hayes and Jennings 1986, Backlin *et al.* 2004), and there is evidence that introduced trout restrict the distribution and abundance of mountain yellow-legged frogs (Bradford 1989, Bradford et al 1994, Knapp and Matthews 2000, Knapp *et al.* 2003, Backlin *et al.* 2004). Today, non-native trout persist at seven of the eight known locations where the mountain yellow-legged frog occurs in southern California (Backlin *et al.* 2004, Stewart *et al.* 2000). Further, Bradford (1989) and Bradford *et al.* (1993) concluded that introduced trout eliminate many populations of mountain yellow-legged frogs and the presence of trout in intervening streams sufficiently isolates other frog populations such that recolonization after stochastic (random) local extirpations is essentially impossible. Virtually all streams in the mountains of southern California contain populations of introduced rainbow trout, and, until recently, trout were routinely released in several of the occupied streams. The CDFG, which operates the Mojave and Fillmore fish hatcheries, has stated that no stocked sites and areas accessible to stocked fish overlap with areas where the mountain yellow-legged frog is known to occur (Service in litt. 2005). The CDFG has also been working with the U.S. Forest Service (USFS) to refrain from stocking certain streams and to assess the potential construction of barriers. In their latest report on mountain yellow-legged frog, the USGS (Backlin *et al.* 2004) recommend continuing trout removal efforts in all streams where mountain yellow-legged frog occur in southern California, and expanding these efforts also to the West Fork of City Creek. Conservation of this species may require management of non-native trout populations within proposed critical habitat and continued protection of those lands proposed for critical habitat that do not contain non-native trout.

Two pathogens are of primary concern for the conservation of mountain yellow-legged frogs in southern California. The "red-leg" disease contributed to the loss of a Sierra Nevada population (Bradford 1991). Another pathogen that is of concern to scientists studying amphibian declines is the chytrid fungus (*Batrachochytrium dendrobatidis*). Chytrid fungus may be seriously affecting amphibians around the world, and has recently been discovered on larval and recently metamorphosed mountain yellow-legged frogs in the Sierra Nevada Mountains (Fellers *et al.* 2001). Currently, chytrid fungal disease does not seem to be plaguing the remaining populations (Backlin *et al.* 2004).

In addition to the threats posed by the presence of non-native trout and pathogens, some recreational activities, which involve human activity in or adjacent to streams where the species is still extant, have also been identified as potentially negatively impacting the mountain yellow-legged frogs (Stewart *et al.* 2000). For example, logging activity, recreational mining, or heavy trampling may alter and/or decrease the presence of habitat structure within a stream, alter pool substrate, erode stream banks, or reduce riparian vegetation, negatively affecting various life history stages and essential behaviors of the mountain yellow-legged frog. Conservation of this species may require special management in areas where heavy recreational use overlaps with occupied habitat.

Chance, catastrophic events which, while normal for the environment in which the frog lives, greatly endanger the remaining, localized populations; *i.e.* fires, droughts; and floods. The area has experienced floods in winter 1968–69, which decimated many of the frog populations formerly abundant in the region (Jennings and Hayes 1994a, b). Drought conditions have prevailed for long periods during the years 1995–2004, with 2002 the height of the drought, and several major fires have occurred (1997, 2003; Backlin *et al.* 2004). However, to alleviate the most immediate threats to the southern California mountain yellow-legged frog, it is possible to reduce or eradicate exotic species, prevent direct human impacts and take precautions to prevent the spread of diseases (Backlin *et al.* 2004). Alleviating the most pressing threats in the occupied areas will allow those populations to expand into currently unoccupied areas which will also be managed and protected allowing even greater population expansion to such an extent that naturally occurring threats will not pose as great a danger.

Previous Federal Actions

Please refer to the final listing rule for a summary of previous Federal actions prior to the listing of the southern California of the mountain yellow-legged frog as endangered July 2, 2002 (67 FR 44382). At the time of listing, we concluded that designating critical habitat was prudent; however, we deferred the critical habitat designation to allow us to concentrate our limited resources on higher priority critical habitat designations and other listing actions, while allowing us to put in place protections needed for the conservation of the southern California mountain yellow-legged frog without further delay. This action was consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without concurrent designation of critical habitat if it is necessary for the conservation of the species that the listing determination be promptly published (67 FR 44382).

On August 19, 2004, the Center for Biological Diversity filed a lawsuit in the U.S. District Court for the Central District of California challenging the Service's failure to designate critical habitat for the southern California mountain yellow-legged frog (Case No. EDCV 04–01041–VAP). On December

20, 2004, the District Court granted the Center's motion for summary judgment and ordered the Service to publish a proposed critical habitat rule for the mountain yellow-legged frog by September 1, 2005, and a final critical habitat rule by September 1, 2006. This proposed rule complies with the Court's order.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing must first have features that are "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide for the essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements (PCEs), as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features (PCEs) are actually present thereon and may require special management considerations or protection. Thus, we do not include areas where existing management is sufficient to protect and manage the habitat in a manner equal to the protections provided by the designation and consistent with the court's direction in *Gifford Pinchot*. Our interpretation of that requirement pending a new rulemaking is included in the Director's December 9, 2004, memorandum, referenced in the preamble. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species at the time of listing. Specific areas outside the geographic area occupied by a species at the time it is listed may only be included in a critical habitat designation if the Secretary determines that such areas are essential for the conservation of the species. In this rule, we have proposed for inclusion in the critical habitat designation some areas not known to be occupied at the time of listing which we have determined are essential for the conservation of the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas to designate as critical habitat, a primary source of information is generally the listing rule for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Conversely, local conservation actions may occur that provide for special management and protection equal to that of critical habitat, removing the necessity of designation. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery of the mountain yellow-legged frog, or that the critical habitat designation itself is immutable.

Areas that support populations of the mountain yellow-legged frog in southern California, but outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts particularly if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available in determining areas of habitat that contain features essential to the conservation of the mountain yellow-legged frog. This includes information from the proposed listing rule (64 FR 71714), final listing rule (67 FR 44382), data from research and survey observations published in peer-reviewed articles, site visits, regional Geographic Information System (GIS) layers, soil, and species coverages, and data compiled in the California Natural Diversity Database (CNDDB).

We have also reviewed available information that pertains to the ecology, natural history, and habitat requirements of this species. This material included information and data in reports submitted during section 7 consultations; research published in peer-reviewed articles and technical reports by the U.S. Geological Survey (USGS) and the USFS; and regional GIS coverages. We are not proposing to designate as critical habitat any areas outside of the geographic area presently occupied by the species in the San Gabriel, San Bernardino and San Jacinto mountains; however, the area proposed for designation includes areas for which we have no data demonstrating current occupancy, but for which we have historic occupancy data.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to identify those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring.

The specific primary constituent elements essential for the conservation of the southern California mountain yellow-legged frog are derived from the abiotic and biotic needs of the species as described below.

Space for Individual and Population Growth and for Normal Behavior

The permanent water sources such as streams, rivers, perennial creeks, permanent plunge pools within intermittent creeks, and pools are needed for individual and population growth. These permanent water sources (PCE #1) provide breeding sites and shelter for the mountain yellow-legged frog. Permanent water sources providing for perennial flows are needed for egg-laying and tadpole growth and survival, and must provide adequate water quality for adult and offspring of the mountain yellow-legged frog. Such water sources and their associated riparian and upland habitat also provide habitat for aquatic invertebrates that are used as a food source by adult mountain yellow-legged frogs, and for the benthic algae and diatoms that are fed upon by larval frogs.

Food, Water, Air, Light, or Other Nutritional or Physiological Requirements

A wide variety of invertebrates including beetles (Coleoptera), ants (Formididae), bees (Apoidea), wasps (Hymenoptera), flies (Diptera), true bugs (Hemiptera), and dragonflies (Odonata) have been found in the stomachs of adult mountain yellow-legged frogs (Long 1970). Terrestrial insects and adult stages of aquatic insects may be the preferred food for adult mountain yellow-legged frog (Bradford 1983); larger frogs consume more aquatic true bugs probably because of their more aquatic behavior (Jennings and Hays 1994).

The riparian zone, with the associated vegetation canopy (PCE #2), is necessary to maintain the prey base needed for the nutritional requirements of the mountain yellow-legged frog. Larvae graze on algae and diatoms in the silt along rocky bottoms in streams and ponds (Zeiner *et al.* 1988). An open or semi-open canopy of riparian vegetation (canopy overstory not exceeding 85 percent) is needed to ensure that adequate sunlight reaches the stream to allow for basking behavior and for photosynthesis by benthic algae and diatoms that are food resources for larval mountain yellow-legged frog.

Cover or Shelter

Mountain yellow-legged frogs are preyed upon by the western terrestrial garter snake (*Thamnophis elegans*), Brewer's blackbird (*Euphagus cyanocephalus*), Clark's nutcrackers (*Nucifraga columbiana*), and coyotes (*Canis latrans*) (USFS 2002). Pools with bank overhangs, downfall logs or branches, and/or rocks (PCEs #1 and #2) provide cover from predators for mountain yellow-legged frogs.

Sites for Breeding, Reproduction, and Rearing of Offspring

In southern California, the mountain yellow-legged frog occupies streams in the chaparral belt (Zweifel 1955), and cool and cold, rocky, mountain watercourses shaded by trees, rocks, and other shelter, where the flow comes from springs and snowmelt (Jennings and Hayes 1994b) (PCEs #1 and #2). California fan palms (*Washingtonia filifera*), and mesquite (*Prosopis* spp.) dominate the mountain yellow-legged frog's habitat at lower elevations, and, in other areas, habitat is dominated by white alders (*Alnus rhombifolia*), willows, sycamore, conifers and maples (Jennings and Hayes 1994b, Backlin *et al.* 2004). Open gravel banks and rocks projecting above the water may provide sunning posts (Zweifel 1955). Many of the streams in which they occurred historically and currently occupy have a relatively steep gradient and large boulders in the stream beds (Stebbins 1951). Although knowledge pertaining to the specific habitat requirements of mountain yellow-legged frogs in southern California is limited, the presence of water year-round is known to be necessary for both reproduction and for hydration of juveniles and adults. In southern California, mountain yellow-legged frogs historically ranged from 1,214 ft to 7546 ft (370 m to 2,300 m) in elevation (Jennings and Hayes 1994a, 1994b).

Historic and Geographic Distribution of the Species

The occupied streams that are proposed for designation contain physical and biological features that are representative of the historic and geographical distribution of the species. The unoccupied streams that are proposed for designation were all historically occupied and will decrease the degree of fragmentation within the current geographic distribution of the DPS.

Primary Constituent Elements

Pursuant to our regulations, we are required to identify primary constituent elements essential to the conservation of the mountain yellow-legged frog, together with the proposed designation of critical habitat that contains features essential to the conservation of the species. In identifying primary constituent elements, we used the best available scientific and commercial data and information. Although the physical ranges described below may not capture all of the variability that is inherent in natural systems, these ranges best represent the physical and biological features essential to the conservation of the southern California DPS of the mountain yellow-legged frog in the occupied areas proposed for designation. In order to conserve this species, we believe that it will be necessary to designate critical habitat in areas currently unoccupied by the species, please see our discussion of Criteria Used to Identify Critical Habitat and Unit Descriptions sections below for further discussion of unoccupied habitat.

The primary constituent elements determined to be essential to the conservation of the southern California

mountain yellow-legged frog are the following:

1. Water source(s) found between 1,214 ft (370 m) to 7,546 ft (2,300 m) in elevation that are permanent, to ensure that aquatic habitat for the species is available year-round. Water sources include, but are not limited to streams, rivers, perennial creeks (or permanent plunge pools within intermittent creeks), pools (*i.e.*, a body of impounded water that is contained above a natural dam) and other forms of aquatic habitat. The water source should maintain a natural flow pattern including periodic natural flooding. Aquatic habitats that are used by mountain yellow-legged frog for breeding purposes must maintain water during the entire tadpole growth phase (which can be from 1–4 years duration). During periods of drought, or less than average rainfall, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they would still be considered essential breeding habitat in wetter years. Further, the aquatic habitat should include:

a. Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel cobble, rock, and boulders;

b. Water chemistry with a pH generally 6.6 to 9, dissolved oxygen varying from 23 to 28 percent and water temperatures during summer (June through August) ranging between 4.0 and 30.3 degrees Celsius;

c. Streams or stream reaches between known occupied sites that can function as corridors for adults and frogs for movement between aquatic habitats used as breeding and/or foraging sites.

2. Riparian habitat and upland vegetation (*e.g.* ponderosa pine, montane hardwood-conifer, montane riparian woodlands, and chaparral) extending 262 feet (80 m) from each side of the centerline of each identified stream and its tributaries, that provides areas for feeding and movement of mountain yellow-legged frog, with a canopy overstory not exceeding 85 percent that allows sunlight to reach the stream and thereby providing basking areas for the species.

Criteria Used To Identify Critical Habitat

We are proposing to designate critical habitat on lands that we have determined to contain habitat with features essential to the conservation of the mountain yellow-legged frog. These areas have sufficient primary constituent elements described above to enable the mountain yellow-legged frog to carry out its essential life processes.

The currently occupied habitat for the mountain yellow-legged frog is highly limited and isolated. The population estimates are all extremely small, with no stream having an estimated population size exceeding 100 breeding adults, and an overall total estimate of approximately 183 adults surviving in 2003 (including City Creek, East Fork; Backlin *et al.* 2004). This DPS is at a high risk of extinction and is highly susceptible to stochastic events (Backlin *et al.* 2004). As such, all occupied areas are proposed as critical habitat.

We have defined occupied proposed critical habitat as: (a) Those streams known to be occupied by the mountain yellow-legged frog at the time of listing (1987–2002); (b) the riparian, upland and aquatic habitats 262 ft (80 m) from the centerline of the stream including tributaries; and (c) aquatic habitats within 4,905 ft (1,495 m) upstream from the upstream-most occurrence and 4,905 ft (1,495 m) downstream from the downstream-most occurrence on the main stem of the river or creek known to be occupied, including any tributary that flows into it (see the following sections for explanation of the scientific basis for the chosen values). To delineate the proposed units of occupied critical habitat, we plotted on maps all occurrences records of mountain yellow-legged frog as points and polygons along streams that were occupied at the time of listing. We then delineated the riparian and upland areas that mountain yellow-legged frogs use bordering the stream, as well as the upstream and downstream range of movement, as defined under (c) above.

Occupied by the Mountain Yellow-Legged Frog at the Time of Listing

We used the proposed and final listing rules; reports prepared by the USGS, the USFS; the California Department of Fish and Game (CDFG), the CNDDB, researchers, and consultants; and available information to determine the location of specific areas within the geographical area occupied by the southern California mountain yellow-legged frog at the time of listing ("occupied at the time of listing" is defined as the time period 1987–2002).

Width of Riparian and Upland Habitats Along Streams Occupied by Mountain Yellow-Legged Frog

We estimated the width of riparian and upland habitats occupied by adults based on a study of movement ecology of mountain yellow-legged frogs in the Sierra Nevada Mountains (Pope and Matthews 2001). The study, in which a total of 581 adult frogs were marked, included 5 stream segments and 11 lakes and ponds. The movement of mountain yellow-legged frogs throughout the entire annual period of activity (mid-late July to mid-late October) was recorded over two successive seasons (1997 and 1998). Of these marked frogs, 82 frogs made overland movements between water bodies that were not connected by aquatic pathways (straight line distance between lake 4 and lake 6 was 216 ft (66 m), straight line distance between lake 5 and stream 41 was 466 ft (142 m), and overland distance between lake 5 and unnamed lake was 1,378 ft (420 m). Based on these results, 72 frogs traveled a minimum distance of 216 ft (66 m), 9 frogs traveled a minimum distance of 466 ft (142 m), and 1 frog traveled 1,378 ft (420 m). The weighted mean overland distance traveled by mountain yellow-legged frogs was approximately 259 ft (79 m).

We applied this weighted mean overland distance (rounded up to 262 ft (80 m)) to determine the width of the riparian and upland habitats along streams occupied by the mountain yellow-legged frog in southern California. We also reviewed the preliminary results of an unpublished study that examined mountain yellow-legged frog movements in the Sierra Nevada Mountains (Knapp in litt. 2005). This study included observations of movement between Marmot Lake and Frog Lake (not connected by a stream) of at least 8,858 ft (2,700 m) by 3 frogs in 2003 and 6 frogs in 2004. In comparison to Knapp's study, our 262 ft (80 m) width is a conservative estimate of the riparian and upland habitats occupied by the mountain yellow-legged frog.

Length of Streams Occupied by the Mountain Yellow-Legged Frog

We estimated the length of stream occupied by mountain yellow-legged frog adults (upstream and downstream distances from occurrences) based on review of several studies that give data on mountain yellow-legged frog movements (Pope and Matthews 2001, Knapp in litt. 2005, Backlin *et al.* 2004, Vredenburg 2005). However, there are no definitive published studies on the upstream and downstream movements of mountain yellow-legged frog and we extracted portions of these studies that specifically identified stream movement. In their study of movement ecology of mountain yellow-legged frog, Pope and Matthews (2001) reported a tagged female that was recaptured in a lake 3,281 ft (1,000 m) southeast of the study area, where a one-way trip requires a minimum of 1,968 ft (600 m) of travel in a fast-flowing stream. For streams in southern California, Backlin

et al. (2004) reported a range of distances between approximately 131 ft (40 m) to 4,902 ft (1,494 m). In the Sierra Nevada Mountains, Knapp (in litt. 2005) reported dispersal along a stream that connects Marmot Lake and Cony Lake (a distance of approximately 2,953 ft (900 m)) by 12 frogs in 2003 and 46 frogs in 2004. Knapp (in litt. 2005) also reported movement of 3 frogs in 2003 and 1 frog in 2004 of approximately 11,811 ft (3,580 m) between Marmot Lake and No Good Lake that included both dispersal along a stream and overland movement. Finally, we received verbal information (Dr. V. Vredenburg, University of California-Berkeley, pers. comm. 2005) that mountain yellow-legged frog tadpoles have been recovered approximately 5,905 ft (1,800 m) downstream from where they were tagged in the Sierra Nevada Mountains.

Given the variability and sources of the available information on stream dispersal distances for mountain yellow-legged frogs, we are unable to calculate or estimate an average stream dispersal distance. Instead, we have defaulted to use the observed distance of 4,905 ft (1,495 m) that an adult mountain yellow-legged frog moved along City Creek, East Fork in the San Bernardino Mountains. While this observation represents the longest dispersal distance reported by Backlin *et al.* (2004) for the southern California, it is less than half the longest dispersal distance observed thus far in the Sierra Nevada Mountains (3,580 m; Knapp *in litt.* 2005). We believe the observation from City Creek represents the best available information to define occupied upstream and downstream reaches for the following reasons: (1) This dispersal distance connects known occurrences that occur along a stream or in populations that occur in tributaries; (2) this dispersal distance is specific to and representative of the southern California populations of the mountain yellow-legged frog; (3) movement distances between 131 ft (40 m) to 4,902 ft (1,494 m) that were identified by Backlin *et al.* (2004) represent home range movements and reflect the high site fidelity displayed by mountain yellow-legged frog and are therefore not representative of dispersal patterns (Backlin *et al.* 2004); and 4) this distance is less than the maximum dispersal distances for stream and overland movements identified by Knapp (*in litt.* 2005; maximum distance was 3,580 m) for adults and by Vredenburg (pers. comm. 2005; maximum distance was 1,800 m) for tadpoles, and likely represents a conservative estimate of the upstream and downstream habitat occupied by the mountain yellow-legged frog in southern California.

We are also proposing to designate critical habitat on lands that were historically occupied by the mountain yellow-legged frog, but are not known to be currently occupied. These subunits were all occupied within the past 45 years, contain features essential to the conservation of the species, and are considered essential for the conservation of the southern California DPS of the mountain yellow-legged frog. These additional sites were selected based in part on comments and information given by herpetologists and experts on the southern California DPS of the mountain yellow-legged frog and by biologists from various management agencies (USGS, CDFG, USFS), who provided their knowledge of the area in terms of anthropogenic activity level, current habitat suitability for the species (survey data), and management potential. At this time, based on the best available information, we have determined that without these unoccupied areas managed and protected for the mountain yellow-legged frog, conservation of the species will not be possible in the foreseeable future.

The criteria used for selecting the additional sites were the following:

(1) Streams where the habitat contains the necessary PCEs (*e.g.*, characteristics such as perennial water flow, pools, riffles, runs, riparian and upland habitat, banks with rocks or substrate);

(2) Streams where the habitat has been characterized as "suitable" for mountain yellow-legged frog by USGS, CDFG and USFS in their survey reports (*i.e.*, contains habitat which meets additional, more specific characteristics that allow for a range of the species' biological needs, such as containing sites for breeding, feeding, sheltering, and other essential mountain yellow-legged frog behavioral patterns);

(3) Streams that were known to be occupied by the species within the past 50 years, and where the habitat has not changed appreciably during that time (thus allowing for the assumption that previous occupancy still provides good indication of the known suitability of the site for the species' biological needs);

(4) Streams that have potential for current occupancy by mountain yellow-legged frog (*i.e.*, no conclusive evidence is available that the species is currently completely absent from the site due to few, incomplete, or no surveys having been conducted there recently, and the habitat has not changed appreciably);

(5) Streams that are in remote locations (*i.e.*, geographically distant from areas with heavy anthropogenic activities, such as vehicular traffic, human recreation, dredging, trout stocking, water regulation, pollution);

(6) Streams that are not currently stocked with non-native aquatic species;

(7) Streams where threats to the species either no longer exist, or are few and could be easily alleviated (*e.g.*, by shifting current human recreational use patterns, and/or by trout removal) through voluntary cooperative conservation measures;

(8) Streams where there is significant potential for re-occupation by the species, either by natural means through dispersal from currently occupied sites (*i.e.*, located within 5 km of a currently occupied site), or by future re-introduction efforts.

Special Management Considerations or Protections

As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the species pursuant to section 3(5)(A) of the Act. Secondly, we evaluate lands defined by those features to assess whether they may require special management considerations or protection. Threats to those features that define important habitat (primary constituent elements) for the mountain yellow-legged frog include the direct and indirect impacts of some human recreation activities, and watershed management practices, water diversions from streams, fire management practices, and hazardous materials spills along roadways adjacent to streams.

Recreational activities (*e.g.* camping, hiking, fishing, and recreational mining) are cited as factors that may have contributed to the decline of mountain yellow-legged frog in the San Gabriel, San Bernardino, and San Jacinto mountains (USFS 2002). In areas occupied by frogs, human use in and along streams can disrupt the lives of eggs, larvae, and adult frogs (Jennings 1995), and change the character of the stream (*e.g.*, sediment and water quality), its bank and associated vegetation in ways that make sections of the stream less suitable as habitat for frogs. For example, logging activity, recreational mining, or heavy trampling may alter and/or decrease the presence of habitat structure within a stream such as bank overhangs, downed logs or branches, and rocks or may alter pool substrate, thereby reducing or eliminating available foraging, resting, breeding or egg-laying sites, and increasing suspended sediments and turbidity (PCE #1). Human activities

associated with heavy recreational use could also erode or denude stream banks or shores, reduce the extent of riparian vegetation, potentially reduce the available prey base for frogs, alter the amount of stream shade, and increase sedimentation within stream channels due to exposed soils, and impact water quality (*e.g.* temperature, pH) (PCEs #1 and 2). Changes due to human recreation could contribute to adverse changes to the habitat that result in local extinctions where these activities occur in close proximity to mountain yellow-legged frog populations (Jennings 1995, Backlin *et al.* 2001). Heavy recreational use is specifically cited as a potential threat in the area of Bear Gulch and Vincent Gulch, the San Gabriel River—East Fork, Little Rock Creek, Fuller Mill Creek, and Dark Canyon and recreational mining is cited as a potential threat in the East Fork San Gabriel (Jennings 1994, 1995, 1998, 1999, USFS 2002). However, due to the proximity of the San Bernardino, San Gabriel and San Jacinto mountains to large urban centers and resulting high recreational use of these areas, there is potential for recreational impacts to all of the areas being proposed as critical habitat.

Watershed management activities such as forest thinning or clearing for public safety or fire prevention (*e.g.*, fuel load management) may also impact the physical and biological features determined to be essential for conservation of the species. Depending on the extent of alteration and the proximity to streams, forest thinning or clearing may alter streambed and riparian characteristics in ways that make sections of the stream less suitable as habitat for frogs. For example, thinning or clearing adjacent to streams could increase flooding and sedimentation within stream channels (Jennings 1998) due to exposed soils, impacting water quality (*e.g.* turbidity and pH (PCEs #1). Alterations to riparian vegetation could reduce the prey-base available for mountain yellow-legged frogs (PCE #2). At the same time, the presence of unnaturally high canopy cover or dense riparian vegetation could decrease the amount of basking areas available (PCE #2) and render the habitat unsuitable for mountain yellow-legged frog. Water diversion, such as water removal from the drainage system occupied by the species could reduce water levels and decrease the quality and extent of suitable breeding, wintering and foraging sites, and reduce the prey-base availability. The use of herbicides or other fire retardant chemicals to reduce fuel loads may impact water quality if used upslope or above a stream (PCE #1). Hazardous material spills along roads that cross streams are also a potential threat impacting water quality (PCE #1). Little Rock Creek, East Fork City Creek, Dark Canyon, Fuller Mill and Hall Canyon are cited as having potentially high canopy cover and/or dense riparian vegetation within the watershed and having potential for a hazardous material spills due to an adjacent roadway (USFS 2002).

The USFS prepared the Mountain Yellow-Legged Frog Conservation Assessment and Strategy: Angeles and San Bernardino National Forests (Strategy) (USFS 2002). This Strategy provides a framework for conservation actions to assist in the recover and conservation of the mountain yellow-legged frog and identifies the following management actions necessary to reduce impacts to mountain yellow-legged frog habitat from (1) recreation: Closing, rerouting or reconstructing unauthorized trails; closing parking areas used for unauthorized trail access; removing campsites and picnic tables adjacent to occupied creeks; installing signing at trailheads and along access points to promote understanding of the species' biology and habitat requirements; (2) high fuel loads: Developing plans for fuels reductions in the watershed which will examine potential riparian treatment of high canopy or dense vegetation; and (3) hazardous materials spills: developing an action plan for prevention, notification, and containment of spills before they enter the stream or its tributaries.

Some of the conservation actions outlined in the Strategy have been implemented. For example, the USFS closed camp sites adjacent to Dark Canyon/North Fork San Jacinto River in May 2001 and acquired approximately 60 ac (24 ha) of mountain yellow-legged frog habitat on in the headwaters of Fuller Mill Creek (USFS 2002) to protect a discontinuous stretch of habitat previously under private ownership. However, recreational activities that may impact habitat for the mountain yellow-legged frog continue to occur in or adjacent to other occupied sites. Also, we are not currently aware of the development of management plans to protect specific streams from potential impacts related to fuels reduction or hazardous spills. However, these issues may be addressed in the USFS's updated Forest Plan covering the Angeles and San Bernardino National Forests. The USFS is currently consulting with the Service under section 7 of the Act on this updated plan. One of the goals of the 2004 draft Forest Plan is to establish critical biological zones that include the most important areas on the Angeles and San Bernardino National Forests to manage for the protection of imperiled species, including the mountain yellow-legged frog (USFS 2004). The revised draft Forest Plan is currently undergoing policy and agency review. Thus, the stream segments that are being proposed as critical habitat may or may not require special management considerations or protection as discussed above, depending on the provisions of the final management plans. Because we do not know the final disposition of these plans, we cannot make a determination as to whether they provide similar protections as a critical habitat determination would provide under the standards of *Gifford Pinchot*. Thus we are proposing designation of these streams.

Proposed Critical Habitat Designation

We have determined that approximately 8,770 ac (3,549 ha) of land containing features essential to the conservation of the mountain yellow-legged frog exists in Los Angeles, San Bernardino, and Riverside counties. Of this total, we are proposing to designate 8,283 ac (3,352 ha) of land as critical habitat within three critical habitat units (further divided into subunits): Unit 1 (with 7 subunits) in the San Gabriel Mountains (Los Angeles and San Bernardino counties), Unit 2 (with 3 subunits) in San Bernardino Mountains (San Bernardino County), and Unit 3 (with 4 subunits) in the San Jacinto Mountains (Riverside County). The remaining 487 ac (197 ha) are managed and protected under the completed Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) and to the extent that these areas meet the definition of critical habitat pursuant to section 3(5)(A)(i)(II), it is our intention to exclude these areas from critical habitat designation pursuant to section 4(b)(2) of the Act (see *Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act* section for a detailed discussion).

The proposed critical habitat units and subunits for the mountain yellow-legged frog in southern California, and their approximate sizes, are shown in Table 1. The unit and subunit names reflect the locations of the streams which constitute each unit. Table 2 provides information about landownership within each subunit being proposed.

The critical habitat units and their subunits described below are our best assessment, at this time, of the areas of

habitat with features essential for the conservation of the mountain yellow-legged frog. Each of these proposed critical habitat areas provides sufficient primary constituent elements to support essential mountain yellow-legged frog behaviors and life history requirements and one or more of them may require special management considerations or protection.

TABLE 1. Areas of habitat determined to contain features essential for the conservation of the mountain yellow-legged frog and the approximate area encompassed by each proposed critical habitat unit. All units were historically occupied, see footnotes for current occupancy data and if the unit was occupied at the time of listing. [Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit number/subunit letter	Critical habitat unit/subunit	Acres	Hectares	Occupancy*
1	SAN GABRIEL MOUNTAINS UNIT (Angeles and San Bernardino National Forests, Los Angeles and San Bernardino Counties).			
A	San Gabriel River, East Fork (main stem, including Bear Gulch, Vincent Gulch, Alder Gulch, and other tributaries).	2,474	1,001	OTL, CO
B	Big Rock Creek, South Fork	625	253	OTL, CO
C	Little Rock Creek	615	249	OTL, CO
D	Devil's Canyon	279	113	OTL, CO
E	Day Canyon Creek	635	257	CO
F	San Gabriel River, East Fork, Iron Fork	373	151	
G	Bear Creek (off San Gabriel River, West Fork)	116	47	
2	SAN BERNARDINO MOUNTAINS UNIT (San Bernardino National Forest, San Bernardino County)			
A	City Creek; (the tributaries East Fork and West Fork)	1,386	561	OTL
B	Barton Creek, East Fork	193	78	CO
C	Whitewater River, North Fork (upper reaches)	74	30	
3	SAN JACINTO MOUNTAINS UNIT (San Bernardino National Forest, Riverside County).			
A	San Jacinto River, North Fork (the tributaries Black Mountain Creek, Fuller Mill Creek, Dark Canyon).	919	372	OTL, CO
B	Indian Creek (at Hall Canyon)	126	51	OTL, CO
C	Tahquitz Creek (upper reaches, including Willow Creek tributary)	358	145	
D	Andreas Creek (upper reaches)	109	44	
...	Total	8,283	3,352	

*OTL = Occupied at the Time of Listing; CO = Currently Occupied.

TABLE 2. Approximate proposed critical habitat area (ac (ha)) by County and land ownership. Estimates reflect the total area within critical habitat unit boundaries.

County	Federal*	Local/state	Private	Total
Angeles	4,483 ac (1,814 ha)	0 ac (0 ha)	0 ac (0 ha)	4,483 ac. (1,814 ha).
San Bernardino	2,169 ac (878 ha)	0 ac (0 ha)	119 ac (48 ha)	2,288 ac. (926 ha).
Riverside	1,301 ac (526 ha)	211 ac (86 ha)	0 ac (0 ha)	1,404 ac. (568 ha).
Total	7,953 ac (3,218 ha)	211 ac (86 ha)	119 ac (48 ha)	8,283 ac. (3,353 ha).

*Federal lands include U.S. Forest Service and other Federal land.

We present below a general description of the overall range followed by a description of the units within each of the three mountain ranges the species occupies, and describe reasons why each area within those units contains habitat with features that are essential for the conservation of the mountain yellow-legged frog.

Unit Descriptions

As discussed in the *Critical Habitat* section above, we believe that all lands proposed as critical habitat are important for the persistence of the mountain yellow-legged frog for the following reasons:

(1) The range of the mountain yellow-legged frog in southern California has been reduced to less than 1 percent of its original area (*i.e.*, extirpated from 99 percent of its former range as estimated by a review of historical records Jennings and Hayes (1994)), with the remaining occupied habitat limited and fragmented;

(2) The population estimates for each stream are extremely small, with no estimate exceeding 100 breeding adults, and a approximate total of only 183 surviving adults for the entire southern California range (this sum includes the City Creek, East Fork population, which has not recently been observed; Backlin *et al.* 2004);

(3) Existing small populations are at a high risk of extinction due to stochastic events (Backlin *et al.* 2004) or deterministic events (Skelly *et al.* 1999);

(4) Existing small populations are susceptible to other threats, including presence of non-native trout, and human recreation;

Of the 14 subunits being proposed as critical habitat, 5 were historically

occupied but are not known to be occupied at the time of listing (subunits 1F, 1G, 2C, 3C, 3D). These subunits were occupied recently (within the past 45 years) and the stream and riparian habitat within each has not changed appreciably (Jennings 1993, 1994, 1995, 1998, 1999; Jennings and Hayes 1994a, b; Backlin *et al.* 2001, 2002, 2003, 2004). Each of these subunits thus contains habitat with features important for the conservation of the species. Because of the necessity of population increase or augmentation for the continued survival of this species, these areas may serve as important re-introduction sites, particularly in the San Bernardino and San Jacinto Mountains, where the number of known occurrences has decreased to one and two limited areas, respectively. Even then, one of the two known populations in the San Bernardino Mountains (City Creek) have experienced a recent fire (2003) and subsequent flooding and were not observed in 2004 (Backlin *et al.* 2004).

We are proposing additional areas historically occupied, but not identified in the listing rule, nor known to be currently occupied, for the following reasons:

(1) The current, overall population size of the mountain yellow-legged frog is at such a low level, it must increase in order to insure long-term survival of this DPS (cf. Backlin *et al.* 2004). While the occupied units provide habitat for current populations, additional units will provide habitat for population augmentation either through natural means, or by re-introduction, thus reducing threats due to naturally occurring events;

(2) Population augmentation either through natural means, or by re-introduction into the additional subunits may serve to decrease the risk of extinction of the species through stochastic events, such as fires or disease as the current, isolated populations are each at high risk of extirpation from such stochastic events (Backlin *et al.* 2004), particularly because of their small sizes and restricted ranges;

(3) Population augmentation either through natural means, or by re-introduction into the additional subunits may increase the viability of the occupied subunits as well as of the existence of the mountain yellow-legged frog in southern California as a whole (increase the persistence likelihood at the local population level and of this DPS range wide);

(4) Additional subunits will serve to decrease the degree of fragmentation of the current geographic distribution of the mountain yellow-legged frog within each of the three mountain ranges, or *i.e.*, increase the connectivity between streams that are known to be currently occupied;

(5) Additional subunits are proposed in areas occupied in the near past and located within the historical range of the species such that they will serve as corridors between currently occupied sites. Most proposed unoccupied subunits lie within 1.5–5 km of an occupied site, the only exception is subunit 2C (in historically occupied Whitewater River). Although subunit 2C is unlikely to serve as a corridor between currently occupied areas, this subunit is the only representative area of southeastern desert slope and of the San Gorgonio Mountains, and ensures representation of the full geographical distribution of the mountain yellow-legged frog not otherwise represented by the currently occupied sites;

(6) There is potential for these areas to be currently occupied, as survey efforts in these areas have been limited. No conclusive evidence is available for current complete absence of mountain yellow-legged frogs at any of these sites due to few, incomplete, or no surveys having been conducted there recently. Although the species is described as highly aquatic but not as solitary (Vredenburg 2005), the species detectability is generally low (cf. Backlin *et al.* 2004), particularly if the population occurs in low numbers. Possible surveys may have missed sightings, as shown by repeated surveys in Dark Canyon and other areas where there are also confirmed historical sightings, followed by repeated annual reports of no occurrences for up to three years, with subsequent population "re-discovery" (cf. USGS, CDFG, USFS, survey reports 1990–2005);

(7) The additional subunits may offer habitat that is superior to that in the occupied subunits (*i.e.*, the potential viability of frogs in unoccupied subunits may be higher) due to the fact that the selected additional subunits contain fewer more easily treatable threats in general, than the occupied units.

The Service is currently working on a recovery plan to implement the reintroduction of frogs into these "not known to be occupied subunits" with all stakeholders.

All of the streams segments being proposed as critical habitat contain sufficient primary constituent elements essential to the mountain yellow-legged frog. We based this determination on site specific information contained in recent survey and technical reports and other available literature. We also based this determination on the fact that lands being proposed as critical habitat are owned and managed by the U.S. Forest Service and have not been subject to urban development or extensive recreational development that might have resulted in large-scale habitat destruction or alteration. The Angeles and San Bernardino National Forests focus on recreational and commercial land use and therefore, allow, at most, small-scale grazing or timber operations at this time (USFS 2004).

Critical Habitat Unit 1: San Gabriel Mountains Unit

This unit is comprised solely of USFS lands and lies entirely within the San Gabriel Mountains of the Angeles and San Bernardino National Forests in Los Angeles and San Bernardino counties. This unit is composed of stream segments within 7 subunits (1A–1G) of which 4 subunits (1A–1D) were known to be occupied at the time of listing; 1 subunit (1E) was found to be occupied subsequent to the listing rule, and 2 subunits (1F, 1G) are assumed to be unoccupied but were historically occupied.

The populations in Unit 1 represent the northern and western-most known distribution of the southern California mountain yellow-legged frog. Both Subunit 1 (Bear Gulch on the East Fork of the San Gabriel River) and Subunit 2 (South Fork of Big Rock Creek) represent areas with the two largest known remaining breeding populations throughout the entire range of the species (Backlin *et al.* 2004a), and these areas encompass habitat with features that are essential for the conservation of the mountain yellow-legged frog.

Other subunits in Unit 1, such as Vincent Gulch, Little Rock Creek, and Devil's Canyon also contain features essential for the conservation of the southern California mountain yellow-legged frog. Further, these three populations maintain the continuity of distribution throughout the San Gabriel Mountains and thereby reduce the risk of losing any isolated population from a stochastic, catastrophic event. Although these areas apparently support smaller adult populations than Bear Gulch and Big Rock Creek, mountain yellow-legged frogs have occurred in these areas since the early 1900's. They may contain important summer or winter habitat for frogs from nearby areas, and may also be a source of breeding animals to the larger population, and are therefore likely to contain resources important for the continued survival of the remaining populations of mountain yellow-legged frog.

The following habitat description for this region is given by Jennings (1993). The San Gabriel Mountains are, in

general, largely composed of metamorphic rock that has been uplifted and recently eroded, thus resulting on steep slopes with thin soil layers. The vegetation that covers much of the area is California chaparral, although Jeffrey pine (*Pinus jeffreyi*) is found at the elevations over 6,900 ft (2,104 m). The larger watercourses contain riparian woodlands consisting mainly of white alder (*Alnus rhombifolia*), canyon live oaks (*Quercus chrysolepis*), California sycamores (*Platanus racemosa*) and willows (*Salix spp.*), while on the surrounding hillsides there is big cone spruce (*Pseudotsuga macrocarpa*) and some incense cedar (*Calocedrus decurrens*) on surrounding hillsides.

Prior to 1970, the mountain yellow-legged frog was the most abundant and widely distributed frog in the Angeles National Forest (Zweifel 1955, Schoenherr 1976, Jennings 1993). However, recent surveys (Backlin *et al.* 2004) have only been able to locate this species in four areas within the Angeles National Forest; these areas are disjunct and widely separated both geographically, but also by paved roads. The reason(s) for the drastic decline in the abundance of mountain yellow-legged frogs on the Forest area remain unclear (Jennings 1993). The areas historically occupied by all three ranid species (foothill yellow-legged frog, California red-legged frog, mountain yellow-legged frog) in the southern portion of the San Gabriel Mountains are now heavily impacted by water regulation or diversion, off-road vehicle use, recreation (swimming, fishing, day use, camping), and in some areas, recreational placer gold mining (dredging; Jennings 1993). In addition, rainbow trout and bullfrogs (Rana catesbeiana) have been introduced into their habitat (Jennings 1999); both these non-native species act as predators or resource competitors for numerous Ranid species (Hayes and Jennings 1986, Backlin *et al.* 2004).

Subunit 1A: San Gabriel River East Fork, (Angeles National Forest)

The East Fork of the San Gabriel River flows north to south, through remote, mountainous terrain that lies north of the West Fork of the San Gabriel River in the Angeles National Forest, Los Angeles County. It lies within the 44,000 ac (17,807 ha) Sheep Mountain Wilderness Area. This subunit includes the following stream reaches in the upper section of the East Fork of the San Gabriel River: Bear Gulch, Vincent Gulch, Fish Fork, Iron Fork, and Alder Gulch.

In the main stem of the East Fork of the San Gabriel River, mountain yellow-legged frogs have been observed as early as 1933, from as far south as Heaton Flats and as far north as the headwaters at Prairie Fork, Vincent Gulch, and Bear Gulch, where there are extant populations. The largest of these occurs in Bear Gulch, with an estimated 54 adults for 2001–2003 (95% confidence interval 33–93). In 2003, 61 adults, 76 tadpoles, and just one egg mass were found in Bear Gulch. In neighboring Vincent Gulch, mountain yellow-legged frogs have been observed as early as 1933 (California Academy of Sciences), but in 2003 contained only about 2 adults and 11 first-year larvae (Backlin *et al.* 2004). Jennings (1993) stated that the trail and/or campgrounds that occur at the mouth of Vincent Gulch should be re-routed. In adjacent Prairie Fork, mountain yellow-legged frogs have been observed since 1982, but were not located during surveys in 1998 and 2000; there is a campground located here and trout occur (Jennings, Backlin *et al.* 2004). The populations in the area of this unit has experienced a number of major climatic events, such as devastating flooding that occurred throughout Southern California in the years 1968–69, when mountain yellow-legged frog populations seemed to be greatly reduced (Jennings and Hayes 1994b) while the area of the headwaters of the San Gabriel River, East Fork were severely burned in 1997 (Jennings 1999).

Threats to the species and its habitat in this subunit include the presence of non-native trout, potential water diversion, and human recreation, including recreational mining (USFS 2002). There have been proposals for water removal from the upper part of the drainage area above Vincent and Bear Gulch for the winter recreation on Blue Ridge, and increased siltation load from fire burns (in 1999) and from people recreating in the streams (Jennings 1999). South of these headwater streams, most areas of the East Fork of the San Gabriel River contain non-native trout (Backlin *et al.* 2004). The main stem of this river, where mountain yellow-legged frog was observed as early as 1933, has been stocked with trout near its base (near Heaton Flats) 52 times between 1947 and 1998 (Backlin *et al.* 2004). The Alder Gulch tributary to the East Fork of the San Gabriel River has not been surveyed extensively, but it contains habitat suitable to the mountain yellow-legged frog, which was known to occur here at least from 1994 to 1998. Rainbow trout were stocked in this stream twice between 1940 and 1969, and the trout persist today (Backlin *et al.* 2004). Stream segments in this subunit may require special management consideration or protection such as relocation of hiking trails or picnic areas or other access limitations in or near sensitive areas, additional monitoring of authorized mining activities, and removal of non-native trout species.

Subunit 1B: Big Rock Creek, South Fork (Angeles National Forest)

In the South Fork of Big Rock Creek, the mountain yellow-legged frog occurs at the uppermost reaches of the tributaries, below which rainbow trout occur. The number of frogs here is almost 10 times greater than in Little Rock Creek (Backlin *et al.* 2004). The breeding adult population of mountain yellow-legged frog in the South Fork of Big Rock Creek between 2000 and 2003 was estimated at 27–74 (Backlin *et al.* 2004). Big Rock Creek, along with Bear Gulch (subunit 1A), represents the largest adult breeding populations throughout the range of the species.

Threats to the species and its habitat in this subunit include the presence of non-native trout (USFS 2002; Backlin *et al.* 2004) and human recreation. In 2002, recent severe drought conditions caused nearly the entire creek to dry such that only a few shallow pools remained below the area where the frogs occur; these contained an estimated number of trout between 20 and 100 fish in each (Backlin *et al.* 2004). By 2003, the drought conditions had greatly reduced the trout in the reaches below the frogs, providing opportunity for successful trout removal, and trout barrier implementation (Backlin *et al.* 2004). By late 2003, approximately 3 individuals were found to occur about 1 km downstream from where the bulk of the population occurs, where only one was found in previous years; it is hypothesized that these individuals could establish and persist given little to no trout (Backlin *et al.* 2004). There is currently no fish barrier to prevent trout from re-colonizing the upper reaches in years with heavier water flow, such as 2005. The main stem of Big Rock Creek has been stocked with trout 51 times between 1947–1998, and the South Fork of Big Rock Creek stocked 4 times from 1948–1953 (Backlin *et al.* 2004). Little documented information on recreational impacts to mountain yellow-legged frog habitat in this subunit exists, but the subunit borders near a campground, hiking trails and there are several roads close by (*e.g.*, Angeles Crest Highway). Further, due to the proximity of the San Gabriel Mountains to large urban centers and resulting high recreational use of these areas, we believe that

recreation occurs to some extent within this subunit. As a result of these threats, the stream segments in this subunit may require special management consideration or protection such as relocation of hiking trails or other access limitations in or near sensitive areas and removal of non-native trout.

Subunit 1C: Little Rock Creek (Angeles National Forest)

Little Rock Creek is a long, desert-flowing drainage that contains substantial arroyo toad (*Bufo californicus*) population in the lower reaches, where camping and OHV use are popular activities (Stephenson and Calcarone 1999). Here, the mountain yellow-legged frog once ranged from its headwaters, and throughout the entire length of this stream to where it empties northwest into the Mojave. This stream, where mountain yellow-legged frog were observed as early as 1911, has a reservoir at its base where non-native trout have been stocked 51 times between 1947 and 1998 (Backlin *et al.* 2004). Today, the current population is estimated at approximately 9 individuals, and believed to exist only at its headwaters at the highest elevations of the stream (Backlin *et al.* 2004), although the side tributaries have been little studied.

Threats to the species and its habitat in Little Rock Creek include the presence of non-native trout, human recreation, and hazard materials spills (USFS 2002). Rock climbing and hiking are common activities in the upper headwaters of Little Rock Creek, near the Angeles Crest Highway, where this unit occurs (Stephenson and Calcarone 1999). An unofficial trail has been blazed to a popular rock-climbing area and follows the creek where the frogs occur (USFS 2002). The USGS has recommended that this trail be diverted away from the stream to avoid disturbance to the frogs and habitat pollution and both the USFS and USGS have identified the need for educational signs to promote understanding of the mountain yellow-legged frog biology/ecology and its habitat requirements (USFS 2002; Backlin *et al.* 2004). Additional special management that may be required to minimize the threat of recreational activities includes closing, rerouting or reconstructing unauthorized trails; closing parking areas used for unauthorized trail access; relocating campsites and picnic tables adjacent to occupied creeks and removal of non-native trout detrimental to the mountain yellow-legged frog. The potential for hazardous materials spills is also a threat to the habitat within this subunit that may require special management such as developing an action plan for prevention, notification, and containment of spills before they enter the stream or its tributaries (USFS 2002). There have also been requests for water removal for ski operations in the uppermost reaches, which can potentially dewater the stream (Service 1999, 2002; Stewart *et al.* 2000).

Little Rock Creek, with its extant mountain yellow-legged frog population, is a site chosen by the USGS to conduct a manipulation experiment in order to study the effects of trout removal on the establishment behavior of frogs. This was because trout are known predators of ranid frogs (Hayes and Jennings 1986, Backlin *et al.* 2004), and there is evidence that introduced trout restrict the distribution and abundance of mountain yellow-legged frogs (Bradford 1989, Bradford et al 1994, Knapp and Matthews 2000, Knapp *et al.* 2003, Backlin *et al.* 2004). The project area encompasses the uppermost reaches of the creek, where it is divided into three consecutive sections by natural fish barriers. The first barrier is a natural waterfall, above which the main frog population occurs; below it are rainbow trout, and few mountain yellow-legged frog sightings have been recorded there regularly (Backlin *et al.* 2004). Further downstream, where there are only trout, a second natural barrier was enhanced by USFS in 2003 to prevent upstream movement by trout. Trout have been experimentally removed between the waterfall and the enhanced barrier on an annual basis (2002 to present) by electro-shocking and dip netting (Backlin *et al.* 2004). In 2002, 900 trout were removed, in 2003, 90 were removed, while in 2004, approximately 250 trout—mostly young of the year—were removed (T. Hovey, CDFG, pers. comm. 2005). Results from this experiment are thus inconclusive as the experiment is as yet incomplete: removal efforts have significantly depleted the trout population, but have not yet completely removed the trout from that section of the stream.

Subunit 1D: Devil's Canyon (Angeles National Forest)

Devil's Canyon is a rugged area within the San Gabriel Wilderness, which covers an area of 36,215 ac (14,667 ha) and varies in elevation from 1,600 to 8,200 ft. The lower elevations are covered with dense chaparral, which rapidly changes to pine and fir-covered slopes. Although wilderness permits are not required, Devil's Canyon has been relatively unstudied with regard to vertebrate resources. Because this area difficult to access, it was surveyed only once by USGS in 2003 (Backlin *et al.* 2004), although the habitat has been characterized as excellent (Jennings 1993). The breeding adult population of mountain yellow-legged frog in Devil's Canyon between 2000 and 2003 was estimated at 20 (Backlin *et al.* 2004).

Threats to the species and its habitat within this subunit include the presence of non-native trout and human recreation. We do not currently have documented information on recreational impacts to mountain yellow-legged frog habitat in this subunit. However, due to the proximity of the San Gabriel Mountains to large urban centers and resulting high recreational use of these areas, we believe that recreation occurs to some extent within this subunit. Therefore, the stream segments that are being proposed as critical habitat in this subunit may require special management consideration or protection such as relocation of hiking trails or other access limitations in or near sensitive areas and the removal of non-native trout.

Subunit 1E: Day Canyon (San Bernardino National Forest)

Day Canyon/Day Creek occurs on the southeastern slope of the San Gabriel Mountains, and it flows southward off of Cucamonga Peak and empties into a large wash area above lowlands to the north of Los Angeles. The terrain is steep and characterized by extensive rock/boulder fields and limited soil development (USFS 2002). Although the mountain yellow-legged frog was first observed here in 1959 (Los Angeles County Museum), Day Canyon has not been surveyed extensively, *i.e.*, only 5 times since 1997. Surveys in 2003 failed to locate any frogs (Backlin, *et al.*, 2004), but did find rainbow trout in 2002; both years were drought years.

This subunit represents the southernmost area in the San Gabriel Mountains that was occupied at the time of listing. Rainbow trout have been observed in this canyon (Myers and Wilcox 1999), and therefore pose a threat to the species and its habitat within this subunit. Further, human recreational impacts such as shooting, dumping (including automobiles) and recreation (swimming, picnicking, etc.) have been documented for a number drainages in the San Gabriel Mountains where mountain yellow-legged frog have been known to occur, including Day Canyon (Myers and Wilcox 1999). Further, this subunit drains into an area in close proximity to large urban centers, and we believe that recreation occurs regularly to some extent within this subunit. Therefore, the stream segments that are being proposed as

critical habitat in this subunit may require special management consideration or protection such as relocation of hiking trails or other access limitations in or near sensitive areas and removal of non-native trout.

Subunit 1F: San Gabriel River, East Fork, Iron Fork (Angeles National Forest)

The two streams, Iron Fork and the South Fork of Iron Fork drain into the San Gabriel East Fork, and had apparently healthy populations of dozens of individuals from at least 1947, through 1975, and in 1994 (Ford 1975; Jennings 1994). However, since then, the area has been surveyed only in 2001 (Backlin, *et al.*, 2002), presumably due to the difficulty of access, and its steep terrain. The upper reaches of this unit are difficult to access, but the survey by USGS found that it contains habitat suitable for the mountain yellow-legged frog (A. Backlin, USGS, pers. comm. 2005). This subunit is important since it connects to the East Fork of the San Gabriel River near the important existing frog populations, while it is also located on the western side of the river, less than 5 km away from the Big Rock Creek. Iron Fork is thus important as it may constitute an important pathway between these two largest populations, while its inaccessibility and steepness may make it a refugia for frogs from trout; it is possible that frogs still occur in this area, particularly in the upper reaches as this area has not been recently surveyed on foot (Backlin, pers. comm.).

While we have information that these stream reaches were historically occupied, reaches within this subunit were not known to be occupied by mountain yellow-legged frog at the time of listing and are not currently known to be occupied. However, this subunit is important since it connects to the East Fork of the San Gabriel River near the important existing frog populations, and it is located on the western side of the river, less than 5 km away from the Big Rock Creek. Iron Fork is thus important as it may constitute an important pathway between these two largest populations, while its inaccessibility and steepness may make it a refugia for frogs from trout; it is possible that frogs still occur in this area, particularly in the upper reaches as this area has not been recently surveyed on foot (A. Backlin, USGS, pers. comm. 2005).

Threats to the species and its habitat within this subunit include the presence of non-native trout and human recreation. We do not have documented information on recreational impacts to mountain yellow-legged frog habitat in this subunit. However, due to the proximity of the San Gabriel Mountains to large urban centers and resulting high recreational use of these areas, we believe that recreation occurs to some extent within this subunit. This subunit may constitute an important alternative site for future mountain yellow-legged frog re-introductions in this region.

Subunit 1G: Bear Creek, Upper Reaches (Off San Gabriel River, West Fork; Angeles National Forest)

Bear Creek lies within the San Gabriel Wilderness Area and is accessible by an 11-mile trail, with trailheads on Highway 39, on the eastern border of the Wilderness. Mountain yellow-legged frog were first observed in the Bear Creek area in 1959 (Schoenherr 1976), and while the stream has only been surveyed twice since (Jennings 1993; Backlin, *et al.*, 2003). However, frogs may have been missed here due to the detectability of the species as shown by repeated surveys in Dark Canyon and other areas where there are also confirmed historical sightings, and repeated annual reports of no occurrences for up to three years, that is, until the populations are subsequently "re-discovered." Bear Creek is known to contain habitat suitable for the frog (described as excellent by Jennings 1994, 1999) and its upper reaches are located less than one mile east of Devil's Canyon, where an extant population of frogs was observed in 2005 (A. Backlin, USGS, pers. comm. 2005).

Threats to the species and its habitat within this subunit include the presence of non-native trout and recreational activities in its southern reaches. We do not have documented information on recreational impacts to mountain yellow-legged frog habitat in this subunit. However, due to the proximity of the San Gabriel Mountains to large urban centers and resulting high recreational use of these areas, we believe that recreation occurs to some extent within this subunit. Stream reaches within this subunit were not known to be occupied by mountain yellow-legged frog at the time of listing (1987–2002) and are not currently known to be occupied. However this subunit is, may be important as a potential reintroduction site for mountain yellow-legged frog in this region.

Critical Habitat Unit 2: San Bernardino Mountains Unit

This unit is composed of stream segments within 3 subunits (2A–2C) of which 1 subunit (2A) was known to be occupied at the time of listing but currently assumed unoccupied, 1 subunit (2B) was found to be occupied subsequent to the listing determination, and 1 subunit (2C) is not known to be currently occupied but was historically occupied. This unit is located in the San Bernardino Mountains within the boundaries the San Bernardino National Forest in San Bernardino County.

Subunit 2A: City Creek

This subunit contains portions of both the west and east forks of City Creek in an unpopulated area of the San Bernardino Mountains where recreational pressure is very low. Backlin *et al.* (2003) identified suitable habitat for the mountain yellow-legged frog in 2003. The City Creek, West Fork has been surveyed less frequently than City Creek, East Fork but both adults and tadpoles have been observed at the confluence of the two streams and below the confluence as well (USFS and CDFG reports, 1998, 1999). The breeding adult population of mountain yellow-legged frog in City Creek, East Fork between 2002 and 2003 was estimated at 50 (confidence interval = 22–127; Backlin *et al.* 2004), representing one of the largest of the known populations of mountain yellow-legged frog in southern California.

Threats to the species and its habitat within this subunit include the presence of non-native trout, potentially high fuel loads, and the potential for hazardous spills along Highway 330 (USFS 2002). Non-native brown trout have been stocked 11 times between 1949 and 1979 (Backlin, *et al.*, 2004). Threats to the species in this subunit also include temporary habitat alteration resulting from flood and fire events. In 2003, the Old Fire burned the front range of the San Bernardino National Forest, including the watershed for City Creek, with subsequent run-off and scouring in late fall 2003. In addition, fire and debris deposition in December 2003 may have decimated much of the fish and frog populations here, although it is possible that some frogs survived (Backlin, *et al.*, 2004). In 2004, 11 juvenile frogs were salvaged from the East Fork and taken to the Los Angeles Zoo's captive rearing facility, where the juvenile frogs currently thrive (Dr. R. Smith, pers. comm. 2004). In their latest report, USGS (Backlin, *et al.*, 2004) recommends that these individuals be bred in captivity and new populations established in the wild from egg masses or tadpoles, in areas determined to be historically occupied where suitable conditions can be rendered through habitat restoration.

As a result of the 2003 fire, and the 2005 floods, parts of City Creek, East Fork may not currently contain all of the

primary constituent elements essential for the mountain yellow-legged frog, and hydrologists expect that the sediments will have been scoured and transported downstream. However, the portion of the creek north of Highway 32 contained many pools and the riparian habitat seemed intact, although the banks themselves were rocky and now lack soil substrate (Dr. E. Pierce, Service, pers. obs. 2004). Thus, at least in the northern portion of this creek, at least one or more of the primary constituent elements still exist. Over time, natural processes will restore the habitat; *i.e.*, the bank substrates and other original conditions. CDFG, USFS, USGS, CRES, and the Service are developing a long-term plan to potentially return the progeny of these 10 remaining frogs to City Creek-East Fork. Prior to the flooding, East Fork of City Creek supported approximately 50 adult frogs and was considered one of the three largest populations of the southern California mountain yellow-legged frog, however surveys since the floods have failed to yield additional frogs.

We consider this subunit to be unoccupied but essential to the conservation of the species because while the habitat does not currently contain sufficient PCEs we expect it to recover naturally from a natural event and because: (1) The habitat previously supported a large adult population; (2) this population was one of only two known occurrences in the San Bernardino Mountains; and (3) this stream would be the most likely candidate to reintroduce the progeny of the mountain yellow-legged frog held at the Los Angeles Zoo.

Stream segments that are being proposed as critical habitat in this subunit may require special management consideration or protection such removal of non-native trout species, restoration of habitat altered during recent fires and floods, the development of an action plan for prevention, notification, and containment of spills before they enter the stream or its tributaries, and management of riparian vegetation in areas of high canopy cover or dense vegetation.

Subunit 2B: Barton Creek, East Fork

The East Fork of Barton Creek drains from the north-facing slope of the San Bernardino Mountain Wilderness area, off Shields Peak, and joins with Frog Creek to form the main stem of Barton Creek. The terrain is characterized by low relief, moderate to extensive soil development, and partly closed canopy (USFS 2002). In 1993, approximately 50 adults were observed in this creek during a year when the creek was flowing well (CNDDB; R. McKernan, dir. San Bernardino County Museum, pers. obs.). Approximately 50 individual adults were observed here in 1993 (CNDDB 2005), a year of significant precipitation.

Threats to the species and its habitat within this subunit include the presence of non-native brown trout, some habitat degradation due to urban development, and human recreation. The area above State Highway 38 and above Jenks Lake Road has a number of permanent dwellings or other structures, and has evidence of human disturbance. The main Barton Creek stem has been stocked with non-native trout six times between 1940 and 1955 (Backlin, *et al.*, 2004). Stream segments that are being proposed as critical habitat may require special management consideration or protection such as relocation of hiking trails or other access limitations in or near sensitive areas, restoration of habitat in disturbed areas, and removal of non-native trout.

Subunit 2C: Whitewater River, North Fork (Upper Reaches)

This portion of Whitewater River, which flows southward, occurs in the San Bernardino Wilderness area, on USFS lands. The first collection of the species was made on the desert slope between Cabezon and Whitewater in 1908. Subsequent fieldwork revealed mountain yellow-legged frog in Whitewater River in 1959, and while it has not been re-located, surveys have only been conducted 2001 and 2003, and only in the lower reaches of the river.

This area contains sufficient features such that we consider the area to be essential to the conservation of the species (A. Backlin, USGS, pers. comm. 2004). Stream reaches within this subunit were not known to be occupied by mountain yellow-legged frog at the time of listing (1987–2002) and are not currently known to be occupied. However, this area at least historically contained the southeastern most known population of mountain yellow-legged frog in the San Bernardino Mountains (A. Backlin, USGS, pers. comm. 2004). This subunit may constitute a potential re-introduction site for the mountain yellow-legged frog in this region.

Threats to the species and its habitat within this subunit include the presence of non-native trout and human recreation. Rainbow trout observed 2003 in the lower reaches; the river has been stocked with non-native trout two times between 1950 and 1967 (Backlin, *et al.*, 2004). Currently, we do not have documented information on recreational impacts to mountain yellow-legged frog habitat in this subunit. However, due to the proximity of the San Bernardino Mountains to large urban centers and resulting high recreational use of these areas, we believe that recreation occurs to some extent within this subunit.

Critical Habitat Unit 3: San Jacinto Mountains Unit

The San Jacinto Mountains Unit is composed of stream segments within 4 subunits (3A–3D) of which 2 subunits (3A & 3B) were known to be occupied at the time of listing and 2 subunits (3C & 3D) are not known to be currently occupied, but were historically occupied. This unit is located in the San Jacinto Mountains in the San Bernardino National Forest, Riverside County.

Subunit 3A: San Jacinto River, North Fork (the Tributaries Black Mountain Creek, Fuller Mill Creek, and Dark Canyon

These populations represent the southernmost distribution of the mountain yellow-legged frog. In 2003, Fuller Mill Creek (9 adults) represented approximately 5 percent of the estimated population of 183 adults (Backlin, *et al.*, 2004) and is the largest remaining population in the San Jacinto Mountains. In 2003, 11 adults, 54 juveniles, and 18 first-year larvae were recorded from Dark Canyon (Backlin *et al.* 2004). Dark Canyon (54 juveniles) represented approximately 42 percent of the 128 juvenile mountain yellow-legged frog captured in 2003, although the small sample may not represent the true demographics of this population (Backlin *et al.* 2004). Dark Canyon, and its upper reaches, has been surveyed little (*i.e.* it was surveyed only once in 2003 because this area difficult to access) (Backlin *et al.* 2004). Both Fuller Mill Creek and Dark Canyon represent important sources of reproductive potential for the low population of the mountain yellow-legged frog and to maintain populations in the San Jacinto Mountains and minimize the risk of losing any population from a stochastic catastrophic event. The North Fork San Jacinto River at Black Mountain Creek was not known occupied at the time of listing, but has been surveyed rarely since 1994. The North Fork San Jacinto River has been stocked with non-native trout 36 times between 1948 and 1984 (Backlin, *et al.*, 2004).

Threats to the species and its habitat in this subunit include the presence of non-native trout, human recreation, and potentially high fuel loads (USFS 2002). Therefore stream segments within this

subunit may require special management consideration or protection such removal of non-native trout species, rerouting or reconstructing hiking trails or some recreational facilities located adjacent to occupied creeks, installing signing at trailheads and along access points to promote understanding of the species' biology and habitat requirements, and management of riparian vegetation in areas of high canopy cover or dense vegetation.

Subunit 3B: Indian Creek (at Hall Canyon)

In Indian Creek at Hall Canyon, mountain yellow-legged frogs have been observed since as early as 1908 (Lake Fulmor). Lake Fulmor has been stocked with non-native trout at least 24 times between 1957 and 1984 (Backlin, *et al.*, 2004). Since then, they have been observed in 1927, in the 1950's and again in 1995 (CNDDB). Although extensive surveys have not been conducted here in the 2000s, water levels in these streams have apparently been very low due to drought conditions. The mountain yellow-legged frog was last observed in Hall Canyon in 1995. North Fork San Jacinto River and Hall Canyon constitute two of the four (50 percent) known occurrences of the mountain yellow-legged frog observed in the San Jacinto Mountains since 1995. Thus, these streams are important for the persistence of the mountain yellow-legged frog.

Threats to the mountain yellow-legged frog in this subunit include the potential presence of non-native trout and potentially high fuel loads (USFS 2002) and some human recreation activities. Therefore stream segments within this subunit may require special management consideration or protection such removal of non-native trout species, closing, rerouting or reconstructing campgrounds, hiking trails or picnic tables adjacent to occupied creeks, installing signage at trailheads, removal of non-native trout, and management of riparian vegetation in areas of high canopy cover or dense vegetation.

Subunit 3C: Tahquitz Creek (Upper Reaches, Including Willow Creek Tributary)

The headwaters of this extensive river occur within the San Jacinto Wilderness area, where the subunit is located entirely. It flows from Mount San Jacinto eastward and empties near Palm Springs. The habitat has been characterized as suitable (Backlin *et al.* 2004). Mountain yellow-legged frogs were located in this stream as early as 1905, throughout the early 1900s and as late as 1970. Surveys of this currently unoccupied stream have been infrequent in recent years, due to its extensive length and ruggedness; the upper reaches and lower reaches have been survey four times in the 2000s, but not the mid-sections. Brown trout were found during recent surveys, and records show that the river was stocked with non-native trout 36 times between 1948 and 1984 (Backlin, *et al.*, 2004).

Threats to the species and its habitat in this subunit include trampling of habitat due to cows (CDFG survey comments, 2001) and the presence of non-native trout. In general, this stream has a low level of human recreational pressure. Tahquitz Creek may constitute an important alternative site for future mountain yellow-legged frog re-introductions in this region.

Subunit 3D: Andreas Creek (Upper Reaches)

The headwaters of this river also occur within the San Jacinto Wilderness area, where the Sub-unit is located entirely, and flows from Mount San Jacinto eastward and empties near Palm Springs. Mountain yellow-legged frog were found in this currently unoccupied site as early as 1941, and as late as 1978 and were thought to persist there still in 1994 (Jennings and Hayes 1994b). Although Andreas Creek also has a low level of human recreational pressure, it has been stocked with non-native trout 9 times between 1949 and 1968 (Backlin *et al.* 2004). The stream habitat has been identified as suitable for the mountain yellow-legged frog (Backlin, *et al.*, 2004). The headwaters of both Andreas Creek and Tahquitz Creek occur relatively close to the upper drainage of the currently known population in the North Fork of San Jacinto, and may therefore constitute an important alternative site for future mountain yellow-legged frog re-introductions.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species, and are relying on the statutory provisions of the Act in evaluating the effects of Federal actions on proposed critical habitat, pending further regulatory guidance. More detail on how we are currently interpreting this portion of the Act can be found in the Fish and Wildlife Service Director's December 9, 2004, memorandum, titled: Application of the "Destruction or Adverse Modification" Standard under Section 7(a)(2) of the Endangered Species Act.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that their actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse

modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request re-initiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the mountain yellow-legged frog or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the mountain yellow-legged frog. Federal activities that, when carried out, may adversely affect critical habitat for the mountain yellow-legged frog include, but are not limited to:

(1) Sale, exchange, or lease of lands managed by the USFS or other Federal agencies. The sale, exchange, or lease of these lands could result in reduced management and conservation efforts to conserve the mountain yellow-legged frog;

(2) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(3) Regulation of water flows, water delivery, damming, diversion, stream channelization, water transfers, diversion, impoundment, groundwater withdrawal, or irrigation activities that causes barriers or deterrents to dispersal, inundates or drains habitat, or significantly converts habitat by the USFS, Bureau of Reclamation, Corps or other Federal agencies;

(4) Regulation of grazing, recreation, mining, or logging by the USFS or other Federal agencies. Mining, grazing, logging, land clearing, and recreational activities in or adjacent to the aquatic habitat could degrade, reduce, fragment or eliminate the habitat necessary for the growth and reproduction of the mountain yellow-legged frog.

(5) Funding and implementation of disaster relief projects by the Federal Emergency Management Agency (FEMA) and the Natural Resource Conservation Service's (NRCS) Emergency Watershed Program, including erosion control, flood control, stream bank repair to reduce the risk of loss of property. Such program activities could adversely affect breeding and non-breeding aquatic habitats of the subspecies by channelization or hardening of stream courses, removal of riparian vegetation used by the mountain yellow-legged frog for foraging or shelter;

(6) Funding and regulation of new road construction, paved areas, or road improvements by the Federal Highways Administration, the USFS, or other agencies. Road construction or improvement activities can adversely affect the mountain yellow-legged frog through creation of barriers to dispersal and increased traffic volume resulting in direct mortality, removal or alteration of aquatic habitat or hydrology necessary for growth and reproduction;

(7) Clearing of riparian vegetation by the USFS or other Federal agencies. These activities may lead to changes in water flows, levels, and quality that may potentially degrade or eliminate habitats for the mountain yellow-legged frog;

(8) Promulgation of air and water quality standards under the Clean Air Act and the Clean Water Act, and the clean up of toxic waste and superfund sites under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act by the EPA;

(9) Discharges that may significantly alter water quality, chemistry, or temperature or significantly increase sediment deposition within the streams and other aquatic habitats used by the mountain yellow-legged frog. These discharges may alter water quality beyond the tolerances of the mountain yellow-legged frog adults, larvae, or eggs.

All lands proposed for designation as critical habitat lie within the geographic range of the southern California of the mountain yellow-legged frog in the San Bernardino, San Jacinto, and San Gabriel mountains. This proposed designation includes areas currently known to be occupied by the species, as well as several areas that were historically occupied, but where current occupancy is not known and assumed to be unoccupied. The occupied units are known to be used for foraging, sheltering, breeding, egg-laying, growth of larvae and juveniles, intra-specific communication, basking, dispersal, and migration. Federal agencies already consult with us on activities in areas currently occupied by the mountain yellow-legged frog, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the species. In the event critical habitat is designated, Federal agencies would need to ensure that their actions do not destroy or adversely modify critical habitat. For these areas where current occupancy has not been verified, we are only proposing to designate federally managed land as critical habitat. Thus, we do not anticipate substantial additional regulatory protection will result from the proposed critical habitat designation for areas known to be occupied by mountain yellow-legged frog, although consultation may need to be reinitiated. For those areas not currently known to be occupied by mountain yellow-legged frog, the Forest Service or other Federal agencies would need to consult with the Service under section 7(a)(2) of the Act.

If you have questions regarding whether specific activities may constitute adverse modification of critical habitat in California, contact the Field Supervisor, Carlsbad Fish and

Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE 11th Ave, Portland, OR 97232 (telephone (503) 231–2063; facsimile (503)— 231–6243.

Application of 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species at the time of listing on which are found those physical and biological features (i) essential to the conservation of the species and (ii) which may require special management considerations or protection. Therefore, areas within the geographic area occupied by the species at the time of listing that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species at the time of listing that do not require special management or protection also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

We consider a current plan to provide adequate management or protection if it meets two criteria: (1) The plan provides management, protection or enhancement to the PCEs at least equivalent to that provided by a critical habitat designation; and (2) the Service has reasonable expectation the management, protection or enhancement actions will continue for the foreseeable future.

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations, we use both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that we are consider proposing designating as critical habitat as well as for those areas that are formally proposed for designation as critical habitat. Lands we have found do not meet the definition of critical habitat under section 3(5)(A) or have excluded pursuant to section 4(b)(2) include those covered legally operative HCPs that cover the species. There are no tribal lands or lands owned by the Department of Defense within the areas proposed as critical habitat for the mountain yellow-legged frog in southern California.

Relationship of Critical Habitat to Approved Habitat Conservation Plans (HCPs)

To the extent that these areas meet the definition of critical habitat pursuant to section 3(5)(A) of the Act, we are proposing to exclude critical habitat from approximately 487 ac (197 ha) of non-Federal lands within existing Public/Quasi Public (PQP) lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Area under section 4(b)(2) of the Act. Non-Federal lands we are proposing to exclude from critical habitat include lands on Mount San Jacinto State Park owned by the California Department of Parks and Recreation (approximately 205 ac (83 ha)), private lands along Fuller Mill Creek (approximately 141 ac (57 ha)), lands owned by the County of Riverside Regional Parks and Open Space District at the confluence of Fuller Mill Creek and Dark Canyon (approximately 87 ac (35 ha)), and lands owned by the University of California at the James San Jacinto Mountains Reserve (approximately 54 ac (22 ha)).

The mountain yellow-legged frog is a covered species under the completed Western Riverside County MSHCP, and all but 141 ac (57 ha) of the 487 ac (197) of essential habitat identified within the MSHCP occur on reserve lands which will be conserved through the provisions of the Western Riverside County MSHCP. All private lands identified as essential mountain yellow-legged frog habitat occur on lands identified within the Western Riverside County MSHCP as Additional Reserve Lands. These Additional Reserve Lands must all be purchased by Riverside County as part of the HCP and will, over time, also be conserved through the provisions of the MSHCP. Therefore, all lands identified as essential habitat will be conserved. All essential habitat identified within the Western Riverside County MSHCP falls in an area defined in the MSHCP as the San Jacinto Mountains Bioregion Core Area, within the MSHCP Conservation Area. This Core Area primarily occurs within the San Bernardino National Forest. This area includes the current known populations as well as suitable and historically occupied mountain yellow-legged frog habitat.

In addition to conserving all lands identified as essential habitat, the Western Riverside County MSHCP also identified 30,927 ac (12,516 ha) of modeled habitat for the mountain yellow-legged frog, far exceeding the 487 ac (197 ha) proposed for exclusion, and includes the following species-specific conservation objectives for this modeled habitat: *Objective 1*: Include within the MSHCP Conservation Area at least 335 ac (136 ha) of primary breeding habitat above 370 m (riparian scrub woodland and forest) within the San Jacinto Mountains. Primary breeding habitat for the yellow-legged frog includes aquatic habitats with gently sloping shore margins that receive some sunlight, and clear cool water; *Objective 2*: Include within the MSHCP Conservation Area the Core Areas above 370 m at the North Fork of the San Jacinto River (including Dark Canyon), Hall Canyon, and Fuller Mill Creek and other perennial water streams in the San Jacinto Mountains; *Objective 3*: Include within the MSHCP Conservation Area at least 32,399 ac (13,111 ha) of the secondary wooded habitat above 1,214 ft (370 m) (oak woodlands and forests and montane coniferous forest) within the North Fork of the San Jacinto River (including Dark Canyon), Hall Canyon, and Fuller Mill Creek and other perennial water streams in the San Jacinto Mountains; *Objective 4*: Surveys for this species will be conducted as part of the project review process for public and private projects within the amphibian species survey area where suitable habitat is present (see Amphibian Species Survey Area Map, Figure 6–3 of the MSHCP, Volume I). Mountain yellow-legged frog localities identified as a result of survey efforts shall be conserved in accordance with procedures described within Section 6.3.2, MSHCP, Volume 1; *Objective 5*: Within the MSHCP Conservation Area, Reserve Managers shall maintain or, if feasible, restore ecological processes (with particular emphasis on removing non-native predatory fish and bullfrogs) within

occupied habitat and suitable new areas within the Criteria Area. At a minimum, these areas will include areas above 1,214 ft (370 m) at the North Fork of the San Jacinto River (including Dark Canyon), Fuller Mill Creek, and Hall Canyon above Lake Fulmor; and *Objective 6*: Within the MSHCP Conservation Area, maintain successful reproduction as measured by the presence/absence of tadpoles, egg masses, or juvenile frogs once a year for the first five years after permit issuance and then as determined by the Reserve Management Oversight Committee as described in Section 6.6 (but not less frequently than every 8 years).

In the MSHCP, the mountain yellow-legged frog is considered an Additional Survey Needs and Procedures species. Until such time that the Additional Reserve Lands are assembled and conservation objectives for this species are met, surveys for the mountain yellow-legged frog will be conducted as part of the project review process for public and private projects where suitable habitat is present for the species within the "Mountain Yellow-legged Frog Amphibian Survey Area" (referred to here as Survey Area). Populations detected as a result of survey efforts will be avoided according to the procedures outlined in the Additional Survey Needs and Procedures (Section 6.3.2 of the Plan; *i.e.*, 90 percent of portions of property with long-term conservation value will be avoided until the species conservation objectives are met). For those locations found to contain large numbers of individuals or otherwise determined to be important to the overall conservation of the species, the Plan allows flexibility to acquire these locations for inclusion into the Additional Reserve Lands (Section 6, pp. 6–70). In addition, we anticipate that implementation of the Riparian/Riverine Areas and Vernal Pools policy (Chapter 6) will assist in providing some protection to this species' habitat by avoiding and/or minimizing direct impacts to riparian, riverine, and vernal pool habitats.

The Permittees will implement management and monitoring practices within the Additional Reserve Lands including surveys for the mountain yellow-legged frog. Cooperative management and monitoring are anticipated on PQP Lands. Within the MSHCP Conservation Area, Reserve Managers will determine if successful reproduction is occurring as measured by the presence/absence of tadpoles, egg masses, or juvenile frogs once a year for the first five years after permit issuance, and then as determined by the Reserve Managers Oversight Committee, but not less frequently than every eight years. Surveys for the mountain yellow-legged frog will be conducted at least every eight years to verify occupancy at a minimum of 75 percent of the known locations. If a decline in the distribution of the mountain yellow-legged frog is documented below this threshold, management measures will be triggered, as appropriate, to meet the species-specific objectives identified in Section 9, Table 9.2 of the MSHCP. Other management activities listed in Section 5 will be conducted to benefit the mountain yellow-legged frog within the MSHCP Conservation Area. Within occupied habitat and suitable new areas, Reserve Managers will maintain ecological and hydrological processes, with particular emphasis on removing non-native predatory fish and bullfrogs. At a minimum, these areas will include areas above 1,214 ft (370 m) at the North Fork of the San Jacinto River (including Dark Canyon), Fuller Mill Creek, and Hall Canyon above Lake Fulmor (Section 5, Table 5.2 of the MSHCP).

As previously stated, all essential habitat will be conserved and managed with implementation of the Western Riverside County MSHCP. Consistent with the MSHCP, development could occur in up to an estimated 8,094 ac (3,275 ha) (26 percent) of MSHCP modeled mountain yellow-legged frog habitat. This habitat may have been historically occupied and may be impacted by urban development, water diversion/flood control projects, fill of aquatic habitat, construction projects, sand and gravel mining practices, recreation, and other urban and agricultural activities. In our biological opinion we did not anticipate that any individual frogs would be taken as a result of permit issuance, and should frogs be located during required surveys in the Survey Area, 90 percent of those portions of the property that provide long-term conservation will be avoided until it is demonstrated that conservation goals for the mountain yellow-legged frog are met.

(1) Benefits of Inclusion

A benefit of including an area within a critical habitat designation is the education of landowners and the public regarding the potential conservation value of these areas. The inclusion of an area as critical habitat may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved for the mountain yellow-legged frog. The public outreach and environmental impact reviews required under the National Environmental Policy Act for the Western Riverside County MSHCP provided significant opportunities for public education regarding the conservation of the areas occupied by the mountain yellow-legged frog DPS. The Western Riverside County MSHCP identifies specific populations (Fuller Mill Creek and Dark Canyon) of the mountain yellow-legged frog for conservation. Therefore, we believe the education benefits which might arise from a critical habitat designation have largely already been generated as a result of the significant outreach for the Western Riverside County MSHCP. The County of Riverside Regional Parks and Open Space District and the James San Jacinto Mountains Reserve are aware of the conservation value of their lands for the mountain yellow-legged frog and designation of these lands as critical habitat would not provide an additional education benefit to these landowners. The USFS has acquired private lands along Fuller Mill Creek for the conservation of the mountain yellow-legged frog. Moreover, in our final listing rule (67 FR 44382) we noted that the mountain yellow-legged frog occurs on private lands along Fuller Mill Creek. Private landowners along Fuller Mill Creek may also already recognize the conservation value of their lands for the mountain yellow-legged frog based on the outreach resulting from the Western Riverside County MSHCP, land acquisition efforts by the USFS, and identification of these private lands in the listing rule for the mountain yellow-legged frog.

Another 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. The designation of critical habitat may provide a different level of protection under section 7(a)(2) of the Act for the mountain yellow-legged frog that is separate from the obligation of a Federal agency to ensure that their actions are not likely to jeopardize the continued existence of the endangered species. Under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species than was previously believed, but it is not possible to quantify this benefit at present. However, the protection provided is still a limitation on the harm that occurs as opposed to a requirement to provide a conservation benefit. We completed a section 7 consultation on the issuance of

the section 10(a)(1)(B) permit for the Western Riverside County MSHCP on June 22, 2004, and concluded that the mountain yellow-legged frog was adequately conserved and the issuance of the permit would not jeopardize the continued existence of this DPS. In our biological opinion, we anticipated that up to 8,094 acres of mountain-yellow legged frog habitat within the Plan Area would become unsuitable for this species. Based on implementation of the survey requirements and various policies of the Western Riverside County MSHCP, we anticipate that zero mountain yellow-legged frogs will be taken as a result of the issuance of the section 10(a)(1)(B) permit.

The areas excluded as critical habitat are currently occupied by the species. If these areas were designated as critical habitat, any actions with a Federal nexus which might adversely affect the critical habitat would require a consultation with us, as explained previously, in Effects of Critical Habitat Designation section. However, inasmuch as this area is currently occupied by the species, consultation for Federal activities which might adversely impact the species or would result in take would be required even without the critical habitat designation.

Primary constituent elements in these areas would be protected from destruction or adverse modification by federal actions using a conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot*. This requirement would be in addition to the requirement that proposed Federal actions avoid likely jeopardy to the species' continued existence. However, inasmuch as nine of the fourteen subunits are occupied by the mountain yellow-legged frog, consultation for activities which may adversely affect the species, including possibly significant habitat modification (see definition of "harm" at 50 CFR 17.3), would be required, even without the critical habitat designation. The requirement to conduct such consultation would occur regardless of whether the authorization for incidental take occurs under either section 7 or section 10 of the Act.

For the subunits that are not known to be occupied, there is still a requirement for a Federal agency to make an effect determination, and in the case of an effect, ensure that their Federal actions are not likely to jeopardize the continued existence of the species. For those subunits that are not known to be occupied, the designation of critical habitat would provide a benefit by clearly indicating to Federal action agencies the need to consider the effects of their proposed activity on designated critical habitat and not just on the presence or absence of the mountain yellow-legged frog. In the case of subunits not known to be occupied that have been identified in this rule as providing for the long-term persistence and recovery of the species, the Service would evaluate the proposed Federal action using a conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot*. However, the 487 ac (197 ha) of non-Federal lands excluded from critical habitat are occupied by the mountain yellow-legged frog. None of the lands within the subunits that are not known to be occupied are excluded from critical habitat pursuant to section 4(b)(2) of the Act. This particular point is significant because, as we note earlier in the rule, where critical habitat is designated in unoccupied areas, it provides a benefit to the species.

The inclusion of these 487 ac (197 ha) of non-Federal land as critical habitat would provide some additional Federal regulatory benefits for the species consistent with the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot*. A benefit of inclusion would be the requirement of a Federal agency to ensure that their actions on these non-Federal lands do not likely result in jeopardizing the continued existence of the species or result in the destruction or adverse modification of critical habitat. This additional analysis to determine destruction or adverse modification of critical habitat is likely to be small because the lands are not under Federal ownership and any Federal agency proposing a Federal action on these 487 ac (197 ha) of non-Federal lands would likely consider the conservation value of these lands as identified in the Western Riverside County MSHCP and take the necessary steps to avoid jeopardy or the destruction or adverse modification of critical habitat.

As discussed below, however, we believe that designating any non-Federal lands within existing PQP lands, proposed conceptual reserve design lands, and on lands targeted for conservation within the Western Riverside County MSCHP Plan Area as critical habitat would provide little additional educational and Federal regulatory benefits for the species. Because the excluded areas are occupied by the species, there must be consultation with the Service over any action which may affect these populations or that would result in take. The additional educational benefits that might arise from critical habitat designation have been largely accomplished through the public review and comment of the environmental impact documents which accompanied the development of the Western Riverside County MSHCP and the recognition by some of the landowners of the presence of the endangered mountain yellow-legged frog and the value of their lands for the conservation and recovery of the species (County of Riverside Regional Parks and Open Space District, California Department of Parks and Recreation, and University of California at the James San Jacinto Mountains Reserve.

For 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot*, the Fish and Wildlife Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. However, in *Gifford Pinchot* the court noted the government, by simply considering the action's survival consequences, was reading the concept of recovery out of the regulation. The court, relying on the CFR definition of adverse modification, required the Service to determine whether recovery was adversely affected. The *Gifford Pinchot* decision arguably made it easier to reach an "adverse modification" finding by reducing the harm, affecting recovery, rather than the survival of the species. However, there is an important distinction: section 7(a)(2) limits harm to the species either through take or critical habitat. It does not require positive improvements or enhancement of the species status. Thus, any management plan which considers enhancement or recovery as the management standard will always provide more benefit than the critical habitat designation.

(2) Benefits of Exclusion

The benefit of excluding the 487 ac (197 ha) of non-Federal land as critical habitat includes relieving private landowners, County of Riverside, California Department of Parks and Recreation, University of California, and Federal agencies from any additional regulatory burden that might be imposed by a critical habitat designation consistent with the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot*. The County of Riverside and the other local jurisdictions invested a significant amount of time and money to complete the Western Riverside County MSHCP with the expectation that the permitting for future development projects would be streamlined. A benefit of excluding these 487 ac (197 ha) would be to reduce any additional regulatory burden

(*e.g.*, time and cost to comply with the reinitiation which could be triggered by the designation of critical habitat) or avoid the negative perception of increased regulation resulting from the designation of critical habitat for the mountain yellow-legged frog. Another benefit from excluding these lands is to maintain the partnerships developed among private landowners, County of Riverside, State of California, and the Service to implement the Western Riverside County MSHCP. Instead of using limited funds to comply with administrative consultation and designation requirements which can not provide protection beyond what is currently in place, the landowners within the 487 acres (197 ha) of land excluded from critical habitat could instead use their limited funds for the conservation of this species.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated excluding critical habitat from approximately 487 ac (197 ha) of non-Federal lands within existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSHCP for the mountain yellow-legged frog. Based on this evaluation, we find that the benefits of exclusion (avoid increased regulatory costs which could result from including those lands in this designation of critical habitat and direct limited funding to conservation actions with partners) of the lands containing features essential to the conservation of the mountain yellow-legged frog within the Western Riverside County MSHCP outweigh the benefits of inclusion (limited educational and regulatory benefits, which are largely otherwise provided for under the MSHCP) of portions of subunits 3A and 3B within the San Jacinto Mountains Unit as critical habitat. The benefits of inclusion of these 487 ac (197 ha) of non-Federal lands as critical habitat are lessened because of the significant level of conservation provided to the mountain yellow-legged frog under the Western Riverside MSHCP (conservation of core biological areas, avoidance of impacts through additional survey requirements, and management that likely exceed any conservation value provided by a critical habitat designation). In contrast, the benefits of exclusion of these 487 ac (197 ha) of non-Federal lands as critical habitat are increased because of the high level of cooperation by the County of Riverside and State of California to conserve this species and this partnership exceeds any conservation value provided by a critical habitat designation. The Western Riverside County MSHCP will conserve all essential habitat, thereby providing equivalent protection to the PCEs as a critical habitat designation to identified essential habitat. In addition to conserving all essential habitat, the Western Riverside County MSHCP also provides for the management of all essential habitat and species-specific conservation objectives for all modeled mountain yellow-legged frog habitat within the Plan Area, therefore the Western Riverside County MSHCP provides more benefit than critical habitat designation.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these non-Federal lands within portions of Subunits A and B of the San Jacinto Mountains Unit will not result in extinction of the mountain yellow-legged frog since these lands will be conserved and managed for the benefit of this species pursuant to the Western Riverside County MSHCP. The Western Riverside MSHCP includes specific conservation objectives, survey requirements, avoidance and minimization measures, and management for the mountain yellow-legged frog that exceed any conservation value provided as a result of a critical habitat designation. Moreover, the 487 ac (197 ha) represents approximately four percent of the 8,290 ac (3,355 ha) of land proposed as critical habitat in this rule. While the populations in Fuller Mill Creek and Hall Canyon are important to the overall conservation of the species, the exclusion of portions of these populations will not result in the extinction of the species since the populations in the San Gabriel Mountains and San Bernardino are still proposed as critical habitat. In fact, the populations in the San Gabriel Mountains are larger than the populations at Fuller Mill Creek and Dark Canyon in the San Jacinto Mountains Unit.

The jeopardy standard of section 7 and routine implementation of habitat conservation through the section 7 process, also provide assurances that the species will not go extinct. In addition, the species is protected from take under section 9 of the Act. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

Critical habitat is being designated for the mountain yellow-legged frog in other areas that will be accorded the protection from adverse modification by federal actions using the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot*. Additionally, the species occurs on lands protected and managed either explicitly for the species, or indirectly through more general objectives to protect natural values, this factor acting in concert with the other protections provided under the Act for these lands absent designation of critical habitat on them, and acting in concert with protections afforded each species by the remaining critical habitat designation for the species, lead us to find that exclusion of these 487 ac (197 ha) within the Western Riverside County MSHCP will not result in extinction of the mountain yellow-legged frog.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the mountain yellow-legged frog is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://carlsbad.fws.gov*, or by contacting the Carlsbad Fish and Wildlife Office directly (*see* **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public

hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. The draft economic analysis can be obtained from the Internet Web site at *http://carlsbad.fws.gov* or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES** section).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Our assessment of economic effect will be completed prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the mountain yellow-legged frog is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide

funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because the lands proposed for designation as critical habitat are on Federal lands within the Cleveland National Forest. As such, Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the mountain yellow-legged frog imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the mountain yellow-legged frog.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (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), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands that contain habitat with features essential for the conservation of the southern California of the mountain yellow-legged frog. Therefore, no tribal lands have been included in the areas proposed as critical habitat for this population segment.

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 the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for "frog, mountain yellow-legged" under "AMPHIBIANS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
AMPHIBIANS							
*	*	*	*	*	*	*	
Frog, mountain yellow-legged (southern California DPS).	*Rana muscosa*	U.S.A. (California, Nevada).	U.S.A., southern California.	E	728	17.95(d)	NA
*	*	*	*	*	*	*	

3. In § 17.95(d), add an entry for "Mountain yellow-legged frog" under "AMPHIBIANS" in the same order as this species appears in the List of Endangered and Threatened Wildlife in § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

MOUNTAIN YELLOW-LEGGED FROG (*Rana muscosa*)

(1) Critical habitat units are depicted for Los Angeles, San Bernardino, and Riverside counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for the mountain yellow-legged frog are the habitat components that provide:

(i) Water source(s) found between 1,214 ft (370 m) to 7,546 ft (2,300 m) in elevation that are permanent, to ensure that aquatic habitat for the species is available year-round. Water sources include, but are not limited to streams, rivers, perennial creeks (or permanent plunge pools within intermittent creeks), pools (*i.e.*, a body of impounded water that is contained above a natural dam) and other forms of aquatic habitat. The water source should maintain a natural flow pattern including periodic natural flooding. Aquatic habitats that are used by mountain yellow-legged frog for breeding purposes must maintain water during the entire tadpole growth phase (which can be from 1–4 years duration). During periods of drought, or less than average rainfall, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they would still be considered essential breeding habitat in wetter years. Further, the aquatic habitat should include:

a. Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel cobble, rock, and boulders;

b. Water chemistry with a pH generally 6.6 to 9, dissolved oxygen varying from 23 to 28 percent and water temperatures during summer (June through August) ranging between 4.0 and 30.3 degrees Celsius;

c. Streams or stream reaches between known occupied sites that can function as corridors for adults and frogs for movement between aquatic habitats used as breeding and/or foraging sites.

(ii) Riparian habitat and upland vegetation (*e.g.*, ponderosa pine, montane hardwood-conifer, montane riparian woodlands, and chaparral) extending 262 feet (80 m) from each side of the centerline of each identified stream and its tributaries, that provides areas for feeding and movement of mountain yellow-legged frog, with a canopy overstory not exceeding 85 percent that allows sunlight to reach the stream and thereby providing basking areas for the species.

(3) Critical Habitat Map Units—Data layers defining map units were created on a base of USGS 7.5' quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(4) Note: Map 1 (index map of critical habitat units for the southern California distinct population segment of the mountain yellow-legged frog) follows:

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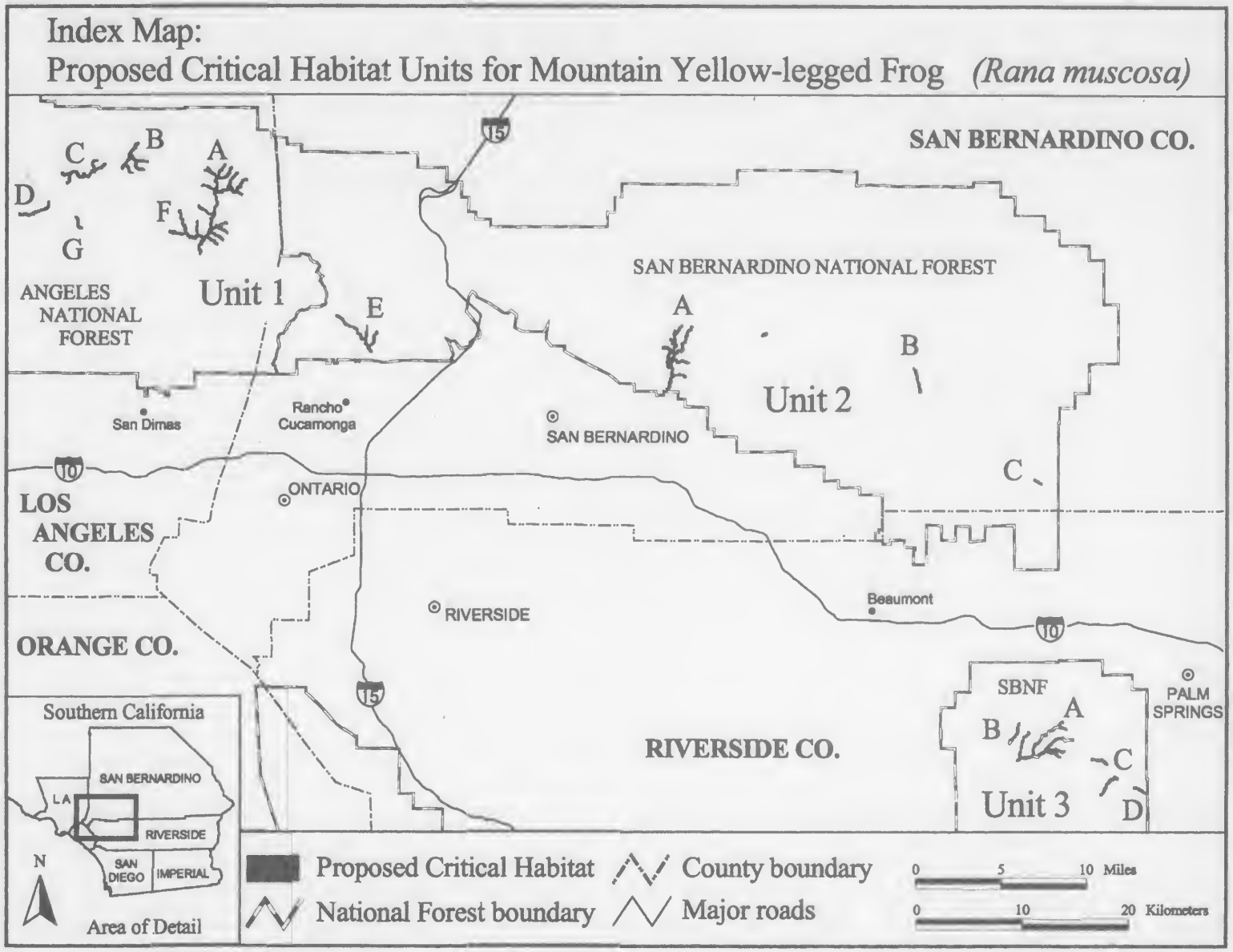
BILLING CODE 4310–55–C



(5) Unit 1: San Gabriel Mountains, Los Angeles and San Bernardino Counties, California. From USGS 1:24,000 quadrangle maps Crystal Lake, Cucamonga Peak, Mount San Antonio Valyermo, and Waterman Mountain, California.

(i) Subunit 1A: San Gabriel River (East Fork), Angeles National Forest, Los Angeles County, California. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 434100, 3803300; 434400, 3803300; 434400, 3803100; 434300, 3803100; 434300, 3802900; 434200, 3802900; 434200, 3802800; 434100, 3802800; 434100, 3802600; 434000, 3802600; 434000, 3802500; 433800, 3802500; 433800, 3802200; 433700, 3802200; 433700, 3801900; 433600, 3801900; 433600, 3801800; 433800, 3801800; 433800, 3801900; 434200, 3801900; 434200, 3802000; 434400, 3802000; 434400, 3802100; 434500, 3802100; 434500, 3802300; 434600, 3802300; 434600, 3802500; 434700, 3802500; 434700, 3802800; 434800, 3802800; 434800, 3802900; 434900, 3802900; 434900, 3803000; 435100, 3803000; 435100, 3802700; 435000, 3802700; 435000, 3802600; 434900, 3802600; 434900, 3802200; 434800, 3802200; 434800, 3802100; 434700, 3802100; 434700, 3801900; 434600, 3801900; 434600, 3801800; 434400, 3801800; 434400, 3801700; 434000, 3801700; 434000, 3801600; 433400, 3801600; 433400, 3801500; 433300, 3801500; 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(ii) Map depicting subunit 1A is found at paragraph (d)(10)(ii) of this section.

(6) Subunit 1B: Big Rock Creek (South Fork), Angeles National Forest, Los Angeles County, California.

(i) Subunit 1B: Big Rock Creek (South Fork). Land bounded by the following UTM NAD27 coordinates (E, N): 424400, 3805700; 424600, 3805700; 424600, 3805400; 424500, 3805400; 424500, 3805300; 424300, 3805300; 424300, 3805200; 424400, 3805200; 424400, 3805000; 424300, 3805000; 424300, 3804900; 424100, 3804900; 424100, 3804800; 424000, 3804800; 424000, 3804700; 423900, 3804700; 423900, 3804500; 423800, 3804500; 423800, 3804400; 423700, 3804400; 423700, 3804300; 424000, 3804300; 424000, 3804100; 424100, 3804100; 424100, 3804000; 424200, 3804000; 424200, 3803900; 424300, 3803900; 424300, 3803800; 425200, 3803800; 425200, 3803700; 425700, 3803700; 425700, 3803400; 425400, 3803400; 425400, 3803500; 424400, 3803500; 424400, 3803000; 424500, 3803000; 424500, 3802900; 425100, 3802900; 425100, 3802800; 425300, 3802800; 425300, 3802600; 424500, 3802600; 424500, 3802700; 424300, 3802700; 424300, 3802800; 424200, 3802800; 424200, 3803000; 424100, 3803000; 424100, 3803700; 423900, 3803700; 423900, 3803800; 423800, 3803800; 423800, 3804000; 423700, 3804000; 423700, 3803700; 423500, 3803700; 423500, 3803600; 423400, 3803600; 423400, 3803400; 423300, 3803400; 423300, 3803200; 423500, 3803200; 423500, 3803000; 423600, 3803000; 423600, 3802600; 423700, 3802600; 423700, 3802500; 423800, 3802500; 423800, 3802400; 424000, 3802400; 424000, 3802300; 423500, 3802300; 423500, 3802400; 423400, 3802400; 423400, 3802800; 423300, 3802800; 423300, 3802900; 423200, 3802900; 423200, 3803000; 423100, 3803000; 423100, 3803100; 423000, 3803100; 423000, 3803000; 422900, 3803000; 422900, 3802800; 422800, 3802800; 422800, 3802700; 422700, 3802700; 422700, 3802800; 422600, 3802800; 422600, 3803100; 422700, 3803100; 422700, 3803200; 422800, 3803200; 422800, 3803300; 422900, 3803300; 422900, 3803400; 423000, 3803400; 423000, 3803500; 423100, 3803500; 423100, 3803600; 423200, 3803600; 423200, 3803900; 423400, 3803900; 423400, 3804500; 423500, 3804500; 423500, 3804600; 423600, 3804600; 423600, 3804700; 423700, 3804700; 423700, 3804900; 423800, 3804900; 423800, 3805000; 423900, 3805000; 423900, 3805100; 424000, 3805100; 424000, 3805400; 424100, 3805400; 424100, 3805500; 424200, 3805500; 424200, 3805600; 424400, 3805600; returning to 424400, 3805700.

(ii) Map depicting subunit 1B is found at paragraph (d)(10)(ii) of this section.

(7) Subunit 1C: Little Rock Creek, Angeles National Forest, Los Angeles County, California.

(i) Subunit 1C: Upper Little Rock Creek. Land bounded by the following UTM NAD27 coordinates (E, N): 419500, 3803800; 420000, 3803800; 420000, 3803600; 419700, 3803600; 419700, 3803500; 419600, 3803500; 419600, 3803400; 419500, 3803400; 419500, 3803300; 419600, 3803300; 419600, 3803200; 419700, 3803200; 419700, 3802900; 420000, 3802900; 420000, 3803000; 420200, 3803000; 420200, 3803100; 420400, 3803100; 420400, 3803200; 420500, 3803200; 420500, 3803300; 420600, 3803300; 420600, 3803400; 420900, 3803400; 420900, 3803200; 420800, 3803200; 420800, 3803100; 420700, 3803100; 420700, 3803000; 420600, 3803000; 420600, 3802900; 420500, 3802900; 420500, 3802800; 420100, 3802800; 420100, 3802700; 419900, 3802700; 419900, 3802600; 419800, 3802600; 419800, 3802400; 419700, 3802400; 419700, 3802300; 419500, 3802300; 419500, 3802400; 419400, 3802400; 419400, 3802300; 419300, 3802300; 419300, 3802100; 419200, 3802100; 419200, 3802000; 419100, 3802000; 419100, 3801900; 419000, 3801900; 419000, 3801800; 418800, 3801800; 418800, 3801900; 418500, 3801900; 418500, 3801800; 417900, 3801800; 417900, 3801900; 417800, 3801900; 417800, 3802000; 417700, 3802000; 417700, 3802100; 417600, 3802100; 417600, 3802300; 417500, 3802300; 417500, 3802400; 417300, 3802400; 417300, 3802300; 417200, 3802300; 417200, 3802200; 417000, 3802200; 417000, 3801400; 416900, 3801400; 416900, 3801300; 416800, 3801300; 416800, 3801200; 416700, 3801200; 416700, 3801100; 416600, 3801100; 416600, 3801200; 416500, 3801200;

416500, 3801400; 416700, 3801400; 416700, 3802100; 416500, 3802100; 416500, 3802000; 416200, 3802000; 416200, 3802100; 416100, 3802100; 416100, 3802200; 416000, 3802200; 416000, 3802500; 416300, 3802500; 416300, 3802300; 416500, 3802300; 416500, 3802400; 416900, 3802400; 416900, 3802500; 417100, 3802500; 417100, 3802600; 417800, 3802600; 417800, 3802400; 417900, 3802400; 417900, 3802300; 418000, 3802300; 418000, 3802100; 418300, 3802100; 418300, 3802400; 418600, 3802400; 418600, 3802200; 419000, 3802200; 419000, 3802400; 419100, 3802400; 419100, 3802500; 419200, 3802500; 419200, 3802700; 419400, 3802700; 419400, 3803100; 419300, 3803100; 419300, 3803600; 419400, 3803600; 419400, 3803700; 419500, 3803700; returning to 419500, 3803800.

(ii) Map depicting subunit 1C is found at paragraph (d)(10)(ii) of this section.

(8) Subunit 1D: Devil's Canyon (north of San Gabriel River, West Fork), Angeles National Forest, Los Angeles County, California.

(i) Subunit 1D: Devil's Canyon. Land bounded by the following UTM NAD27 coordinates (E, N): 414500, 3799300; 414700, 3799300; 414700, 3798600; 414600, 3798600; 414600, 3798500; 414500, 3798500; 414500, 3798400; 414300, 3798400; 414300, 3798300; 413900, 3798300; 413900, 3798200; 413600, 3798200; 413600, 3798100; 413400, 3798100; 413400, 3798000; 413000, 3798000; 413000, 3797800; 412600, 3797800; 412600, 3797700; 412500, 3797700; 412500, 3797600; 412300, 3797600; 412300, 3797700; 412100, 3797700; 412100, 3797800; 411800, 3797800; 411800, 3797700; 411400, 3797700; 411400, 3797800; 411300, 3797800; 411300, 3798100; 411500, 3798100; 411500, 3798000; 411800, 3798000; 411800, 3798100; 412200, 3798100; 412200, 3798000; 412300, 3798000; 412300, 3797900; 412400, 3797900; 412400, 3798000; 412700, 3798000; 412700, 3798100; 412800, 3798100; 412800, 3798200; 413100, 3798200; 413100, 3798300; 413400, 3798300; 413400, 3798400; 413700, 3798400; 413700, 3798500; 414100, 3798500; 414100, 3798600; 414200, 3798600; 414200, 3798700; 414400, 3798700; 414400, 3798800; 414500, 3798800; returning to 414500, 3799300.

(ii) Map depicting subunit 1D is found at paragraph (d)(10)(ii) of this section.

(9) Subunit 1F: San Gabriel River, East Fork, Iron Fork, Los Angeles County, California.

(i) Subunit 1F: San Gabriel River, East Fork and Iron Fork. Land bounded by the following UTM NAD27 coordinates (E, N): 429100, 3798400; 429400, 3798400; 429400, 3798000; 429500, 3798000; 429500, 3797400; 429700, 3797400; 429700, 3797100; 429600, 3797100; 429600, 3797000; 429700, 3797000; 429700, 3796800; 429800, 3796800; 429800, 3796700; 429900, 3796700; 429900, 3796500; 430000, 3796500; 430000, 3796000; 430100, 3796000; 430100, 3795800; 430200, 3795800; 430200. 3795500; 430100, 3795500; 430100, 3795400; 430000, 3795400; 430000, 3795600; 429600, 3795600; 429600, 3795500; 429300, 3795500; 429300, 3795600; 429000, 3795600; 429000, 3795700; 428700, 3795700; 428700, 3795800; 428600, 3795800; 428600, 3795700; 428300, 3795700; 428300, 3795800; 428000, 3795800; 428000, 3796100; 428700, 3796100; 428700, 3796000; 428900, 3796000; 428900, 3795900; 429400, 3795900; 429400, 3795800; 429800, 3795800; 429800, 3796000; 429700, 3796000; 429700, 3796400; 429600, 3796400; 429600, 3796600; 429500, 3796600; 429500, 3796800; 429400, 3796800; 429400, 3797200; 429300, 3797200; 429300, 3797300; 429200, 3797300; 429200, 3798000; 429000, 3798000; 429000, 3798300; 429100, 3798300; returning to 429100, 3798400.

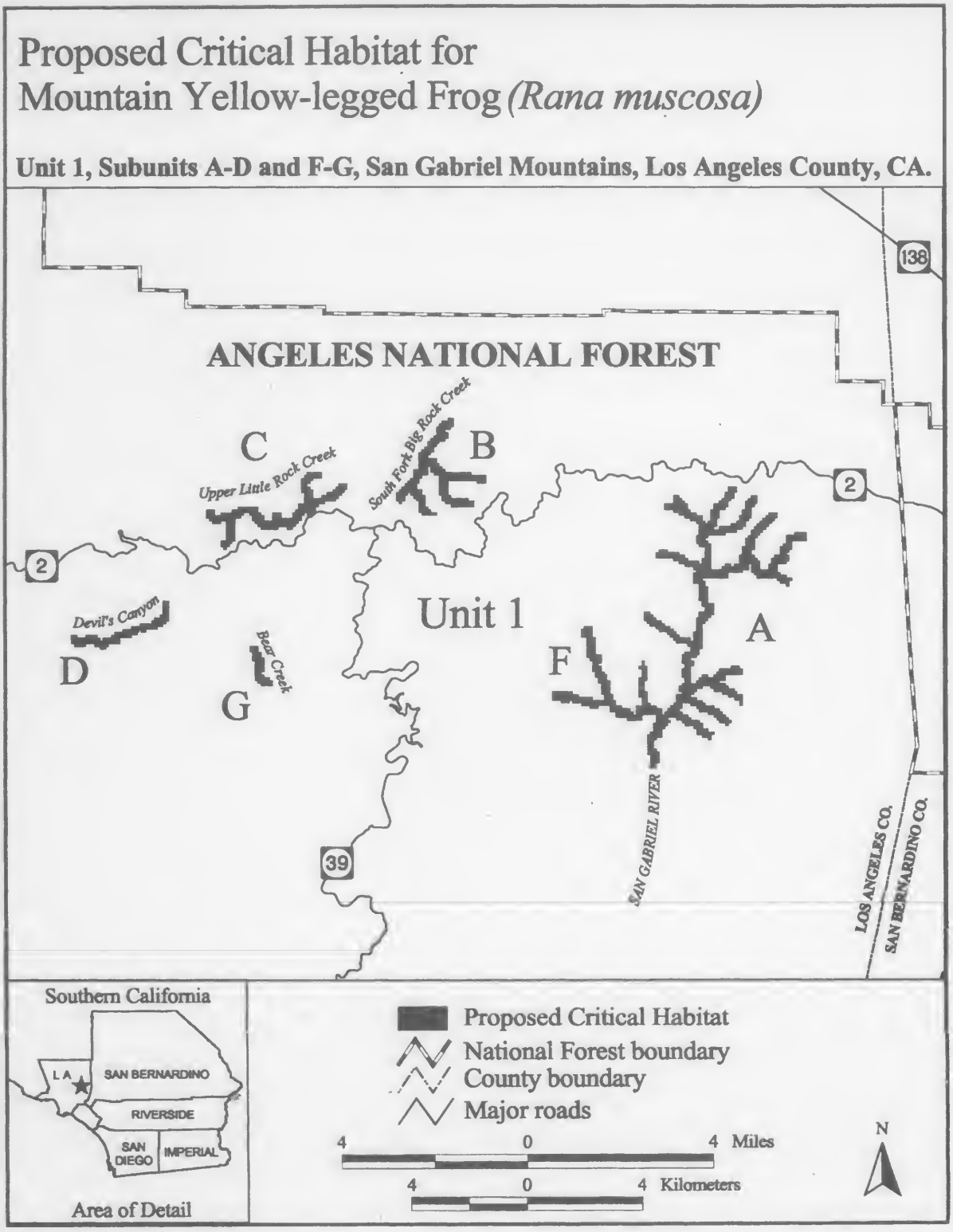
(ii) Map depicting subunit 1F is found at paragraph (d)(10)(ii) of this section.

(10) Subunit 1G: Bear Creek (off San Gabriel River, West Fork), Angeles National Forest, Los Angeles County, California.

(i) Subunit 1G: Bear Creek, Upper Reaches. Land bounded by the following UTM NAD27 coordinates (E, N): 417500, 3797700; 417800, 3797700; 417800, 3797500; 417900, 3797500; 417900, 3797300; 418000, 3797300; 418000, 3796800; 417900, 3796800; 417900, 3796700; 418000, 3796700; 418000, 3796600; 418200, 3796600; 418200, 3796500; 418300, 3796500; 418300, 3796300; 417900, 3796300; 417900, 3796400; 417800, 3796400; 417800, 3796500; 417700, 3796500; 417700, 3797200; 417600, 3797200; 417600, 3797500; 417500, 3797500; returning to 417500, 3797700.

(ii) Map 2 of Unit 1, with subunits 1A, 1B, 1C, 1D, 1F, and 1G, follows:

BILLING CODE 4310–55–P

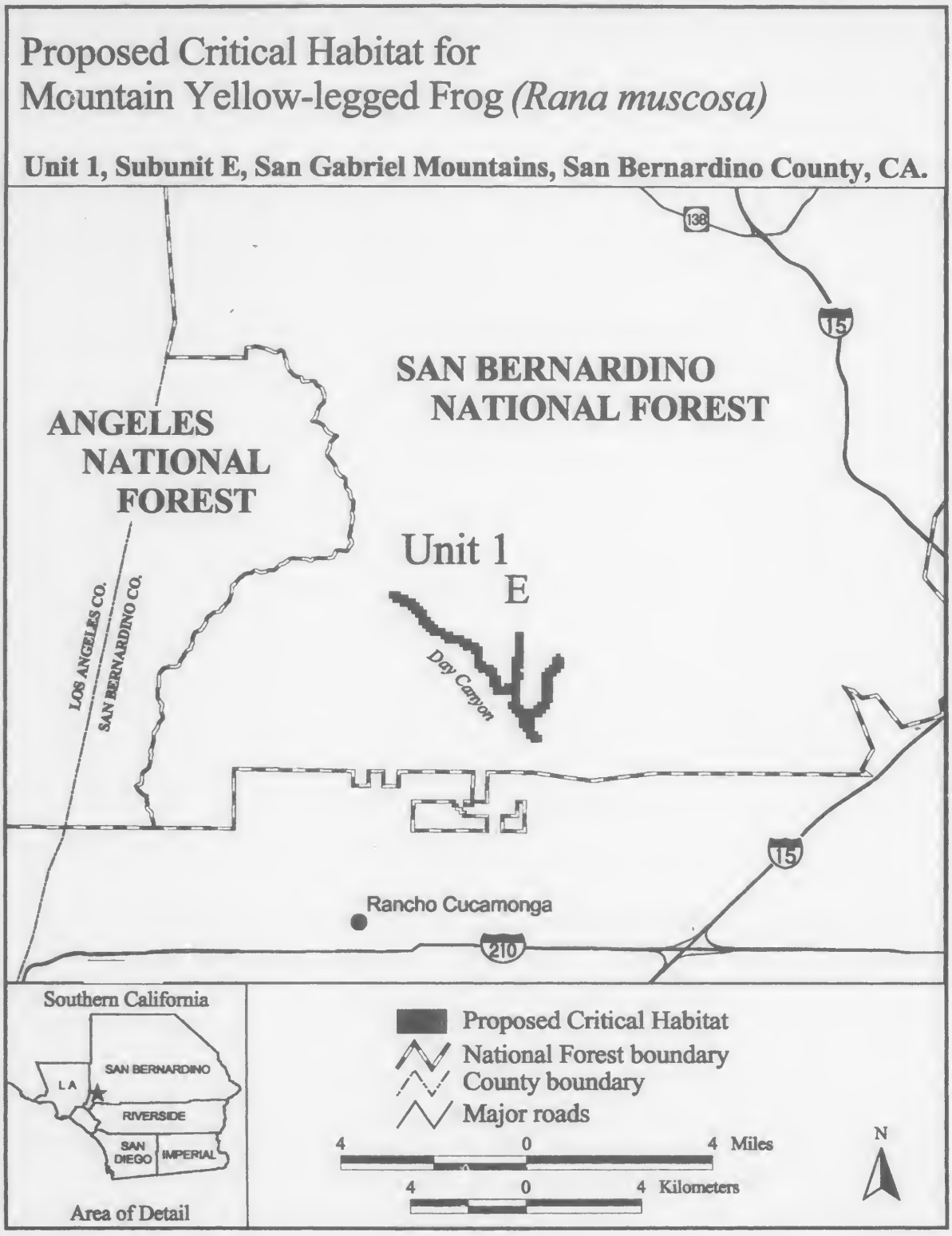


BILLING CODE 4310–55–C

(11) Subunit 1E: Day Canyon, San Bernardino National Forest, San Bernardino County, California.

(i) Subunit 1E: Day Canyon. Land bounded by the following UTM NAD27 coordinates (E, N): 446400, 3786900; 446700, 3786900; 446700, 3786800; 446900, 3786800; 446900, 3786700; 447100, 3786700; 447100, 3786600; 447200, 3786600; 447200, 3786500; 447300, 3786500; 447300, 3786400; 447400, 3786400; 447400, 3786200; 447500, 3786200; 447500, 3786100; 447600, 3786100; 447600, 3786000; 447700, 3786000; 447700, 3785900; 447900, 3785900; 447900, 3785800; 448100, 3785800; 448100, 3785700; 448400, 3785700; 448400, 3785600; 448600, 3785600; 448600, 3785500; 448800, 3785500; 448800, 3785400; 448900, 3785400; 448900, 3785000; 449000, 3785000; 449000, 3784900; 449200, 3784900; 449200, 3784800; 449300, 3784800; 449300, 3784600; 449400, 3784600; 449400, 3784300; 449500, 3784300; 449500, 3784400; 449700, 3784400; 449700, 3785100; 449800, 3785100; 449800, 3785800; 450000, 3785800; 450000, 3784800; 449900, 3784800; 449900, 3784700; 450000, 3784700; 450000, 3784500; 449900, 3784500; 449900, 3783800; 450000, 3783800; 450000, 3783700; 450300, 3783700; 450300, 3783800; 450400, 3783800; 450400, 3783900; 450500, 3783900; 450500, 3784700; 450600, 3784700; 450600, 3784800; 450700, 3784800; 450700, 3784900; 450800, 3784900; 450800, 3785100; 450900, 3785100; 450900, 3785200; 451000, 3785200; 451000, 3785100; 451100, 3785100; 451100, 3784800; 451000, 3784800; 451000, 3784700; 450900, 3784700; 450900, 3784600; 450800, 3784600; 450800, 3783900; 450700, 3783900; 450700, 3783700; 450600, 3783700; 450600, 3783600; 450500, 3783600; 450500, 3783500; 450300, 3783500; 450300, 3783100; 450400, 3783100; 450400, 3783000; 450500, 3783000; 450500, 3782800; 450200, 3782800; 450200, 3782900; 450100, 3782900; 450100, 3783100; 450000, 3783100; 450000, 3783200; 449900, 3783200; 449900, 3783500; 449800, 3783500; 449800, 3783600; 449700, 3783600; 449700, 3783700; 449600, 3783700; 449600, 3783900; 449700, 3783900; 449700, 3784100; 449200, 3784100; 449200, 3784300; 449100, 3784300; 449100, 3784600; 449000, 3784600; 449000, 3784700; 448800, 3784700; 448800, 3784800; 448700, 3784800; 448700, 3785200; 448600, 3785200; 448600, 3785300; 448400, 3785300; 448400, 3785400; 448300, 3785400; 448300, 3785500; 447900, 3785500; 447900, 3785600; 447800, 3785600; 447800, 3785700; 447500, 3785700; 447500, 3785800; 447400, 3785800; 447400, 3785900; 447300, 3785900; 447300, 3786000; 447200, 3786000; 447200, 3786200; 447100, 3786200; 447100, 3786300; 447000, 3786300; 447000, 3786400; 446900, 3786400; 446900, 3786500; 446700, 3786500; 446700, 3786600; 446500, 3786600; 446500, 3786700; 446400, 3786700; returning to 446400, 3786900.

(ii) **Note:** Map 3 of subunit 1E follows:



BILLING CODE 4310–55–C

(12) Unit 2: San Bernardino Mountains, San Bernardino National Forest, San Bernardino County, California. From USGS 1:24,000 quadrangle maps Big Bear Lake, Catclaw Flat and Harrison Mountain, California. Subunit 2A: City Creek, San Bernardino National Forest, San Bernardino County, California.

(i) Subunit 2A: City Creek, East and West Forks. Land bounded by the following UTM NAD27 coordinates (E, N): 483800, 3785100; 483900, 3785100; 483900, 3785200; 484000, 3785200; 484000, 3785400; 484100, 3785400; 484100, 3785600; 484200, 3785600; 484200, 3785700; 484300, 3785700; 484300, 3785800; 484400, 3785800; 484400, 3785900; 484600, 3785900; 484600, 3785600; 484500, 3785600; 484500, 3785500; 484400, 3785500; 484400, 3785400; 484300, 3785400; 484300, 3785200; 484200, 3785200; 484200, 3785000; 484100, 3785000; 484100, 3784900; 484000, 3784900; 484000, 3784800; 483900, 3784800; 483900, 3784700; 483800, 3784700; 483800, 3784400; 483900, 3784400; 483900, 3784000; 483700, 3784000; 483700, 3783900; 483900, 3783900; 483900, 3783800; 484000, 3783800; 484000, 3783400; 483900, 3783400; 483900, 3783300; 483700, 3783300; 483700, 3782900; 483900, 3782900; 483900, 3783100; 484000, 3783100; 484000, 3783200; 484300, 3783200; 484300, 3783100; 484400, 3783100; 484400, 3783400; 484500, 3783400; 484500, 3783500; 484400, 3783500; 484400, 3783900; 484500, 3783900; 484500, 3784000; 484700, 3784000; 484700, 3784100; 484800, 3784100; 484800, 3784700; 484900, 3784700; 484900, 3785000; 485000, 3785000; 485000, 3785200; 485100, 3785200; 485100, 3785300; 485200, 3785300; 485200, 3785400; 485400, 3785400; 485400, 3785800; 485700, 3785800; 485700, 3785700; 485800, 3785700; 485800, 3785600; 485600, 3785600; 485600, 3785200; 485400, 3785200; 485400, 3785100; 485300, 3785100; 485300, 3785000; 485200, 3785000; 485200, 3784600; 485100, 3784600; 485100, 3784200; 485000, 3784200; 485000, 3783900; 484900, 3783900; 484900, 3783800; 484700, 3783800; 484700, 3783300; 484800, 3783300; 484800, 3783100; 484700, 3783100; 484700, 3783000; 484600, 3783000; 484600, 3782900; 484500, 3782900; 484500, 3782800; 484200, 3782800; 484200, 3782900; 484100, 3782900; 484100, 3782700; 483900, 3782700; 483900, 3782600; 483800, 3782600; 483800, 3782400; 483700, 3782400; 483700, 3782200; 484000, 3782200; 484000, 3782000; 484400, 3782000; 484400, 3782100; 484700, 3782100; 484700, 3782000; 485000, 3782000; 485000, 3781900; 485200, 3781900; 485200, 3781800; 485400, 3781800; 485400, 3781700; 485200, 3781700; 485200, 3781600; 485000, 3781600; 485000, 3781700; 484800, 3781700; 484800, 3781800; 484300, 3781800; 484300, 3781700; 483900, 3781700; 483900, 3781800; 483800, 3781800; 483800, 3782000; 483600, 3782000; 483600, 3781800; 483400, 3781800; 483400, 3781200; 483600, 3781200; 483600, 3780900; 483500, 3780900; 483500, 3780500; 484200, 3780500; 484200, 3780600; 484300, 3780600; 484300, 3780500; 484800, 3780500; 484800, 3780400; 484900, 3780400; 484900, 3780300; 485000, 3780300; 485000, 3780100; 484700, 3780100; 484700, 3780200; 484600, 3780200; 484600, 3780300; 483700, 3780300; 483700, 3780200; 483500, 3780200; 483500, 3780100; 483400, 3780100; 483400, 3780000; 483300, 3780000; 483300, 3779900; 483400, 3779900; 483400, 3779500; 483300, 3779500; 483300, 3779000; 483100, 3779000; 483100, 3778800; 482800, 3778800; 482800, 3778900; 482700, 3778900; 482700, 3779000; 482900, 3779000; 482900, 3779200; 483100, 3779200; 483100, 3779300; 483000, 3779300; 483000, 3779700; 483100, 3779700; 483100, 3780100; 483200, 3780100; 483200, 3780300; 483300, 3780300; 483300, 3780400; 483200, 3780400; 483200, 3780700; 483300, 3780700; 483300, 3781100; 482900, 3781100; 482900, 3781200; 482800, 3781200; 482800, 3781800; 482700, 3781800; 482700, 3781900; 482800, 3781900; 482800, 3782600; 482900, 3782600; 482900, 3782800; 483000, 3782800; 483000, 3782900; 483100, 3782900; 483100, 3783000; 483000, 3783000; 483000, 3783100; 482900, 3783100; 482900, 3783200; 482300, 3783200; 482300, 3783500; 482600, 3783500; 482600, 3783600; 482700, 3783600; 482700, 3783500; 483000, 3783500; 483000, 3783400; 483100, 3783400; 483100, 3783300; 483300, 3783300; 483300, 3783200; 483500, 3783200; 483500, 3783500; 483700, 3783500; 483700, 3783700; 483300, 3783700; 483300, 3784100; 483100, 3784100; 483100, 3784400; 483300, 3784400; 483300, 3784300; 483500, 3784300; 483500, 3784200; 483600, 3784200; 483600, 3784400; 483500, 3784400; 483500, 3784700; 483400, 3784700; 483400, 3784900; 483500, 3784900; 483500, 3785100; 483600, 3785100; 483600, 3785300; 483800, 3785300; returning to 483800, 3785100; excluding land bounded by 483700, 3785100; 483800, 3785100; 483800, 3785000; 483700, 3785000; 483700, 3785100; land bounded by 483100, 3782700; 483600, 3782700; 483600, 3782600; 483500, 3782600; 483500, 3782500; 483400, 3782500; 483400, 3782400; 483300, 3782400; 483300, 3782300; 483200, 3782300; 483200, 3782100; 483100, 3782100; 483100, 3782700; and land bounded by 483000, 3781800; 483100, 3781800; 483100, 3781500; 483000, 3781500; 483000, 3781800.

(ii) **Note**: Map 4 of subunit 2A follows:

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(13) Subunit 2B: Barton Creek (East Fork), San Bernardino National Forest, San Bernardino County, California.

(i) Subunit 2B: Barton Creek (East Fork). Land bounded by the following UTM NAD27 coordinates (E, N): 510000, 3781300; 510100, 3781300; 510100, 3781200; 510200, 3781200; 510200, 3781100; 510400, 3781100; 510400, 3780700; 510500, 3780700; 510500, 3780400; 510600, 3780400; 510600, 3780200; 510500, 3780200; 510500, 3780100; 510600, 3780100; 510600, 3779800; 510700, 3779800; 510700, 3779600; 510800, 3779600; 510800, 3779400; 510700, 3779400; 510700, 3779300; 510800, 3779300; 510800, 3779000; 510900, 3779000; 510900, 3778500; 510600, 3778500; 510600, 3779100; 510500, 3779100; 510500, 3779600; 510400, 3779600; 510400, 3779900; 510300, 3779900; 510300, 3780400; 510200, 3780400; 510200, 3780700; 510100, 3780700; 510100, 3781000; 510000, 3781000; returning to 510000, 3781300.

(ii) Map depicting subunit 2B is found at paragraph (d)(14)(ii) of this section.

(14) Subunit 2C: Whitewater River (North Fork), San Bernardino National Forest, San Bernardino County, California.

(i) Subunit 2C: Whitewater River (North Fork). Land bounded by the following UTM NAD27 coordinates (E, N): 523300, 3769200; 523400, 3769200; 523400, 3769100; 523600, 3769100; 523600, 3769000; 523800, 3769000; 523800, 3768900; 523900, 3768900; 523900, 3768800; 524200, 3768800; 524200, 3768500; 523900, 3768500; 523900, 3768600; 523700, 3768600; 523700, 3768700; 523600, 3768700; 523600, 3768800; 523400, 3768800; 523400, 3768900; 523200, 3768900; 523200, 3769100; 523300, 3769100; returning to 523300, 3769200.

(ii) **Note:** Map 5 of subunits 2B and 2C follows:

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(15) Unit 3: San Jacinto Mountains, San Bernardino National Forest, Riverside County, California. From USGS 1:24,000 quadrangle maps Lake Fulmor, Palm Springs and San Jacinto Peak, California. Subunit 3A: San Jacinto River, North Fork (Black Mountain Creek, Fuller Mill Creek, Dark Canyon), San Bernardino National Forest, Riverside County, California.

(i) Subunit 3A: San Jacinto River, North Fork (Black Mountain Creek, Fuller Mill Creek, Dark Canyon). Land bounded by the following UTM NAD27 coordinates (E, N): 526400, 3743000; 526600, 3743000; 526600, 3742700; 526400, 3742700; 526400, 3742600; 526300, 3742600; 526300, 3742500; 526200, 3742500; 526200, 3742400; 526600, 3742400; 526600, 3742300; 526900, 3742300; 526900, 3742200; 527000, 3742200; 527000, 3742000; 526800, 3742000; 526800, 3742100; 526300, 3742100; 526300, 3742200; 526100, 3742200; 526100, 3742800; 526200, 3742800; 526200, 3742900; 526400, 3742900; returning to 526400, 3743000; land bounded by: 525000, 3742100; 525200, 3742100; 525200, 3742000; 525400, 3742000; 525400, 3741900; 525300, 3741900; 525300, 3741800; 525100, 3741800; 525100, 3741700; 525000, 3741700; 525000, 3741600; 524900, 3741600; 524900, 3741800; 524800, 3741800; 524800, 3741900; 524900, 3741900; 524900, 3742000; 525000, 3742000; returning to 525000, 3742100; land bounded by: 522600, 3741900; 522800, 3741900; 522800, 3741800; 522900, 3741800; 522900, 3741600; 522800, 3741600; 522800, 3741400; 522600, 3741400; 522600, 3741300; 522500, 3741300; 522500, 3741200; 522400, 3741200; 522400, 3741100; 522300, 3741100; 522300, 3740700; 522200, 3740700; 522200, 3740500; 522100, 3740500; 522100, 3740000; 522000, 3740000; 522000, 3739500; 521900, 3739500; 521900, 3739200; 521800, 3739200; 521800, 3739000; 522000, 3739000; 522000, 3739100; 522600, 3739100; 522600, 3739200; 523000, 3739200; 523000, 3739300; 523100, 3739300; 523100, 3739400; 523200, 3739400; 523200, 3739000; 522900, 3739000; 522900, 3738900; 522600, 3738900; 522600, 3738800; 521800, 3738800; 521800, 3738700; 521700, 3738700; 521700, 3738600; 521400, 3738600; 521400, 3738800; 521500, 3738800; 521500, 3738900; 521600, 3738900; 521600, 3739500; 521700, 3739500; 521700, 3739700; 521800, 3739700; 521800, 3740300; 521900, 3740300; 521900, 3740700; 522000, 3740700; 522000, 3740900; 522100, 3740900; 522100, 3741300; 522200, 3741300; 522200, 3741400; 522400, 3741400; 522400, 3741600; 522600, 3741600; returning to 522600, 3741900; land bounded by: 525800, 3741200; 525900, 3741200; 525900, 3740900; 525800, 3740900; 525800, 3740800; 525600, 3740800; 525600, 3740700; 525500, 3740700; 525500, 3740600; 525400, 3740600; 525400, 3740400; 525300, 3740400; 525300, 3740300; 525200, 3740300; 525200, 3740200; 525100, 3740200; 525100, 3740100; 525000, 3740100; 525000, 3740000; 525600, 3740000; 525600, 3740100; 525800, 3740100; 525800, 3740000; 525900, 3740000; 525900, 3739700; 525800, 3739700; 525800, 3739800; 525500, 3739800; 525500, 3739700; 525700, 3739700; 525700, 3739600; 525800, 3739600; 525800, 3739500; 525900, 3739500; 525900, 3739400; 526000, 3739400; 526000, 3739000; 525900, 3739000; 525900, 3739100; 525800, 3739100; 525800, 3739200; 525700, 3739200; 525700, 3739300; 525600, 3739300; 525600, 3739400; 525100, 3739400; 525100, 3739500; 524800, 3739500; 524800, 3739600; 524600, 3739600; 524600, 3739500; 524500, 3739500; 524500, 3739400; 524200, 3739400; 524200, 3739300; 524100, 3739300; 524100, 3739600; 524200, 3739600; 524200, 3739700; 524400, 3739700; 524400, 3739800; 524500, 3739800; 524500, 3740000; 524600, 3740000; 524600, 3740100; 524700, 3740100; 524700, 3740200; 524800, 3740200; 524800, 3740300; 524900, 3740300; 524900, 3740400; 525000, 3740400; 525000, 3740500; 525100, 3740500; 525100, 3740600; 525200, 3740600; 525200, 3740700; 525300, 3740700; 525300, 3740800; 525400, 3740800; 525400, 3740900; 525500, 3740900; 525500, 3741000; 525600, 3741000; 525600, 3741100; 525800, 3741100; returning to 525800, 3741200; and land bounded by 523900, 3741000; 524200, 3741000; 524200, 3740800; 524100, 3740800; 524100, 3740700; 524000, 3740700; 524000, 3740600; 523900, 3740600; 523900, 3740500; 523800, 3740500; 523800, 3740400; 523600, 3740400; 523600, 3740300; 523500, 3740300; 523500, 3740100; 523400, 3740100; 523400, 3739500; 523200, 3739500; 523200, 3739600; 523100, 3739600; 523100, 3740000; 523200, 3740000; 523200, 3740300; 523300, 3740300; 523300, 3740500; 523400, 3740500; 523400, 3740600; 523600, 3740600; 523600, 3740700; 523800, 3740700; 523800, 3740900; 523900, 3740900; returning to 523900, 3741000.

(ii) Map 6 depicting subunit 3A is found at paragraph (d)(18)(ii) of this section.

(16) Subunit 3B: San Jacinto Mountains (Indian Creek at Hall Canyon), San Bernardino National Forest, Riverside County, California.

(i) Subunit 3B: Indian Creek (at Hall Canyon). Land bounded by the following UTM NAD27 coordinates (E, N): 521600, 3742800; 521800, 3742800; 521800, 3742500; 521700, 3742500; 521700, 3741700; 521600, 3741700; 521600, 3741500; 521500, 3741500; 521500, 3741400; 521400, 3741400; 521400, 3741200; 521300, 3741200; 521300, 3741100; 520900, 3741100; 520900, 3741200; 521000, 3741200; 521000, 3741300; 521100, 3741300; 521100, 3741400; 521200, 3741400; 521200, 3741600; 521300, 3741600; 521300, 3741700; 521400, 3741700; 521400, 3742300; 521500, 3742300; 521500, 3742700; 521600, 3742700; returning to 521600, 3742800.

(ii) Map 6 depicting subunit 3B is found at paragraph (d)(18)(ii) of this section.

(17) Subunit 3C: San Jacinto Mountains (Tahquitz and Willow Creek), San Bernardino National Forest, Riverside County, California.

(i) Subunit 3C: Tahquitz Creek. Land bounded by the following UTM NAD27 coordinates (E, N): 529600, 3739000; 529900, 3739000; 529900, 3738900; 531000, 3738900; 531000, 3738800; 531100, 3738800; 531100, 3738700; 531200, 3738700; 531200, 3738600; 531300, 3738600; 531300, 3738500; 531400, 3738500; 531400, 3738400; 531500, 3738400; 531500, 3738200; 531200, 3738200; 531200, 3738300; 531100, 3738300; 531100, 3738400; 531000, 3738400; 531000, 3738500; 530900, 3738500; 530900, 3738600; 530200, 3738600; 530200, 3738700; 529600, 3738700; returning to 529600, 3739000; and land bounded by 532100, 3737000; 532400, 3737000; 532400, 3736900; 532600, 3736900; 532600, 3736600; 532300, 3736600; 532300, 3736700; 532200, 3736700; 532200, 3736500; 531800, 3736500; 531800, 3736300; 531700, 3736300; 531700, 3736200; 531600, 3736200; 531600, 3736100; 531500, 3736100; 531500, 3736000; 531400, 3736000; 531400, 3735700; 531300, 3735700; 531300, 3735500; 531200, 3735500; 531200, 3735300; 531100, 3735300; 531100, 3735100; 531000, 3735100; 531000, 3735000; 530900, 3735000; 530900, 3734900; 530600, 3734900; 530600, 3735200; 530800, 3735200; 530800, 3735300; 530900, 3735300; 530900, 3735500; 531000, 3735500; 531000, 3735800; 531100, 3735800; 531100, 3735900; 531200, 3735900; 531200, 3736200; 531300, 3736200; 531300, 3736300; 531400, 3736300; 531400, 3736400; 531500, 3736400; 531500,

3736600; 531600, 3736600; 531600, 3736700; 531700, 3736700; 531700, 3736800; 532000, 3736800; 532000, 3736900; 532100, 3736900; returning to 532100, 3737000.

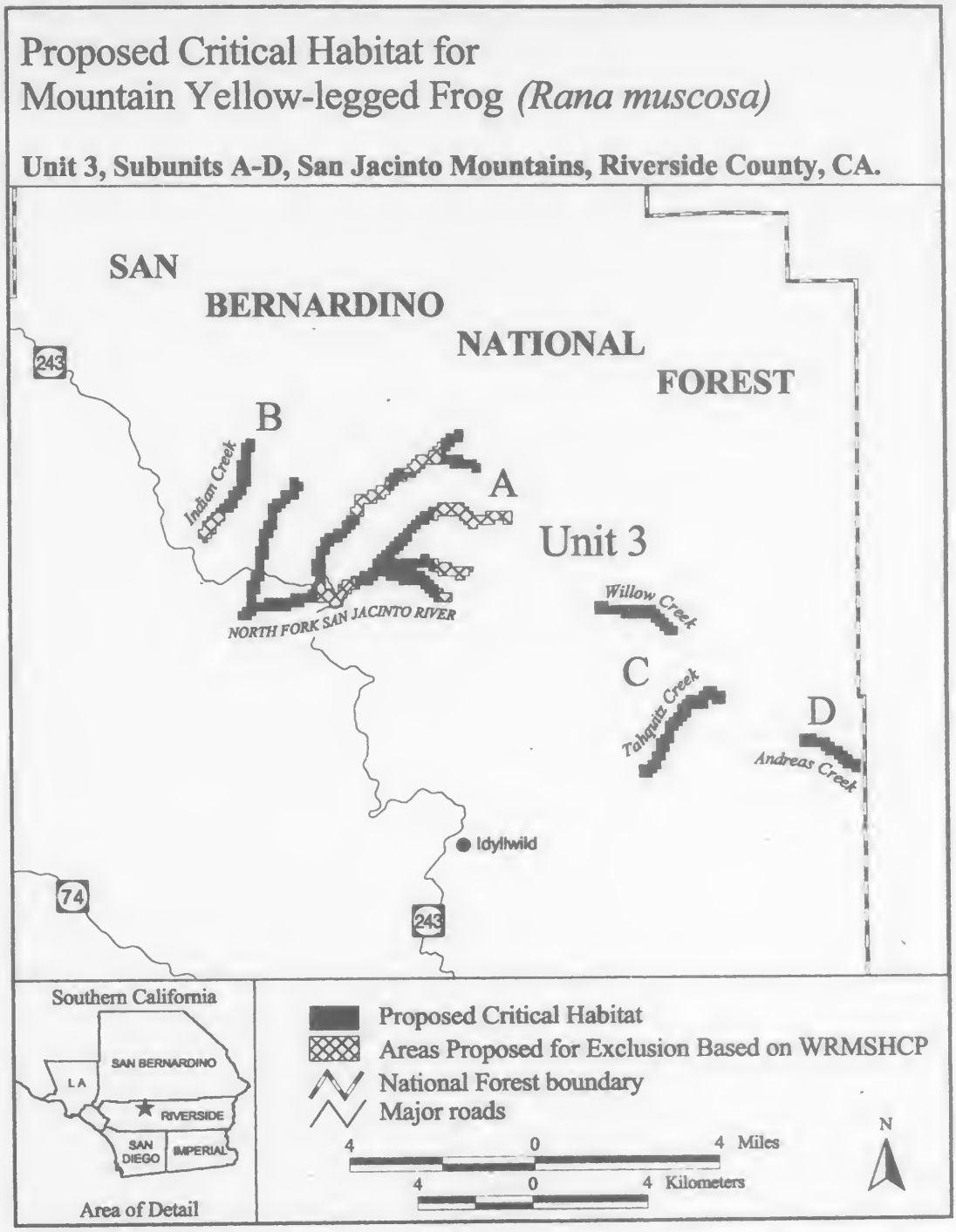
(ii) Map 6 depicting subunit 3C is found at paragraph (d)(18)(ii) of this section.

(18) Subunit 3D: San Jacinto Mountains (Andreas Creek), San Bernardino National Forest, Riverside County, California.

(i) Subunit 3D: San Jacinto Mountains (Andreas Creek). Land bounded by the following UTM NAD27 coordinates (E, N): 534300, 3735900; 534700, 3735900; 534700, 3735800; 535000, 3735800; 535000, 3735700; 535100, 3735700; 535100, 3735600; 535300, 3735600; 535300, 3735500; 535400, 3735500; 535400, 3735400; 535500, 3735400; 535500, 3735300; 535700, 3735300; 535700, 3735000; 535500, 3735000; 535500, 3735100; 535300, 3735100; 535300, 3735200; 535200, 3735200; 535200, 3735300; 535100, 3735300; 535100, 3735400; 534900, 3735400; 534900, 3735500; 534800, 3735500; 534800, 3735600; 534300, 3735600; returning to 534300, 3735900.

(ii) **Note:** Map 6 of Unit 3, with Subunits 3A, 3B, 3C, and 3D, follows:

BILLING CODE 4310–55–P



* * * * *

Dated: September 1, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–17755 Filed 9–12–05; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
September 13, 2005

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32
2005–2006 Refuge-Specific Hunting and Sport Fishing Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AU14

2005–2006 Refuge-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service adds six refuges to the list of areas open for hunting and/or sport fishing programs and increases the activities available at seven other refuges. We also implement pertinent refuge-specific regulations for those activities and amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2005–2006 season.

DATES: This rule is effective on September 13, 2005.

FOR FURTHER INFORMATION CONTACT: Leslie A. Marler, (703) 358–2397; Fax (703) 358–2248.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 closes national wildlife refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications, deletions, or additions. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in Title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the "Statutory Authority" section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, seasons, bag or creel limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. With this rulemaking, we are also standardizing and clarifing the existing language of these regulations.

Plain Language Mandate

In this rule, we made some of the revisions to the individual refuge units to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using "you" to refer to the reader and "we" to refer to the Service, using the word "allow" instead of "permit" when we do not require the use of a permit for an activity, and using active voice.

Statutory Authority

The National Wildlife Refuge System Administration Act (Administration Act) of 1966 (16 U.S.C. 668dd–668ee, as amended) and the Refuge Recreation Act (Recreation Act) of 1962 (16 U.S.C. 460k–460k–4) govern the administration and public use of refuges.

Amendments enacted by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) build upon the Administration Act in a manner that provides an "organic act" for the Refuge System similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Act established six wildlife-dependent recreational uses, when compatible, as the priority general public uses of the Refuge System. These uses are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on

newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

Response to Comments Received

In the July 12, 2005, **Federal Register** (70 FR 40108), we published a proposed rulemaking identifying refuges and their proposed hunting and/or fishing programs and invited public comments. We reviewed and considered all comments received by August 5, 2005, the end of a 30-day comment period that opened on the date of public filing (July 6, 2005). We received 859 comments on the proposed rule. The comments/responses are grouped by major issue area.

Comment 1: Many commenters expressed opposition to opening refuges to hunting and fishing and believe refuges should offer protection and safe haven for wildlife. They feel this rule violates the Service's own policy that "wildlife comes first in the National Wildlife Refuge System." Also, commenters were concerned about endangered species being accidentally killed.

Response 1: The Administration Act authorizes the Secretary to allow use of any refuge area for any purpose as long as those uses are compatible; and the Act specifically references hunting and fishing. Amendments to the Administration Act made by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) establish wildlife-dependent recreational uses as priority uses, when compatible. It specifically includes hunting and fishing as wildlife-dependent recreational uses.

Additionally, we comply with ESA Section 7 before opening or expanding hunting on refuges in order to insure the programs will not jeopardize listed species.

Comment 2: A commenter questioned the use of the 2001 figures from the "national source of hunting and fishing and wildlife" as being very old and inaccurate.

Response 2: Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2001 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. These are the best available data that are consistent nationwide.

The number of hunting and fishing days are collected by each individual refuge annually. The hunting and fishing numbers presented represent the year 2004.

Comment 3: A commenter questioned the use of lead shot by hunters.

Response 3: 50 CFR 32.2(k) specifically prohibits the possession of toxic shotgun pellets by hunters on waterfowl production areas and certain other areas (refuges or areas within refuges) of the System. This regulation does not apply to turkey and deer hunters using buckshot or slugs, except as specifically authorized by refuge-specific regulations or State laws. The only shot types allowed on the Refuge System are specifically identified in 50 CFR 20.21(j).

Comment 4: Several commenters questioned the practice of allowing ATV use on refuges. They felt that refuges should prohibit ATV use unless they were found to be compatible and that our regulations did not address these issues of compatibility and other procedural issues relating to this subject.

Response 4: We allow limited ATV use on some refuges. For example, in the State of Arkansas on Felsenthal, Overflow, and Pond Creek Refuges and in the State of Louisiana on Catahoula National Wildlife Refuge, we allow ATVs for wildlife-dependent activities only but restrict their use to designated times, dates, and specific trails. The refuges further limit the size of the engines, tires, etc. so as to minimize their impact. The refuges provide ATV use specifics to the public in their brochures. On Black Bayou Lake, D'Arbonne, and Upper Ouachita National Wildlife Refuges in the State of Louisiana, we prohibit hunting from or across ATV trails. And similar to the refuges mentioned at the beginning of this response, these refuges limit ATV use to designated times, dates, and specific trails, in addition to limiting their engine and tire size.

On Laguna Atascosa National Wildlife Refuge in the State of Texas, we allow ATV use for hunters with mobility impairments and other disabilities through the issuance of a Special Use Permit.

On Squaw Creek National Wildlife Refuge in the State of Missouri, the refuge manager has decided to prohibit all ATV use on the refuge, and we have revised condition A9 accordingly.

As required by the Administration Act, we determined these uses are compatible. In addition, we have complied with NEPA with regard to the hunting programs and associated ATV use. However, because these comments have raised the issue, we are commencing a System-wide review of our ATV approvals to ensure that we are meeting the requirements of E.O. 11644 and 11989.

Comment 5: A commenter felt we should not allow hunting of greater prairie chicken and/or rail at Glacial Ridge National Wildlife Refuge in the State of Minnesota as most hunters cannot differentiate between a "flushed grouse and a greater prairie chicken or a snipe and yellow rail prior to discharging their weapon."

Response 5: The proposal to allow hunting of the greater prairie chicken on the Glacial Ridge National Wildlife Refuge (Refuge) will be cooperatively managed with the State of Minnesota (State). While it is possible for hunters to misidentify birds and take protected species, it is anticipated that through the Minnesota Firearm Safety Program, which is mandatory and covers wildlife identification, as well as providing the public other educational materials, this would be rare. In addition, sharp-tailed grouse, and the sora and Virginia rails, are species for which the State allows hunting. Ruffed grouse will not be affected, as it occupies different habitat.

Currently, the Service owns only 2,300 acres of the proposed 35,000 acre refuge. While it will be many years before we reach this goal, we are also developing plans for providing opportunities for the nonhunting public. While the main purpose of the Refuge is the restoration and management of tallgrass prairie habitat, we anticipate that the refuge will accommodate both consumptive and nonconsumptive compatible public use.

Comment 6: A commenter was concerned about negligence in the hunting community and wondered about the lack of funding spent for law enforcement. Other commenters expressed concern about safety in general on refuges.

Response 6: While there is inherent risk in any type of activity on a refuge, we promote hunter safety as much as possible. We require a State hunting license of hunters on national wildlife refuges. Most State regulations require hunter safety courses and certification prior to issuance of hunting licenses, and safety on refuges has increased as a result. We routinely review their needs, and changes in the 2006 budget will make it much easier to track law enforcement expenditures and plan accordingly.

Comment 7: A commenter felt that without sufficiently detailed, annotated maps accompanying each refuge in the regulations, a brief physical description of the areas open to hunting is unclear, and we are in violation of Executive Order 12866.

Response 7: We disagree and believe we are in full compliance with the Executive Order. Balancing a number of factors, including efficient ease of understanding and feasibility, we ask refuges to describe the boundary of the hunting areas for inclusion in regulations when they can do so simply. For many reasons, we do not publish maps for each refuge where public activities take place. For example, refuge boundaries are subject to change depending on land acquisition, and the refuge maps would be of such a small size to fit into the **Federal Register**, and subsequently codified in the CFR as to be useless for detailed boundaries of areas in question. However, detailed information is available at each refuge. We advise the public to consult with the refuge staff for further details and information, pick up a brochure (which in most cases include maps) available at each refuge, and/or view large-scale refuge maps posted at each refuge.

Comment 8: Concerning Moosehorn National Wildlife Refuge in Maine, two commenters questioned allowing deer hunting, alleging it made the refuge unavailable for safe access for other users (including visits by school groups in October). Further, a commenter said that because of many years of deer hunting only, other species are less wary and more likely to be seen and easily killed. A commenter also felt that for years part of Washington County had been unsuccessfully trying to recover from overhunting, illegal hunting, and clear cutting. A commenter also felt woodcock numbers hadn't been growing and questioned allowing hunting for that species. A commenter also asked about adding coot and rail to the list of hunted species. A commenter also believes that since there are more wildlife watchers than hunters in Maine, this should be the focus of departmental policy.

Response 8: Moosehorn National Wildlife Refuge has modified the regular Maine hunting season and provided 2,077 acres of "No Hunt Zones" to provide for hiking, photography, wildlife viewing, and other activities during the hunting season. Deer hunting will take place in areas of the Edmunds Division and in the section of Baring Division to the west of Route 191. We do not have a school nature trail in these areas. The school nature trail, which is 1.8 miles (2.9 km) long, is in the center of the No Hunt Zone and circles around the refuge office. It is on the core Baring Division and the only expansion of hunting in this zone is incidental take of coyote and bear during the deer hunt season that has been in existence on the refuge since 1957. The refuge has experienced no incidences in this area, and many school groups have visited without complaint or incident. Twenty years ago there was a ¼ mile (.4 km) No Hunt Zone, which the refuge expanded to over ½ mile (.8 km) from trails and structures. This not only complies with State regulations but exceeds the standards. The refuge's Friends Group and Youth Conservation Corps are, in fact, working on this school trail this summer to insure that there are good directional signs.

It is the refuge's opinion that the wildlife population of eastern Washington County is diverse and healthy and that the clear-cut areas from 15–20 years ago have developed into excellent wildlife habitat. This habitat will provide excellent cover for wildlife, and an expanded hunting program will have little effect on migratory species and mammals that move on and off the refuge lands. The white-tailed deer population in Washington County has been below State optimal objective levels, but the reasons for this are not well understood. The average number of deer taken on the 28,800 acres of the refuge during the hunting season over the last 8 years is eight deer per year. The refuge has a vigorous biological program that monitors its wildlife resources, and along with our law enforcement program, ensures that we protect our resources.

The refuge's hunt plan does not call for any migratory bird hunting (which includes woodcock) on the core Baring Division. The refuge is trying to preserve this nonhunted woodcock population for further study. There was a study conducted (McAuley *et al.* 2005) that indicated that hunting did not appear to reduce the overall survival of woodcock on the Moosehorn Breeding Grounds. Woodcock numbers have, in fact, increased substantially on the refuge since intense habitat management began in the late 1970s.

The refuge gave consideration to adding coot and rail to the list of species for hunting; however, for this season they decided not to add them to the list.

The National Wildlife Refuge System Improvement Act of 1997 encourages hunting, when compatible, on national wildlife refuges along with other activities as long as the biological compatibility process has been met. It is the refuge's finding that, based on State data, the species hunted have sustainable populations.

We are considering adding coot, sora, and Virginia rail to the list of species hunted and will review and make that determination for the next hunting season (2006–2007).

Regardless of the number of participants in wildlife watching or hunting activities, we believe both of these uses are important to the economy, and we provide for both groups as best we can within our budgets.

Comment 9: A commenter questioned the use of "natural material" for hunters constructing blinds and wondered if that might be a source of introduced nonnative/invasive species on a refuge.

Response 9: We are adding language to all of the wetland management districts in North and South Dakota that will read as follows: "We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time." We are also amending the language for Upper Mississippi River National Wildlife Refuge in Illinois to expressly prohibit nonnative materials. On Don Edwards San Francisco Bay National Wildlife Refuge, the refuge has allowed the public to bring in materials for temporary blind construction in the Ravenswood ponds for decades. It has not resulted in invasive species being introduced to the area.

Comment 10: A commenter recommended that we make all attempts to minimize the amount of additional regulation, restriction, permits, fees, etc., associated with implementing this proposed rule and felt there were redundancies with State regulations. This comment was specific to Great Meadows National Wildlife Refuge in Massachusetts (Great Meadows).

Response 10: It is not our intent to burden a hunter with additional regulations and restrictions. Rather, our intent is to provide hunters with quality wildlife-dependent recreational experience, as stated in Refuge System policy (8 RM 5.2A of the Refuge Manual, U.S. Fish and Wildlife Service, 1985). The Refuge Manual (8 RM 5.5) states: "Refuge hunting programs should be planned, supervised, conducted, and evaluated to promote positive hunting values and hunter ethics such as fair chase and sportsmanship. In general, hunting on refuges should be superior to that available on other public or private lands and should provide participants with reasonable harvest opportunities, uncrowded conditions, limited interference from or dependence on mechanized aspects of the sport. This may require zoning the hunt unit and

limiting the number of participants. Good planning will minimize the controls and regimentation needed to achieve hunting objectives." The additional measures implemented by refuge staff will help facilitate such an experience. In addition, we review the hunting program annually to ensure compatibility with the Service mission and refuge purposes as well as its compliance with Federal and State hunting regulations.

Comment 11: The same commenter questioned our repeating the State requirement of required hunter orange clothing for hunters on Great Meadows.

Response 11: Safety is a priority on all of our refuges, and we feel this is a condition that bears inclusion in our regulations, even if it repeats the State regulations. The statement of this requirement may seem redundant because it is listed under three separate refuges (Assabet River, Great Meadows, and Oxbow National Wildlife Refuges) on the same page of the **Federal Register.**

Comment 12: The same commenter questioned whether condition A12 should apply to big game hunting as well as to migratory bird hunting on Great Meadows.

Response 12: The commenter points up an error on our part. In fact, condition A12 states that we allow no more than two dogs per hunting party and is only applicable to Migratory Game Bird Hunting, not for Big Game Hunting. The correct condition we should have referenced for Big Game Hunting under C4 is A10, which actually prohibits use of dogs during scouting. We corrected that error in the final rule.

Comment 13: The same commenter questioned our statement that costs should be minimal for the proposed rule, which flowed down to the individual refuge hunt plans, for Great Meadows. Therefore, the commenter feels that no additional fees or charges should be implemented or associated with the proposed rule.

Response 13: There are sufficient funds within the annual operating budget of the Eastern Massachusetts National Wildlife Refuge Complex (of which Great Meadows is a part) to conduct the refuge hunt program. There will be little difference in the amount of law enforcement needed whether or not the refuge is open to hunting. We focus current law enforcement efforts on prohibiting poaching on the refuge. By opening Great Meadows to hunting, the refuge will incur additional administrative costs due to the issuance of hunt permits and outreach, particularly in the first few years of the hunt program.

Comment 14: The same commenter questioned where the "Additional Hunting Day" figures came from on Table 1, Additional Hunting Days, and felt that the numbers were too low for Great Meadows. The commenter felt that the refuge can accommodate a much larger number of hunting days over the course of the hunting season. The commenter recommended eliminating the permit restrictions after the initial opening days.

Response 14: The number of hunters anticipated represent good-faith estimates from the refuges when they were asked to estimate annual hunter participation for the new activities for purposes of economic analysis on the overall impact of the rule on the local economy, and this is a conservative estimate. At this time the Service plans to institute a two-tiered permit process (first tier is that each hunter must possess a general permit, second tier is a lottery for big game and waterfowl hunting) that will be in effect at the three refuges located in the northern part of the complex (Great Meadows, Assabet River, and Oxbow). We will charge a fee for the permit and limit the number of permits issued through a lottery to ensure a quality hunt and help us achieve refuge management objectives. We are implementing this permit process because the anticipated level of interest in hunting deer, waterfowl, and turkey (where allowed) at these refuges is unknown, but could be initially high due to interest in hunting areas that have not been open for hunting for many years. Limiting the number of hunters on the refuge should ensure a quality hunt, increase safety, and reduce potential conflicts with other refuge users. The need to maintain the two-tiered permit process will be reevaluated after a few hunt seasons, and modified or eliminated if determined to no longer be necessary.

Comment 15: The same commenter opposes the imposition of fees or user charges for hunters that would exceed any current fees/charges for other users of these refuge properties for Great Meadows. The commenter feels the permits should be free of charge.

Response 15: Costs of administering the hunt will be partially offset by revenues received from the issuance of hunt permits. The only way the Service will be able to achieve, maintain, and provide a quality hunting program in the future is with additional funds to cover the administrative costs. Failure to receive additional revenues will have a significant impact on our ability to provide quality hunting opportunities on refuges and provide participants with reasonable harvest opportunities.

Comment 16: The same commenter feels that the refuge should not attempt to regulate/limit scouting for waterfowl hunting areas, nor should they require a permit for this purpose for Great Meadows.

Response 16: Once a hunter obtains a permit, we would then allow scouting in areas that are normally off limits or closed to the public. Allowing unlimited scouting in these areas could lead to adverse impacts on refuge habitat.

Comment 17: A commenter expressed concerns about the section of Great Meadows around Heard Pond as being quite small. The commenter feels allowing hunting creates a safety issue as the area is in the midst of suburban neighborhoods.

Response 17: The refuge weighs a number of factors in opening an area to hunting, including visitor safety considerations. The refuge manager may, upon annual review of the hunting program, impose further restrictions on hunting, recommend that the refuge be closed to hunting, or further liberalize hunting within the limits of State law. Restrictions will occur if hunting becomes inconsistent with other higher priority refuge programs or endangers refuge resources or public safety. There will be areas on the refuge where we prohibit hunting. We strive to achieve a balance between consumptive and nonconsumptive uses on the refuges. Because Massachusetts prohibits hunting on Sunday, at a minimum nonhunters will be free to enjoy the refuge with no concern about possible hunting conflicts on those days during the hunting seasons.

In others, we have restricted hunting because of the mandated safety zones, such as in the Heard Pond area. Further, State regulation requires a 500 foot (150 m) zone around any inhabited structure. As we state in the draft comprehensive conservation plan (CCP), "Hunting, whether by gun or bow, is prohibited in this area unless the hunter received permission from the owner of the building. It is the hunter's responsibility to ensure that he/she is more than 500 feet (150 m) from any such buildings." There are times in which the safety zone extends into the refuge. We will prohibit hunting within these areas.

Based upon concerns expressed in response to the draft CCP, we reviewed the most up-to-date aerial photographs available, which include the Heard Pond area. We analyzed locations of the 500-foot safety zones around existing homes to determine whether or not a

reasonable hunting area could be provided given the constraints associated with safety zones. In addition to the aerial photo analysis, we went to the refuges to determine how visible the homes near the refuge are from inside the refuge. The Service will assist hunters and nonhunters in delineating any areas where there may be confusion as to the actual location of the safety zone.

Comment 18: Many commenters also felt that the procedure by which we open refuges circumvents the review process mandated by both the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). In a related comment, a commenter felt the Service erred in categorically excluding the proposed rule from NEPA review and feels we should prepare an Environmental Impact Statement (EIS).

Response 18: As discussed in the section **SUPPLEMENTARY** of this rule, "New Hunting and Sport Fishing Programs," we detail the steps which follow NEPA and ESA mandates. This final rule represents a compilation of the new refuges opening for this season and makes corrections to existing refuges listed in 50 CFR part 32. Each individual refuge, when making a determination as to whether or not to allow hunting and/or fishing, includes the appropriate NEPA and ESA Section 7 compliance when preparing an "opening package." For each of the refuges included in the rulemaking, we prepared Environmental Assessments and determined that EISs were unnecessary. No changes were made to the regulation as a result of this comment.

The Service applies a categorical exclusion regarding the action of publishing the proposed and final rules. It does not assert a categorical exclusion regarding the opening or alteration of existing hunting or fishing programs. On the contrary, the Service complied with NEPA in each and every case in arriving at the decision to open or alter these programs. As we noted in the preamble to the proposed rule, we conduct all of the legally required compliance steps at each of the involved refuges before coordinating publication at the Headquarters level. It is the act of publishing the proposed rule, not the decisions regarding openings or alterations, which we categorically exclude. We also disagree with the commenter's opinion that the openings and alterations require an EIS.

Comment 19: Several commenters objected to the 30-day public comment period as being insufficient time for adequate public comment.

Response 19: We disagree that the comment period is insufficient. The process of opening refuges is done in stages, with the fundamental work being done on the ground at the refuge and in the community where the program is administered. In these stages, the public is given other opportunities to comment, for example, on the comprehensive conservation plans and the compatibility determinations. The second stage is when we publish the proposed rule in the **Federal Register** each summer for additional comment, commonly a 30-day comment period. There is nothing contained in this annual regulation outside the scope of the annual review process where we add refuges or determine whether individual refuges need modifications, deletions, or additions made to them. We make every attempt to collect all of the proposals from the refuges nationwide and process them expeditiously to maximize the time available for public review. We believe that a 30-day comment period, through the broader publication following the earlier public involvement, gives the public sufficient time to comment and allows us to establish hunting and fishing programs in time for the upcoming seasons. Many of these rules also relieve restrictions and allow the public to participate in wildlife-dependent recreational activities on a number of refuges. Even after issuance of a final rule, we accept comments, suggestions, and concerns for consideration for any appropriate subsequent rulemaking.

Comment 20: A commenter felt we believe that the Improvement Act provides carte blanche approval to us to open refuges to hunting and fishing and feels we have not ensured the availability of sufficient funds as the law requires.

Response 20: We do not agree with commenter's characterization that the Improvement Act provides carte blanche approval for hunting and fishing on refuges. That Act, amending the National Wildlife Refuge System Administration Act, maintained the requirement that all uses be found compatible before allowing them, and the Service adheres to that. Each of these uses has been found compatible. We do note, however, that the Improvement Act establishes a policy that compatible wildlife-dependent recreational uses (two of the six specifically named being hunting and fishing) are to be facilitated. Moreover, the Improvement Act requires the Secretary to recognize the wildlife-dependent recreational uses as the priority general public uses, ensure that opportunities for compatible wildlife-dependent uses are provided within the Refuge System, and provides increased opportunities for families to experience wildlife-dependent uses such as hunting and fishing.

The reference to the Refuge Recreation Act (16 U.S.C. 460k) regarding a finding on availability of funds is incorrect. The Improvement Act specifically exempts wildlife-dependent recreational uses from that requirement.

Comment 21: A commenter expressed concern that elk are being targeted as a threat to the Columbian white-tailed deer instead of cattle grazing at Julia Butler Hansen Refuge for the Columbian White-tailed Deer in Washington.

Response 21: Elk traditionally used the mainland unit of the refuge as a wintering area. Before 1978, their numbers were relatively small (20 to 30), and they stayed on the refuge for only 2 to 4 months. After 1978, both the numbers of elk and the length of time they spent on the refuge began increasing for unknown reasons. By 1983 there were an estimated 110 elk living year-round on the refuge.

The Service recognized the need to control elk numbers to minimize competition between the deer and the elk. The Columbian White-tailed Deer Recovery Team stated that the presence of elk on the refuge was not compatible with the recovery of the deer and recommended that elk be significantly reduced or eliminated (letter from Recovery Team to Division of Endangered Species, dated February 13, 1984). In 1984, we prepared an Environmental Assessment (USFWS 1984) for elk control, and a public meeting was held in Cathlamet, Washington. We evaluated several alternatives, and it was decided to proceed, with the support of Washington Department of Fish and Wildlife (WDFW), with transplanting the elk to other areas of Wahkiakum County, construction of a barrier fence along the northeast side of the refuge, and off-refuge hunting (the issuance of additional anterless permits in the management unit adjacent to the refuge). In the Proposed Alternative of the 1984 Environmental Assessment, the Service proposed that we allow a maximum of 20–30 elk on the refuge. The transplanting program began in 1984 and 38 elk were moved off the refuge. Since then, an additional 283 elk have been captured and relocated. Currently transplanting elk is no longer feasible because the WDFW has withdrawn their support for this option.

The primary refuge objective is to maintain the refuge in optimum

condition for the Columbian White-Tailed Deer (CWTD). High elk numbers have the potential of causing significant damage to CWTD habitat through feeding and movement activities. Although a small herd of 20–30 animals may cause a level of damage that is tolerable to the deer, larger numbers can cause serious problems for the deer recovery effort. Despite the refuge's best efforts to exclude new elk from entering the refuge, each year some succeed. The herd also continues to grow due to the fact that calves are generally born every year.

Because the refuge's main purpose is to provide high-quality habitat for the CWTD, and because high numbers of elk in a relatively restricted environment can degrade deer browsing and resting areas, we must control elk population numbers on the refuge. Options for controlling the size of the elk herd are somewhat limited due to State concerns regarding relocation of animals and because of limited funds for moving elk.

Cattle grazing on the refuge, an important management tool for providing high-quality forage for the deer, control reed canary grass that the deer find unpalatable and allow more desirable grasses and clover to grow. We allow cattle grazing only in the spring and summer months and restrict them to small, fenced pastures. These pastures occupy less than 10 percent of the refuge land base. The deer prefer the pastures for feeding areas during the winter months. Cattle numbers on the refuge have been reduced over the past 10 years and are presently now at an all-time low. Elk, on the other hand, are free to roam throughout the refuge feeding on and trampling sensitive riparian areas.

Cattle grazing do not limit the growth of brush and trees on the refuge. Old fields that are not grazed become dominated by reed canary grass that outcompetes woody seedlings. The refuge is presently establishing brush and trees in old fields by plowing and planting saplings.

Columbian white-tailed deer numbers continue to hover at around 100 animals on the mainland unit. The refuge's stated goal for the mainland unit of the refuge is 200 animals. Control of elk numbers has been and continues to be an important component in recovery of the mainland population of CWTD.

Comment 22: With regard to Eastern Massachusetts refuges generally, several commenters expressed concern about sufficient use of local population estimates in setting take limits for the proposed list of hunted species. They feel the local populations of woodcock, ruffed grouse, and common snipe appear to be low and should not be hunted. The commenter also felt that use of archery should be promoted over firearm hunting due to the refuges' location in a suburban area.

Response 22: Woodcock and waterfowl (ducks and geese) populations are managed at a national level. The Service Migratory Bird Regulations Committee, comprised of flyway and State representatives, and Service personnel, annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early and late seasons. The length of hunting seasons, the number of permits issued, and bag limits are annually changed to reflect population status. Numerous and varied monitoring efforts are undertaken by a wide variety of organizations. The Service's Office of Migratory Bird Management conducts a number of surveys in conjunction with the Service's Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. For more information about migratory bird management, please consult their Web site at: *http://migratorybirds.fws.gov/mgmt/mgmttbl.html.*

The refuges have found both archery and shotgun hunting to be compatible. Refer to Comment/Response #6 for a further discussion of safety issues. The Eastern Massachusetts refuges exercise strict limitations on both the numbers of permits issued and where we allow hunting to minimize conflicts.

Comment 23: A commenter also felt that deer (and another commenter mentioned turkey) hunting at the Eastern Massachusetts refuges should be determined by wildlife and habitat inventories and management step-down plans. They felt that hunting permits and check stations would be crucial to the success of such a program.

Response 23: The hunting of resident species, such as deer, rabbits, and squirrels, falls within the responsibility of State fish and wildlife agencies, which also monitor and manage populations to ensure healthy ecosystems, sustainable populations, and a certain level of hunter success. We work in partnership with the Massachusetts Division of Fisheries and Wildlife and rely on their knowledge and expertise to determine the appropriateness of hunting seasons. We base any decisions we make to limit or prevent the harvest of resident species on any refuge on other refuge management concerns and not on a concern about the population of a given species. State fish and wildlife agencies have an excellent record of sound, professional wildlife management, and this is true in Massachusetts as well.

Refuge law enforcement staff will work independently, and in conjunction with State Environmental Police, to enforce State and Federal hunting regulations on the refuge.

The refuge will not provide check stations. Hunters will be required to tag and report harvested game according to State regulations.

Comment 24: Several commenters wondered about the archery-only "buffer" at Assabet River National Wildlife Refuge in Massachusetts and why that buffer was not extended to the eastern portion (Marlboro Road) of the refuge. A commenter also asked why specific areas of Assabet River were designated archery only.

Response 24: During the CCP process, based upon comments that the refuge received regarding Hudson Road and Stearns Lane, they made a revision to the hunting areas on the north section of the refuge. The area outside of the entire Patrol Road has been designated "Archery Only." (The map currently published in the CCP and on the website does not reflect this change and will be updated).

Pertaining to the request for extension of the archery-only area east of Marlboro Road, the refuge weighs a number of factors before opening an area to hunting, including visitor safety considerations. The refuge manager may, upon annual review of the hunting program, impose further restrictions on hunting, recommend closure of the refuge to hunting, or further liberalize hunting within the limits of the State law. Restrictions will occur if hunting becomes inconsistent with other higher priority refuge programs or endangers refuge resources or public safety.

To mitigate some of the concerns about safety at Assabet River, the refuge manager wanted to keep all shotgun hunting within the confines of Patrol Road and Craven Lane, thus creating a clear landmark for hunters to orient themselves when participating in this priority use north of Hudson/Sudbury Road.

During the CCP process, some individuals expressed concerns about safety while using the refuge during hunting season and the assertion that the nonhunting public will not participate in other wildlife-dependent activities during the hunting seasons. Some people will be too uncomfortable to walk on the refuge during any hunt season. Others are or will become comfortable walking on the refuge during archery-only seasons. The refuge manager has a responsibility to facilitate

all forms of wildlife-dependent public use on the refuges, when possible, and there may be days when people engaged in hunting will have preferential access to parts of the refuges.

Comment 25: A commenter asked that Assabet River Refuge specify how many hunting permits they will issue for each category of hunting and describe how they will advise hunters in the field of the boundaries of the hunting areas to avoid trespass on private property.

Response 25: Additional information about the application process and permits will be available on the respective refuge websites for Assabet River, Oxbow, and Great Meadows National Wildlife Refuges. We will encourage hunters to scout potential hunting areas in advance of their hunt in order to become familiar with refuge lands, boundaries, and hunting areas. We will provide refuge hunting regulations and maps with each permit to assist hunters in this effort to safely and legally participate in a hunt and minimize conflicts with refuge neighbors and refuge users. Ultimately, it is the hunters' responsibility to know where they are located on the refuge in order to comply with State laws and refuge specific regulations.

Comment 26: A commenter believes the Service has engaged in a pattern of compromising the biological and ecological integrity of our national wildlife refuges by providing hunters the opportunity to kill for fun and sport the deer, ducks, and a variety of other wildlife species that inhabit these refuges.

Response 26: We strongly disagree with and object to the allegations that we have compromised the biological and ecological integrity of the Refuge System and that we have not provided sufficient opportunities for nonconsumptive users of the System. The commenter has failed to take note of the repeated enactment of laws governing refuges whereby Congress has authorized and encouraged hunting and fishing on refuge lands. Those enactments recognize that all types of uses, consumptive as well as nonconsumptive, have their place on Refuge System lands, and we have taken steps that ensure those needs are balanced within the delegation given to the Secretary by them.

New Hunting and Sport Fishing Programs

In preparation for new openings, we include the following documents in each refuge's "opening package" (which the Region and/or California/Nevada Operations Office completes, the Regional Director and/or California/Nevada Operations Manager reviews, and the refuge copies and sends to the Headquarters Office for review of compliance with the various opening requirements): (1) Step-down management plan; (2) appropriate National Environmental Policy Act (NEPA) documentation (*e.g.*, Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement); (3) appropriate NEPA decision documentation (*e.g.*, Finding of No Significant Impact, Record of Decision); (4) Endangered Species Act Section 7 evaluation; (5) copies of letters requesting State and, where appropriate, Tribal involvement and the results of the request(s); (6) draft news release; (7) outreach plan; and (8) draft refuge-specific regulation. Upon approval of these documents, the Regional Director(s) is certifying that the opening of these refuges to hunting and/or sport fishing has been found to be compatible with the principles of sound fish and wildlife management and administration and otherwise will be in the public interest.

In accordance with the Administration Act and Recreation Act, we have determined that these openings are compatible and consistent with the purpose(s) for which we established the respective refuges and the Refuge System mission. A copy of the compatibility determinations for these respective refuges is available by request to the Regional office noted under the heading "Available Information for Specific Refuges."

The annotated chart below reflects the following changes for the 2005–2006 season. The key below the chart explains the symbols used:

CHANGES FOR 2005–2006 HUNT/FISH SEASON

Unit	State	Migratory bird hunting	Upland game hunting	Big game hunting	Sport fishing
Assabet River NWR	MA	A	A	A	A
Great Meadows NWR	MA	B		B	E
Moosehorn NWR	ME	B	B	C	
Oxbow NWR	MA	C	C	B	
Silvio O. Conte NWR	NH	A	A	A	
Wertheim NWR	NY			B	Previously published.
Cahaba River NWR	AL		A	A	A
Julia Butler Hansen NWR	WA	Previously published		B	
Stone Lakes NWR	CA	A			
Glacial Ridge NWR	MN	A	A	A	
Squaw Creek NWR	MO	B		Previously published	Previously published.
Sacramento River NWR	CA	B	B	B	D Previously published.
San Bernardino NWR	AZ	E	Previously published.		
Stewart B. McKinney NWR	CT	A			
Pocasse NWR	SD		F		
Rock Lake NWR	ND			F	

A. Refuge added to part 32 and activity(ies) opened.
B. Refuge already listed in part 32; added hunt category.
C. Refuge already listed in part 32; species added to hunt category.
D. Refuge already listed in part 32; land added.
E. Refuge opened to that activity for many years but never listed in part 32; correcting administrative oversight.
F. Refuge removed from part 32 (explanation below).

We are adding 6 refuges to the list of open refuges in part 32 and increasing hunt categories at 7 refuges already listed in part 32.

Lands acquired as "waterfowl production areas," which we generally manage as part of wetland management

districts, are open to the hunting of migratory game birds, upland game, big game, and sport fishing subject to the provisions of State law and regulations (see 50 CFR 32.1 and 32.4). We are adding these existing wetland management districts (WMDs) to the list of refuges open for all four activities in 50 CFR part 32: Big Stone WMD and Minnesota Valley WMD (both in the State of Minnesota;) and Arrowwood WMD, Audubon WMD, Chase Lake WMD, Crosby WMD, J. Clark Salyer WMD, Kulm WMD, Lostwood WMD, Long Lake WMD, Tewaukon WMD, and Valley City WMD all in the State of North Dakota.

We are correcting the following administrative errors in 50 CFR part 32: we are removing Pocasse National Wildlife Refuge in the State of South Dakota because it was an easement refuge, and it is no longer a part of the Refuge System; we are removing Rock Lake National Wildlife Refuge in the State of North Dakota because it closed to hunting in 1996; we are adding Great Meadows in the State of Massachusetts as open to fishing as it has been open to that opportunity for years but this status has never been reflected in 50 CFR part 32; and we are adding migratory bird hunting to San Bernardino National Wildlife Refuge in the State of Arizona, because it has been open to that opportunity since 1986, but this status has not been reflected in 50 CFR part 32.

This document codifies in the Code of Federal Regulations, all of the Service's hunting and/or sport fishing regulations that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We are doing this to better inform the general public of the requirements at each refuge, to increase understanding and compliance with these requirements, and to make enforcement of these regulations more efficient. In addition to now finding these conditions in 50 CFR part 32, visitors to our refuges will usually find these terms and conditions reiterated in literature distributed by each refuge or posted on signs.

We have cross-referenced a number of existing regulations in 50 CFR parts 26, 27, and 32 to assist hunting and sport fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs.

Fish Advisory

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the Internet at: *http://www.epa.gov/ost/fish/.*

We incorporate this regulation into 50 CFR part 32. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on refuges.

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Service asserts that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and full economic analysis is not required. However, a brief assessment follows to clarify the costs and benefits associated with the rule.

The purpose of this rule is to add six refuges to the list of areas open for hunting and/or sport fishing programs and increase the activities available at seven other refuges. The refuges are located in the States of Alabama, California, Connecticut, Maine, Massachusetts, Minnesota, Missouri, New Hampshire, New York, and Washington. Fishing and hunting are two of the wildlife-dependent uses of national wildlife refuges that Congress recognizes as legitimate and appropriate, and we should facilitate their pursuit, subject to such restrictions or regulations as may be necessary to ensure their compatibility with the purpose of each refuge. Many of the 545 existing national wildlife refuges already have programs where we allow fishing and hunting. Not all refuges have the necessary resources and landscape that would make fishing and hunting opportunities available to the public. By opening these refuges to new activities, we have determined that we can make quality experiences available to the public. This rule establishes hunting and/or fishing programs and expands existing activities at the following refuges: Cahaba River National Wildlife Refuge in Alabama, Sacramento River and Stone Lakes National Wildlife Refuges in California, Stewart B. McKinney National Wildlife Refuge in Connecticut, Moosehorn National Wildlife Refuge in Maine, Assabet River, Great Meadows, and Oxbow National Wildlife Refuges in Massachusetts, Glacial Ridge National Wildlife Refuge in Minnesota, Squaw Creek National Wildlife Refuge in Missouri, Silvio O. Conte National Wildlife Refuge in New Hampshire, Wertheim National Wildlife Refuge in New York, and Julia Butler Hansen Refuge for the Columbian White-Tailed Deer in Washington.

We are correcting the following administrative errors in 50 CFR part 32: We are removing Pocasse National Wildlife Refuge in the State of South Dakota as it was an easement refuge and is no longer a part of the Refuge System, and we are removing Rock Lake National Wildlife Refuge in the State of North Dakota, because it closed to hunting back in 1996. Since both of these closures happened years ago, and we are just correcting 50 CFR part 32 to reflect this, there is no appreciable economic impact.

Lands acquired as "waterfowl production areas," which we generally manage as part of wetland management districts (WMDs), are open to the hunting of migratory game birds, upland game, big game, and sport fishing subject to the provisions of State law and regulations (see 50 CFR 32.1 and 32.4). We are adding these existing WMDs to the list of refuges open for all four activities in part 32 this year: Big Stone WMD and Minnesota Valley WMD, both in the State of Minnesota, and Arrowwood WMD, Audubon WMD, Chase Lake WMD, Crosby WMD, J. Clark Salyer WMD, Kulm WMD, Lostwood WMD, Long Lake WMD, Tewaukon WMD, and Valley City WMD, all in the State of North Dakota. We do not expect any change in visitation rates at these wetland management districts because recreationists currently have the option to participate in these activities. Therefore, there are no new economic impacts from the addition of these wetland management districts to the list in 50 CFR part 32.

Costs Incurred

Costs incurred by this regulation would be minimal, if any. We expect any law enforcement or other refuge actions related to recreational activities to be included in any usual monitoring of the refuge. Therefore, we expect any costs to be negligible.

Benefits Accrued

A correction has been made from the proposed rule concerning Squaw Creek National Wildlife Refuge (MO). The refuge expects an increase of 30 days during the Spring Conservation Order Season for migratory game birds, not an increase of 300 days. This corrected number impacts additional hunting days, total additional fishing and hunting days, and total days per year

(Table 1); change in estimated customer surplus for hunters and change in total consumer surplus (Table 2); change of possible additional refuge expenditures for hunters (Table 3); and estimated maximum addition from new refuge and addition as a percentage of total for Squaw Creek (Table 4).

Benefits from this regulation would be derived from the new fishing and hunting days from opening the refuges to these activities. If the refuges establishing new fishing and hunting programs were a pure addition to the current supply of such activities, it would mean an estimated increase of 12,000 user days of fishing and 7,185 user days of hunting (Table 1). These new fishing and hunting days would generate: (1) Consumer surplus (the net benefit received by recreationists); and (2) expenditures associated with fishing and hunting on the refuges.

TABLE 1.—ESTIMATED CHANGE IN FISHING AND HUNTING OPPORTUNITIES IN 2005/06

Refuge	Current hunting and/or fishing days (FY04)	Additional fishing days	Additional hunting days	Total additional fishing and hunting days
Assabet River	.....	3,000	130	3,130
Great Meadows	49,050	.....	125	125
Moosehorn	43,500	.....	985	985
Oxbow	18,886	.....	128	128
Silvio O. Conte	.....	.....	65	65
Wertheim	14,750	.....	1,406	1,406
Cahaba River	.....	8,000	2,200	10,200
Julia Butler Hansen	2,660	.....	20	20
Stone Lakes	.....	.....	14	14
Glacial Ridge	.....	.....	87	87
Squaw Creek	353	.....	30	30
Sacramento River	.....	1,000	1,005	2,005
San Bernardino	45	.....	.....	0
Stewart B. McKinney	.....	.....	990	990
Total Days per Year	129,244	12,000	7,185	19,185

Assuming the new days are a pure addition to the current supply, the additional days would create consumer surplus (CS) of approximately $906,000 annually ([7,185 days × $47.32 CS per day] + [12,000 days × $47.07 CS per day]) (Table 2). However, the participation trend is flat in fishing and hunting activities because the number of Americans participating in these activities has been stagnant since 1991. Any increase in the supply of these activities introduced by adding refuges where the activity is available will most likely be offset by other sites losing participants, especially if the new sites have higher quality fishing and/or hunting opportunities. Therefore, the additional consumer surplus is more likely to be smaller.

TABLE 2.—ESTIMATED CHANGE IN CONSUMER SURPLUS FROM ADDITIONAL FISHING AND HUNTING OPPORTUNITIES IN 2005/06

[2004 $]

	Fishing	Hunting	Total fishing and hunting
Total additional days	12,000	7,185	19,185
Consumer surplus per day [1]	$47.32	$47.07	.....
Change in total Consumer Surplus	$567,840	$338,198	$906,038

[1] Due to the unavailability of consistent consumer surplus estimates for these various site-specific activities, a national consumer surplus estimate is used for this analysis. The estimates are from: Pam Kaval and John Loomis. "Updated Outdoor Recreation Use Values with Emphasis on National Recreation." October 2003.

In addition to benefits derived from consumer surplus, this rule would also have benefits from the recreation-related expenditures. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2001 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the expected maximum additional participation on the Refuge System yields approximately $818,000 in fishing-related expenditures and $692,000 in hunting-related expenditures (Table 3).

TABLE 3.—ESTIMATION OF THE ADDITIONAL EXPENDITURES WITH AN INCREASE OF ACTIVITIES IN SEVEN REFUGES AND THE OPENING OF SIX REFUGES TO FISHING AND/OR HUNTING FOR 2005/06

	U.S. total expenditures in 2001	Average expenditures per day	Current refuge expenditures w/o duplication	Possible additional refuge expenditures
Anglers				
Total Days Spent	557 Mil		7.0 Mil	12,000
Total Expenditures	38.0 Bil	$68	$453.6 Mil	$818,231
Trip Related	15.6 Bil	28	$186.6 Mil	$336,549
Food and Lodging	6.3 Bil	11	$74.9 Mil	$135,046
Transportation	3.8 Bil	7	$44.8 Mil	$80,733
Other	5.6 Bil	10	$66.9 Mil	$120,769
Hunters				
Total Days Spent	228 Mil		2.4 Mil	7,185
Total Expenditures	22.0 Bil	$96	$212.0 Mil	$691,676
Trip Related	5.6 Bil	25	$54.0 Mil	$176,263
Food and Lodging	2.6 Bil	11	$25.2 Mil	$82,216
Transportation	1.9 Bil	8	$18.0 Mil	$60,047
Other	1.1 Bil	5	$10.4 Mil	$33,999

By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of waterfowl hunting. Using a national impact multiplier for hunting activities (2.73) derived from the report "Economic Importance of Hunting in America" and a national impact multiplier for sportfishing activities (2.79) from the report "Sportfishing in America" for the estimated increase in direct expenditures yields a total economic impact of approximately $4.2 million (2004 dollars) (Southwick Associates, Inc., 2003). (Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.)

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending would be "new" money coming into a local economy and, therefore, this spending would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than $4.2 million, and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of $834,000 annually.

In summary, we estimate that the additional fishing and hunting opportunities would yield approximately $906,000 in consumer surplus and $834,000 in recreation-related expenditures annually. The 10-year quantitative benefit for this rule would be $17.4 million ($15.3 million discounted at 3 percent or $13.1 million discounted at 7 percent).

b. This rule will not create inconsistencies with other agencies' actions. This action pertains solely to the management of the Refuge System. The fishing and hunting activities located on national wildlife refuges account for approximately 1 percent of the available supply in the United States. Any small, incremental change in this supply will not measurably impact any other agencies' existing programs.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does not affect entitlement programs. There are no grants or other Federal assistance programs associated with public use of national wildlife refuges.

d. This rule will not raise novel legal or policy issues. This rule opens six additional refuges for fishing and hunting programs and increases the activities available at seven other refuges. This rule continues the practice of allowing recreational public use of national wildlife refuges. Many refuges in the Refuge System currently have opportunities for the public to hunt and fish on refuge lands.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601, *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This rule does not increase the number of recreation types allowed in the System but establishes hunting and/or fishing programs on six refuges and expands activities at seven other refuges. As a result, opportunities for wildlife-dependent recreation on national wildlife refuges will increase. The changes in the amount of allowed use are likely to increase visitor activity on these national wildlife refuges. But, as stated in the *Regulatory Planning and Review* section, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity. To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses.

Many small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, etc.) may benefit from some increased refuge visitation. A large percentage of these retail trade establishments in the majority of affected counties qualify as small businesses (Table 4).

We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in any region or nationally. Using the estimate derived in the *Regulatory Planning and Review* section, we expect approximately $834,000 to be spent in total in the refuges' local economies. The maximum increase ($4.2 million if all spending is new money) at most would be less than 1 percent for local retail trade spending (Table 4).

TABLE 4.—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2005/2006

Refuge/County(ies)	Retail trade in 1997 (2004 dollars in millions)	Estimated maximum addition from new refuge	Addition as a percent of total	Total number retail establish	Establish with <10 emp
Assabet River					
Middlesex, MA	17,021.1	$148,079	0.0009	5,701	3,697
Great Meadows					
Middlesex, MA	17,021.1	5,884	0.0001	5,701	3,697
Moosehorn					
Washington, ME	306,233.4	46,364	0.0151	281	206
Oxbow					
Middlesex, MA	17,021.1	3,012	0.0001	5,701	3,697
Worcester, MA	7,334.4	3,012	0.0001	2,796	1,896
Silvio O. Conte					
Coos, NH	498.8	3,060	0.0006	293	218
Wertheim					
Suffolk, NY	15,900.2	66,180	0.0004	8,946	6,904
Cahaba River					
Bibb, AL	90.8	482,114	0.5307	69	51
Julia Butler Hansen					
Wahkiakum, WA	8.6	471	0.0054	25	21
Clatsop, OR	391.2	471	0.0001	407	291
Stone Lakes					
Sacramento, CA	11,183.2	659	0.0001	5,555	3,573
Glacial Ridge					
Polk, MN	249.2	4,095	0.0016	203	131
Squaw Creek					
Holt, MO	46.4	1,412	0.0030	32	22
Sacramento River					
Butte, CA	1,768.5	94,625	0.0054	1,095	736
San Bernardino					
Cochise, AZ	838.1	0	0.0001	628	439
Stewart B. McKinney					
New Haven, CT	9,092.1	23,300	0.0003	4,852	3,424
Fairfield, CT	13,610.1	23,300	0.0002	5,672	3,994

With the small increase in overall spending anticipated from this rule, it is unlikely that a substantial number of small entities will have more than a small benefit from the increased spending near the affected refuges. Therefore, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The additional fishing and hunting opportunities at the seven refuges would generate angler and hunter expenditures with an economic impact estimated at $4.2 million per year (2004 dollars). Consequently, the maximum benefit of this rule for businesses both small and large would not be sufficient to make this a major rule. The impact would be scattered across the country and would most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will have only a slight effect on the costs of hunting and fishing opportunities for Americans. Under the assumption that any additional hunting and fishing opportunities would be of high quality, participants would be attracted to the refuge. If the refuge is closer to the participants' residences, then a reduction in travel costs would occur and benefit the participants. The Service does not have information to quantify this reduction in travel cost but assumes that, since most people travel fewer than 100 miles to hunt and fish, the reduced travel cost would be small for the additional days of hunting and fishing generated by this rule. We do not expect this rule to affect the supply or demand for fishing and hunting opportunities in the United States and, therefore, it should not affect prices for fishing and hunting equipment and supplies, or the retailers that sell equipment. Additional

refuge hunting and fishing opportunities would account for less than 0.001 percent of the available opportunities in the United States.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. This rule represents only a small proportion of recreational spending of a small number of affected anglers and hunters, approximately a maximum of $4.2 million annually in impact. Therefore, this rule will have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide. Refuges that establish hunting and fishing programs may hire additional staff from the local community to assist with the programs, but this would not be a significant increase because we are only opening six refuges to hunting and/or fishing and only seven refuges are increasing programs by this rule.

Unfunded Mandates Reform Act

Since this rule applies to public use of federally owned and managed refuges, it does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This regulation will affect only visitors at national wildlife refuges and describe what they can do while they are on a refuge.

Federalism (Executive Order 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. In preparing this rule, we worked with State governments.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation will clarify established regulations and result in better understanding of the regulations by refuge visitors.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule opens six refuges to hunting and/or sport fishing programs and makes minor changes to other refuges open to those activities, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with tribal governments having adjoining or overlapping jurisdiction before we propose the regulations. This regulation is consistent with and not less restrictive than tribal reservation rules.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Number is 1018–0102). See 50 CFR 25.23 for information concerning that approval. 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. We are seeking further OMB approval for other necessary information collection.

Endangered Species Act Section 7 Consultation

In preparation for new openings, we include Section 7 consultation documents approved by the Service's Endangered Species program in the refuge's "openings package" for Regional review and approval from the Headquarters Office. We reviewed the changes in hunting and fishing regulations herein with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1544, as amended) (ESA). For the national wildlife refuges opening for hunting and/or fishing, we have determined that Moosehorn National Wildlife Refuge (bald eagle), Wertheim National Wildlife Refuge, Cahaba River National Wildlife Refuge, Julia Butler Hansen National Wildlife Refuge (Columbia white-tailed deer and bald eagle), Glacial Ridge National Wildlife Refuge, Squaw Creek National Wildlife Refuge (bald eagle), and Sacramento River National Wildlife Refuge will not likely adversely affect any endangered or threatened species or designated critical habitat; and Assabet River National Wildlife Refuge, Great Meadows National Wildlife Refuge, Moosehorn National Wildlife Refuge (Atlantic salmon), Oxbow National Wildlife Refuge, Silvio O. Conte National Wildlife Refuge, Julia Butler Hansen National Wildlife Refuge (marbled murrelet, northern spotted owl, bull trout, howellia, Nelson's checkermallow, streaked horned lark), Stewart B. McKinney National Wildlife Refuge, Squaw Creek National Wildlife Refuge (piping plover and least tern), and Stone Lakes National Wildlife Refuge will not affect any endangered or threatened species or designated critical habitat; and Squaw Creek National Wildlife Refuge (Eastern Massasauga rattlesnake) is not likely to jeopardize candidate or proposed species critical habitat.

We also comply with Section 7 of the ESA when developing Comprehensive Conservation Plans (CCPs) and step-down management plans for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We also make determinations when required by the ESA before the addition of a refuge to the lists of areas open to hunting or fishing as contained in 50 CFR 32.7.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and 516 DM 6, Appendix 1. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required.

A categorical exclusion from NEPA documentation applies to this amendment of refuge-specific hunting and fishing regulations since it is technical and procedural in nature, and

the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (516 DM 2, Appendix 1.10).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 FW 1, 3, and 4. We prepare these CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans.

Available Information for Specific Refuges

Individual refuge headquarters retain information regarding public use programs and conditions that apply to their specific programs and maps of their respective areas. You may also obtain information from the regional offices at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

California/Nevada Operations Office—Assistant Manager, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, California 95825; Telephone (916) 414–6464

Stone Lakes National Wildlife Refuge; 1624 Hood-Franklin Road, Elk Grove, California 95757–9774; Telephone (916) 775–4421.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, New Mexico 87103; Telephone (505) 248–7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713–5401.

Glacial Ridge National Wildlife Refuge, c/o Rydell National Wildlife Refuge, 17788 349th Street, SE., Erskine, Minnesota 56535; Telephone (218) 687–2229.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345; Telephone (404) 679–7166.

Cahaba River National Wildlife Refuge; 291 Jimmy Parks Blvd., Anniston, Alabama 36205; Telephone (256) 848–7085.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8306.

Assabet River National Wildlife Refuge, c/o Eastern Massachusetts National Wildlife Refuge Complex, 73 Weir Hill Road, Sudbury, Massachusetts 01776; Telephone (978) 443–4661.

Silvio O. Conte National Wildlife Refuge, 52 Avenue A, Turners Falls, Massachusetts 01376; Telephone (413) 863–0209.

Stewart B. McKinney National Wildlife Refuge, P.O. Box 1030, 733 Old Clinton Road, Westbrook, Connecticut 06498; Telephone (860) 399–2513.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236–8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Primary Author

The primary author of this rulemaking document is Leslie A. Marler, Management Analyst, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Arlington, Virginia 22203.

List of Subjects

50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

■ For the reasons set forth in the preamble, we amend Title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 32—HUNTING AND FISHING

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd-668ee, and 715i.

§ 32.7 [Amended]

■ 2. Amend § 32.7 "What refuge units are open to hunting and/or sport fishing?" by:

■ a. Adding the listing of Cahaba River National Wildlife Refuge in the State of Alabama;

■ b. Adding the listings of Sacramento River and Stone Lakes National Wildlife Refuges in the State of California;

■ c. Adding the listing of Stewart B. McKinney National Wildlife Refuge in the State of Connecticut;

■ d. Adding the listing of Assabet River National Wildlife Refuge in the State of Massachusetts;

■ e. Adding the listings of Big Stone Wetland Management District, Glacial Ridge National Wildlife Refuge, and Minnesota Valley Wetland Management in the State of Minnesota;

■ f. Adding the listing of Silvio O. Conte National Wildlife Refuge in the State of New Hampshire; and

■ g. Adding the listings of Arrowwood Wetland Management District, Audubon Wetland Management District, Chase Lake Wetland Management District, Crosby Wetland Management District, J. Clark Salyer Wetland Management District, Kulm Wetland Management District, Lostwood Wetland Management District, Long Lake Wetland Management District, Tewaukon Wetland Management District, and Valley City Wetland Management District in the State of North Dakota.

■ 3. Amend § 32.20 Alabama by:

■ a. Adding Cahaba River Naticnal Wildlife Refuge; and

■ b. Revising the introductory text of paragraph C. and adding paragraph C.9. of Wheeler National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

Cahaba River National Wildlife Refuge

A. Migratory Game Bird Hunting. [Reserved]

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, opossum, raccoon, coyote, and bobcat on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed hunt permit when hunting.

2. We prohibit hunting within 100 yards (90 m) of River Road.

3. We prohibit ATVs, mules, and horses on the refuge.

4. We allow the use of dogs to hunt upland game, but the dogs must be under the immediate control of the handler at all times and not allowed to run free (see § 26.21(b) of this chapter).

5. We allow shotguns with #4 shot or smaller, rifles firing .22 caliber rimfire ammunition, or archery equipment.

C. Big Game Hunting. We allow the hunting of white-tailed deer, feral hog, and wild turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed hunt permit when hunting.

2. We only allow the use of archery equipment during white-tailed deer season.

3. We prohibit marking trees and the use of flagging tape, reflective tacks, and other similar marking devices.

4. We prohibit damaging trees or hunting from a tree that contains an inserted metal object (see § 27.51 of this chapter). Hunters must remove stands from trees after each day's hunt (see §§ 27.93 and 27.94 of this chapter).

5. We require tree stand users to use a safety belt or harness.

6. We prohibit the use of dogs for hunting or pursuit of big game.

7. Conditions B2 and B3 apply.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit the taking of frog or turtle (see § 27.21 of this chapter).

2. Condition B3 applies.

* * * * *

Wheeler National Wildlife Refuge

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C. Big Game Hunting. We allow the hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

9. You may only hunt feral hog during the refuge archery and flintlock deer season.

* * * * *

■ 4. Amend § 32.22 Arizona by:

■ a. Revising paragraph B.1. of Bill Williams National Wildlife Refuge;

■ b. Revising Havasu National Wildlife Refuge;

■ c. Revising the introductory text of paragraphs A. and B., revising paragraphs B.2. through B.5., and revising paragraphs C. and D. of Imperial National Wildlife Refuge;

■ d. Revising paragraph A., revising the introductory text of paragraph B., and revising paragraph B.1. of San Bernardino National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

* * * * *

Bill Williams National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. Conditions A1 through A7 apply.

* * * * *

Havasu National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning and whitewinged dove, duck, coot, moorhen, goose, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit falconry.

2. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

3. You may not hunt within 50 yards (45m) of any building or public road.

4. We prohibit target shooting or the discharge of any weapon except to hunt.

5. We prohibit possession of firearms except while hunting.

6. We prohibit the construction or use of pits and permanent blinds (see § 27.92 of this chapter).

7. You must remove temporary blinds, boats, hunting equipment, and decoys from the refuge following each day's hunt (see §§ 27.93 and 27.94 of this chapter).

8. We prohibit retrieving game from closed areas. You may retrieve game from areas closed to hunting, but otherwise open to entry, as long as you possess no firearms or other means of take.

9. Anyone hired to assist or guide hunter(s) must obtain, possess, and carry a valid Special Use Permit issued by the refuge manager.

10. We prohibit hunting on those refuge lands within the Lake Havasu City limits.

11. The following conditions apply only to Pintail Slough (all refuge lands north of North Dike):

i. We require a fee for waterfowl hunting. You must possess proof of payment (refuge permit) while hunting.

ii. Waterfowl hunters must hunt within 25 feet (7.5 m) of the numbered post of their assigned blind.

iii. We limit the number of persons at each waterfowl hunt blind to three. Observers cannot hold shells or guns unless in possession of a valid State hunting license and stamps.

iv. We limit the number of shells a waterfowl hunter may possess to 25.

v. Waterfowl hunters must possess at least 12 decoys per blind.

vi. You may use only dead vegetation or materials brought from off refuge for making or fixing hunt blinds. We prohibit the cutting, pulling, marking or removing vegetation (see § 27.51 of this chapter).

vii. Waterfowl hunters must be at their blind at least 45 minutes before legal shoot time and not leave their blind until 10:00 am MST.

viii. Waterfowl hunting ends at 12:00 p.m. (noon) MST. Hunters must be out of the slough area by 1:00 p.m. MST.

ix. We allow hunting in the juniors-only waterfowl season.

x. We allow dove hunting only during the September season.

12. The following conditions apply to all waters of the lower Colorado River within the Havasu NWR:

i. We close designated portions of Topock Marsh to all entry from October 1 through the last day of the waterfowl hunt season (including the State junior waterfowl hunt). These areas are indicated in refuge brochures and identified by buoys and/or signs.

ii. We prohibit hunting in the waters of the Colorado River and on those refuge lands within 1/4 mile (.4 km) of the waters of the Colorado River from and including Castle Rock Bay north to Interstate 40.

iii. We allow hunting on refuge lands and waters south of Castle Rock Bay to the north boundary of the Lake Havasu City limits.

B. Upland Game Hunting. We allow hunting of quail and cottontail rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A10, A11vi., and A12 apply.

2. We prohibit the possession or use of rifles.

3. We allow hunting of quail in Pintail Slough prior to and following the State waterfowl season (The State waterfowl season includes the State general waterfowl season, the days between the juniors-only waterfowl hunt and the general State waterfowl season, and the juniors-only waterfowl hunt.).

4. We allow hunting of cottontail rabbit in Pintail Slough prior to and following the State waterfowl season (The State waterfowl season includes the State general waterfowl season, the days between the juniors-only waterfowl hunt and the general State waterfowl season, and the juniors-only waterfowl hunt.).

C. Big Game Hunting. We allow hunting of bighorn sheep on those refuge lands in Arizona Wildlife Management Area 16B in accordance with State regulations subject to the following conditions:

1. Conditions A3 through A9 and A12ii apply.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations (Colorado River specific regulations apply) subject to the following conditions:

1. We prohibit the use of all air-thrust boats or air-cooled propulsion engines, including floating aircraft.

2. We prohibit overnight boat mooring and shore anchoring unless actively fishing as defined by State regulations (see § 27.93 of this chapter).

3. Anyone hired to assist or guide anglers must obtain, possess, and carry a valid Special Use Permit issued by the refuge manager.

4. The following apply only on Topock Marsh:

i. We close designated portions to all entry from October 1 through the last day of the waterfowl hunt season (including the State junior waterfowl hunt).

ii. We close designated portions to all entry from April 1 through August 31. These areas are indicated in refuge brochures and identified by buoys and or signs.

iii. We prohibit personal watercraft (PWC, as defined by State law).

5. The following apply to all waters of the Colorado River within Havasu NWR from the south regulatory buoy line to the north regulatory buoy line at Interstate 40 (approximately 17 miles [27.2 km]).

i. We prohibit personal watercraft (PWC, as defined by State law) as indicated by signs or regulatory buoys in all backwaters.

ii. We limit watercraft speed as indicated by signs or regulatory buoys to no wake (as defined by State law) in all backwaters.

iii. We prohibit water-skiing, tubing, wake boarding, or other recreational-towed devices.

6. The following apply to the Mesquite Bay areas of Lake Havasu.

i. We prohibit entry of all watercraft (as defined by State law) in all three bays as indicated by signs or regulatory buoys.

ii. The Mesquite Bays are Day Use Only areas and open from 1 hour before legal sunrise to 1 hour after legal sunset.

Imperial National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning and white-winged dove, duck, coot, moorhen, goose, and common snipe on designated areas of the refuge subject to the following conditions:

* * * * *

B. Upland Game Hunting. We allow hunting of quail, cottontail rabbit, coyote, and fox on designated areas of the refuge subject to the following conditions:

* * * * *

2. You may possess only approved nontoxic shot while hunting quail and cottontail rabbit (see § 32.2(k).

3. We allow cottontail rabbit hunting from September 1 to the close of the State quail season.

4. We require Special Use Permits for hunting coyote and fox.

5. We allow coyote and fox hunting only during the State quail season.

C. Big Game Hunting. We allow hunting of mule deer and desert bighorn sheep on designated areas of the refuge.

D. Sport Fishing. We allow fishing and frogging for bullfrog on designated areas of the refuge subject to the following condition: We close posted portions of Martinez Lake and Ferguson Lake to entry from October 1 through the last day of February.

* * * * *

San Bernardino National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of mourning and white-winged dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow only shotguns.

2. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

B. Upland Game Hunting. We allow hunting of quail and cottontail rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A2 apply.

* * * * *

■ 5. Amend § 32.23 Arkansas by:

■ a. Revising paragraphs A.10., A.13., and adding paragraph A.21., revising paragraph B.1., revising paragraph C.1., adding paragraph C.15., and revising paragraph D.4. of Felsenthal National Wildlife Refuge;

■ b. Adding paragraphs B.11. and B.12., revising paragraph C.1., C.4., and D.1. of Holla Bend National Wildlife Refuge;

■ c. Revising paragraphs A.10., A.13., and adding paragraph A.20., revising paragraphs B.1., C.1., and adding paragraph C.11. of Overflow National Wildlife Refuge; and

■ d. Revising paragraphs A.8. and A.11., adding paragraph A.19., revising paragraphs B.3. and C.2., adding paragraph C.16., and revising paragraph D.3. of Pond Creek National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Felsenthal National Wildlife Refuge

A. Migratory Game Bird Hunting.

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* * * * *

10. We prohibit possession or use of alcoholic beverage(s) while hunting (see § 32.2(j)). We prohibit consumption or possession of opened container(s) of alcoholic beverage(s) in parking lots, on roadways, and in plain view in campgrounds.

* * * * *

13. We only allow ATVs for wildlife-dependent activities such as hunting and fishing. We restrict ATVs to designated times and designated trails (see § 27.31 of this chapter) marked with signs and paint. We identify these trails and the dates they are open for use in the refuge hunt brochure. We limit ATVs to those having an engine displacement size not exceeding 700cc. We limit ATV tires to those having a centerline lug depth not exceeding 1 inch (2.5 cm). You may use horses on roads and ATV trails (when open to motor vehicle and ATV traffic respectively) as a mode of transportation for on-refuge, wildlife-dependent activities.

* * * * *

21. We prohibit the use or possession of any electronic call or other electronic device used for producing or projecting vocal sounds of any wildlife species.

B. Upland Game Hunting. * * *

1. Conditions A4 through A18, A20, and A21 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A6, A8 through A11, A13 through A18, A20, and A21 apply.

* * * * *

15. We prohibit the use of deer decoy(s).

D. Sport Fishing. * * *

* * * * *

4. We prohibit consumption or possession of opened container(s) of alcoholic beverage(s) in parking lots, on roadways, and in plain view in campgrounds (see § 32.2(j)).

Holla Bend National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

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11. Hunters must enter and exit the refuge from designated roads and parking areas.

12. We prohibit hunting within 150 feet (45 m) of roads and trails open to public use.

C. Big Game Hunting. * * *

1. Conditions B1 and B4 through B12 apply.

* * * * *

4. The firearms spring youth hunt for turkey is the same as the State. We restrict hunting to youths under age 16. One adult age 18 or older must accompany one youth hunter. We must receive applications for hunts by the last day of January.

* * * * *

D. Sport Fishing. * * *

1. Conditions B6, B7, B8, and B10 apply.

* * * * *

Overflow National Wildlife Refuge

A. Migratory Game Bird Hunting.

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* * * * *

10. We prohibit possession or use of alcoholic beverage(s) while hunting (see § 32.2(j)). We prohibit consumption or possession of opened container(s) of alcoholic beverage(s) in parking areas and on roadways.

* * * * *

13. We only allow ATVs for wildlife-dependent activities such as hunting and fishing. We restrict ATVs to designated times and designated trails (see § 27.31 of this chapter) marked with signs and paint. We identify those trails and the dates they are open for use in the refuge hunt brochure. We limit ATVs to those having an engine displacement size not exceeding 700cc. We limit ATV tires to those having a centerline lug depth not exceeding 1 inch (2.5 cm). You may use horses on roads and ATV trails (when open to motor vehicle and ATV traffic respectively) as a mode of transportation for on-refuge, wildlife-dependent activities. You may use ATVs on unmarked roads and levees in the North Sanctuary beginning 2 days prior to the opening of deer archery season through October 31.

* * * * *

20. We prohibit the use or possession of any electronic call or other electronic device used for producing or projecting vocal sounds of any wildlife species.

B. Upland Game Hunting. * * *

1. Conditions A4 through A17, A19, and A20 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A5 through A11, A13 through A17, A19, and A20 apply.

* * * * *

11. We prohibit the use of deer decoy(s).

* * * * *

Pond Creek National Wildlife Refuge

A. Migratory Game Bird Hunting.

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8. We prohibit possession or use of alcoholic beverage(s) while hunting (see § 32.2(j)). We prohibit consumption or possession of opened container(s) of alcoholic beverage(s) in parking lots, on roadways, and in plain view in campgrounds.

* * * * *

11. We only allow ATVs for wildlife-dependent activities such as hunting and fishing. We restrict ATVs to designated times and designated trails (see § 27.31 of this chapter) marked with signs and paint. We identify those trails and the dates they are open for use in the refuge hunt brochure. We limit ATVs to those having an engine displacement size not exceeding 700cc. We limit ATV tires to those having a centerline lug depth not exceeding 1 inch (2.5 cm). You may use horses on roads and ATV trails (when open to motor vehicle and ATV traffic respectively) as a mode of transportation for on-refuge, wildlife-dependent activities.

* * * * *

19. We prohibit the use or possession of any electronic call or other electronic device used for producing or projecting vocal sounds of any wildlife species.

B. Upland Game Hunting. * * *

* * * * *

3. Conditions A4 through A16, A18, and A19 apply.

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. Conditions A4, A5 (for archery deer and muzzleloader deer hunts and spring turkey hunts), A6 through A9, A11 through A16, A18, and A19 apply.

* * * * *

16. We prohibit the use of deer decoy(s)

D. Sport Fishing. * * *

* * * * *

3. We prohibit consumption or possession of opened container(s) of alcoholic beverage(s) in parking lots, on roadways, and in plain view in campgrounds (see § 32.2(j)).

* * * * *

■ 6. Amend § 32.24 California by:

■ a. Revising paragraphs A.2. through A.9. and adding paragraph A.10. of Don Edwards San Francisco Bay National Wildlife Refuge;

■ b. Revising Sacramento River National Wildlife Refuge; and

■ c. Alphabetically adding Stone Lakes National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Don Edwards San Francisco Bay National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

* * * * *

2. We allow hunting in the 17 salt evaporation ponds listed below. These ponds are surrounded by levees and were formerly part of the San Francisco Bay. We have not opened any other ponds.

i. Ponds R1 and R2 in the Ravenswood Unit. These ponds are located on the west side of the Dumbarton Bridge between Ravenswood Slough and Highway 84. You may access these ponds only by foot or bicycle from either of two trailheads off Highway 84. We prohibit hunting within 300 feet (90 m) of Highway 84. These ponds will be open 7 days a week.

ii. Ponds M1, M2, M3, M4, M5, M6, and A19 in the Mowry Slough Unit. These ponds are located on the east side of the Bay between Mowry Slough and Coyote Creek. You may only access these ponds by boat. You may land your boat at specific points on the Bay side of the levee as designated by refuge signs. You may pull your boat across the levee from the Bay. We prohibit hunting within 300 feet (90 m) of the Union Pacific Railroad track. These ponds will be open 7 days a week.

iii. Ponds AB1, A2E, AB2, A3N, and A3W in the Alviso Unit. These ponds are located on the west side of the Bay between Stevens Creek and Guadalupe Slough. You must obtain a refuge Special Use Permit to hunt these ponds. Access to Ponds AB1 and A2E will be from the Crittenden Lane Trailhead in Mountain View. Access to Ponds A3W will be from the Carl Road Trailhead in Sunnyvale. Access to Ponds A3N and AB2 is by boat from the other ponds. We allow hunting only from existing hunting blinds. We allow hunting only on Wednesdays, Saturdays, and Sundays on these ponds.

iv. Ponds A5, A7, and A8N in the Alviso Unit. These ponds are located on the south end of the Bay between Guadalupe Slough and Alviso Slough. You must obtain a refuge Special Use Permit to hunt these ponds. Access is via walking and bicycling from the Gold Street gate in Alviso. We allow hunting from existing hunting blinds and by walking pond levees. We allow hunting only on Wednesdays, Saturdays, and Sundays on these ponds.

3. During the 2 weekends before the opening of the hunt season, you may

bring a boat into Ponds AB1, A2E, AB2, A3N, A3W, A5, A7, and A8N and moor it at a designated site only if authorized by a valid refuge Special Use Permit. These boats will be used to access the hunting blinds and will stay in the pond during the hunt season. You must remove your boat within 2 weeks following the close of the hunt season. We allow nonmotorized boats and motorized boats powered by electric or 4-stroke gasoline motors only.

4. You may maintain an existing blind in the ponds open to hunting if you have a valid refuge Special Use Permit, but the blind will be open for general use on a first-come, first-served basis. We prohibit pit blinds or digging into the levees (see § 27.92 of this chapter).

5. You must remove all decoys and other personal property (except personal boats authorized by a refuge Special Use Permit) from the refuge by legal sunset. You must remove all trash, including shotshell hulls, when leaving hunting areas (see §§ 27.93 and 27.94 of this chapter).

6. Hunters may enter closed areas of the refuge to retrieve downed birds, provided they leave all weapons in a legal hunting area. We encourage the use of retriever dogs. You must keep your dog(s) under immediate control of the handler at all times (see § 26.21(b) of this chapter). Dogs must remain inside a vehicle or be on a leash until they are on the ponds or on the levees (Ponds R1, 2, A5, 7, and 8N only) as a part of the hunt.

7. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

8. You must keep firearms unloaded (see § 27.42(b) of this chapter) until you are within the designated hunt area.

9. We prohibit target practice on the refuge or any nonhunting discharge of firearms (see § 27.42 of this chapter).

10. At the Ravenswood Unit only, we only allow portable blinds or construction of temporary blinds of natural materials that readily decompose. We prohibit collection of these natural materials from the refuge (see § 27.51 of this chapter). You must remove portable blinds (see §§ 27.93 and 27.94 of this chapter) by legal sunset. Temporary blinds become available for general use on a first-come, first-served basis on subsequent days. We prohibit permanent blinds, pit blinds, or digging into the levees (see § 27.92 of this chapter). We prohibit entry into closed areas of the refuge prior to the hunt season in order to scout for hunting sites or to build blinds.

* * * * *

Sacramento River National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, moorhen, dove, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow shotgun hunting.

2. You must unload firearms (see § 27.42(b) of this chapter) before transporting them between parking areas and hunting areas. "Unloaded" means that no ammunition is in the chamber or magazine of the firearm.

3. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

4. We prohibit hunting within 50 feet (15 m) of any landward boundary adjacent to private property.

5. We prohibit hunting within 150 yards (45 m) of any occupied dwelling, house, residence, or other building or any barn or other outbuilding used in connection therewith.

6. Access to the hunt area is by foot traffic or boat only. We prohibit bicycles or other conveyances. Mobility-impaired hunters should consult with the refuge manager for allowed conveyances.

7. We prohibit fires on the refuge, except we allow portable gas stoves on gravel bars (see § 27.95(a) of this chapter).

8. We allow camping on gravel bars up to 7 days during any 30-day period. We prohibit camping on all other refuge lands.

9. We open the refuge for day-use access from 1 hour before legal sunrise until 1 hour after legal sunset. We allow access during other hours on gravel bars only (see condition A8).

10. We require dogs to be kept on a leash, except for hunting dogs engaged in authorized hunting activities, and under the immediate control of a licensed hunter (see § 26.21(b) of this chapter).

11. We prohibit permanent blinds. You must remove all personal property, including decoys and boats, by one hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

12. We prohibit cutting or removal of vegetation for blind construction or for making trails (see § 27.51 of this chapter).

B. Upland Game Hunting. We allow hunting of pheasant, turkey, and quail on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow shotgun and archery hunting.

2. Conditions A3 through A10 and A12 apply.

C. Big Game Hunting. We allow hunting of black-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A4, A5, A7, A8, A9, A12, and B1 apply.

2. We prohibit construction or use of permanent blinds, platforms ladders or screw-in foot pegs.

3. You must remove all personal property, including stands, from the refuge by one hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A7, A8, A9, and A12 apply.

2. On Packer Lake, due to primitive access, we only allow boats up to 14 feet (4.2 m) and canoes.

* * * * *

Stone Lakes National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, and moorhen on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting on Sun River Unit only on Wednesdays and Saturdays from ½ hour before legal sunrise until 12 p.m. (noon).

2. We will select hunters through a random drawing process conducted at the refuge. Hunters should bring a copy of their refuge notification on the day of their hunt. Hunters should contact the refuge manager for additional information.

3. We require adults, age 18 or older, to accompany hunters under age 16.

4. We prohibit bicycles or other conveyances. Mobility-impaired hunters should contact the refuge manager regarding allowed conveyances.

5. You must unload firearms (see § 27.42(b) of this chapter) before transporting them between parking areas and spaced-blind areas. "Unloaded" means that no ammunition is in the chamber or magazine of the firearm.

6. We restrict hunters to their assigned spaced-blind except when they are placing or retrieving decoys, traveling to and from the parking area, retrieving downed birds, or when shooting to retrieve cripples.

7. You may only possess approved nontoxic shot while in the field (see § 32.2(k)) in quantities of 25 or less.

8. We prohibit fires on the refuge (see § 27.95(a) of this chapter).

9. We allow vehicles to stop only at designated parking areas. We prohibit

dropping of passengers or equipment or stopping between designated parking areas.

10. We allow only nonmotorized boats to access water blinds.

11. You must remove all decoys, personal equipment, shotshell hulls, and refuse from the refuge by 12:30 p.m. (see §§ 27.93 and 27.94 of this chapter).

12. Junior hunters must possess a valid Junior Hunting License.

13. We allow the use of hunting dogs for retrieving birds, provided the dogs remain under the immediate control of the hunter at all times (see § 26.21(b) of this chapter).

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

■ 7. Amend § 32.25 Colorado by revising paragraph D. of Rocky Mountain Arsenal to read as follows:

§ 32.25 Colorado.

* * * * *

Rocky Mountain Arsenal

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D. Sport Fishing. We allow fishing at designated times and on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require a valid State fishing license and valid refuge fishing permit for all anglers age 16 and older. You must obtain and display a daily refuge fishing badge while fishing.

2. We only allow the use of rod and reel with one hook or lure per line.

3. We only allow catch and release fishing.

4. We only allow barbless hooks.

5. We only allow artificial flies or lures.

6. We prohibit the use of live bait.

■ 8. Amend § 32.26 Connecticut by adding an introductory paragraph and adding Stewart B. McKinney National Wildlife Refuge to read as follows:

§ 32.26 Connecticut.

The following refuge units have been opened for hunting and/or fishing and are listed in alphabetical order with applicable refuge-specific regulations.

Stewart B. McKinney National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, coot, and goose on designated areas of the Great Meadows Unit in Stratford, Connecticut in accordance with State regulations subject to the following conditions:

1. We require hunters to obtain an annual Special Use Permit in advance for permission to hunt in the designated hunting area. Consult the refuge manager for details on how and when to apply for a Special Use Permit.

2. Any person entering, using, or occupying the refuge for hunting must abide by all the terms and conditions of the Special Use Permit.

3. You must have all applicable hunting licenses, permits, stamps, and a photographic identification in your possession while hunting on the refuge.

4. We will limit hunt days to Tuesdays, Wednesdays, and Saturdays during the waterfowl hunting season as established by the State.

5. We only allow shotguns.

6. You must keep firearms unloaded until you are within the designated hunting area (see § 27.42(b) of this chapter).

7. Access to the hunt area is by foot or boat in designated areas only. Mobility-impaired hunters should consult with the refuge manager for allowed conveyances.

8. You may possess no more than 25 approved nontoxic shot per day while in the field (see § 32.2(k)).

9. This is a waterfowl hunt only. We allow no more than two dogs per waterfowl hunting party. We prohibit dog training on the refuge.

10. During State-established youth days, licensed junior hunters may hunt in the designated hunting area when accompanied by a licensed adult hunter age 18 or older. Adults must possess a valid hunting license; however, we prohibit them carrying a firearm.

11. We prohibit the use of air-thrust and inboard water-thrust boats such as, but not limited to, hovercrafts, airboats, jet skis, watercycles, and waterbikes on all waters within the refuge boundaries.

12. We prohibit hunters launching any boats on the refuge that they cannot portage by hand. A dock and a boat ramp are not available on the refuge.

13. We prohibit pit or permanent blinds.

14. You must remove all temporary blinds, boats, decoys, and all other personal property from the refuge each day (see §§ 27.93 and 27.94 of this chapter).

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

■ 9. Amend § 32.28 Florida by:

■ a. Revising paragraph D. of Cedar Keys National Wildlife Refuge;

■ b. Revising paragraph D. of J. N. "Ding" Darling National Wildlife Refuge;

■ c. Revising paragraphs C. and D. of Lake Woodruff National Wildlife Refuge;

■ d. Revising Lower Suwannee National Wildlife Refuge;

■ e. Revising paragraphs A.2. through A.5., the introductory text of paragraph D., D.1., D.3., D.4., D.6., D.11., and adding paragraph D.12. of Merritt Island National Wildlife Refuge;

■ f. Revising paragraph C.1., C.5., C.9. through C.12, and adding paragraph C.13. of St. Marks National Wildlife Refuge; and

■ g. Revising paragraph C.2. of St. Vincent National Wildlife Refuge to read as follows:

§ 32.28 Florida.

* * * * *

Cedar Keys National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow salt water sport fishing year-round in accordance with State regulations subject to the following condition: We will close a 300 foot (90 m) buffer zone beginning at mean high tide line and extending into the waters around Seahorse Key to all public entry from March 1 through June 30.

* * * * *

J. N. "Ding" Darling National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow fishing and crabbing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit fishing and crabbing in all waters of the Bailey Tract except for Smith Pond and Airplane Canal.

2. We allow fishing and crabbing in all other refuge waters except in areas designated as "closed to public entry".

3. We prohibit the taking of horseshoe crabs, stone crabs, or spider crabs.

4. We prohibit the taking of blue crabs for commercial purposes.

5. We allow the recreational take of blue crabs within 150 feet (45 m) of the Wildlife Drive only with the use of dip nets.

6. Beyond 150 feet (45 m) of the Wildlife Drive we allow recreational take of blue crabs with baited lines and traps only if such devices are continuously attended/monitored and removed at the end of each day. "Attended/monitored" means that all devices used in the capture of blue crabs must be within the immediate view of the sport crabber.

7. The daily limit of blue crabs is 20 per person, of which no more than 10 shall be females.

8. We prohibit the use of cast nets within 150 feet (45 m) of a water-control structure on the Wildlife Drive.

9. We prohibit the use of personal watercraft, air-thrust boats, and hovercraft.

10. We prohibit kite-surfing or kite-boarding, wind-surfing or sail-boarding, or any similar type of activities.

11. We prohibit vessels exceeding the slow speed/minimum wake in refuge waters.

12. We only allow vessels propelled by polling, paddling, or floating in the posted "no-motor zone" of the Ding Darling Wilderness Area. All motors, including electric motors, must be in a nonuse position (out of the water) when in the "no-motor zone".

13. We prohibit camping on all refuge lands and overnight mooring of vessels on all refuge waters.

14. You may only launch vessels at designated sites on the refuge.

Lake Woodruff National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following condition: We require refuge permits.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing from legal sunrise to legal sunset.

2. We prohibit the use of airboats on the refuge.

3. We prohibit commercial fishing or the taking of frogs or turtles (see § 27.21 of this chapter).

4. We prohibit the use of snatch hooks in the refuge impoundments.

5. When boating, you must slow down and observe all manatee speed zones and caution areas.

Lower Suwannee National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to possess and carry signed refuge hunt permits for all hunts.

2. We designated open and closed refuge hunting areas on the map in the refuge hunt permit that the hunter must possess and carry.

3. You must park vehicles in a manner that does not block roads or gates (see § 27.31(h) of this chapter).

4. We prohibit the use of ATVs (see § 27.31(f) of this chapter).

5. We prohibit horses.

6. We prohibit possession of a loaded firearm or bow and arrow (see § 27.42(b) of this chapter) while on a refuge road right-of-way designated for motorized vehicle travel or in any vehicle or boat. We define "loaded" as shells in the chamber or magazine or percussion cap on a muzzleloader, or arrow notched in a bow.

7. We prohibit hunting from refuge roads open to public vehicle travel.

8. We prohibit construction of permanent blinds or stands.

9. In addition to State hunter education requirements, an adult (parent or guardian) age 21 or older must supervise and must remain within sight of and in normal voice contact of the youth hunter age 15 and under. Parents or adult guardians are responsible for ensuring that hunters under age 16 do not engage in conduct that would constitute a violation of the refuge regulations. An adult may supervise no more than two youths.

10. We prohibit all commercial activities, including guiding or participating in a guided hunt.

11. We prohibit target practice or any nonhunting discharge of firearms (see § 27.42 of this chapter).

12. We prohibit marking any tree, or other refuge feature, with flagging, litter, paint, or blaze.

13. We allow marking trails with reflective markers, but you must remove the markers (see §§ 27.93 and 27.94 of this chapter) at the end of the refuge deer hunting season.

14. Hunters utilizing the refuge are subject to inspection of licenses, permits, hunting equipment, bag limits, vehicles, and their contents during compliance checks by refuge or State law enforcement officer.

15. Hunters must be at their vehicles by 1 hour after legal shooting time.

B. Upland Game Hunting. We allow hunting of gray squirrel, armadillo, opossum, rabbit, raccoon, coyote, and beaver on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A15 apply.

2. The refuge upland game hunting season opens on the Monday after the refuge limited hog hunt closes and ends on February 28.

3. You may only possess .22 caliber rimfire rifle (but not .22 magnum) firearms (see § 27.42 of this chapter) or shotguns with shot no larger than #4 common or bows with arrows that have judo or blunt tips. We prohibit possession of arrows capable of taking big game during the upland game hunting season.

4. We allow night hunting in accordance with State regulations for raccoon and opossum on Wednesday through Saturday nights from legal sunset until legal sunrise during the month of February.

C. Big Game Hunting. We allow hunting of big game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A15 apply.

2. We prohibit the use of hunting and tracking dogs for all deer and hog hunts.

3. We require quota hunt permits (issued through a random draw) for the limited deer gun hunt, limited hog hunt, and limited youth gun deer hunt. They cost $12.50.

4. Quota hunt permits are nontransferable.

5. Hunters may only use archery equipment in accordance with State archery regulations during the refuge archery season.

6. Hunters may only use muzzleloading firearms (see § 27.42 of this chapter) in accordance with State muzzleloader regulations during the refuge muzzleloader season.

7. We prohibit hunting from a tree in which a metal object has been driven (see § 32.2(i)).

8. You may leave temporary tree stands on the refuge starting on the last weekend of August, but you must remove them by the last day of the general gun hunting season (see § 27.93 of this chapter).

9. All hunters (including all persons accompanying hunters) must wear a minimum of 500 square inches (3,250 cm^2) of fluorescent orange visible above the waistline while hunting during all refuge deer gun hunts.

10. We prohibit the use of organized drives for taking or attempting to take game.

11. The refuge general gun season begins on the opening Saturday of the Florida State Central Management Zone, General Gun season and ends on the following Friday. It reopens on the Monday after the refuge limited deer season and ends on the following Sunday. The refuge general gun season lasts 14 days.

12. The refuge limited either-sex deer hunt is on the second Saturday and Sunday of the State Central Management Zone General Gun season. This coincides with the opening of the State's either-sex hunt deer hunting season.

13. The youth limited Gun Deer Hunt is the Saturday and Sunday following the close of the refuge general gun season.

14. The refuge limited hog hunt begins on the first Monday after the Florida State Central Management Zone General Gun (antlered deer and wild hog) season closes, and ends on the following Sunday.

15. During the limited youth hunt, an adult age 21 or older must accompany the youth, age 15 and under, but only the youth hunter may hunt and handle the firearm.

16. We confine the limited youth hunt to the Levy County portion of the refuge, and hunters must access the refuge from Levy County Road 347.

17. We allow hunting of deer (except spotted fawns), feral hog (no size or bag limit), gray squirrel, rabbit, armadillo, opossum, raccoon, beaver, and coyote during the archery season.

18. Hunters may take deer, with one or more antlers at least 5 inches (12.5 cm) in length visible above the hairline, and feral hog (no bag or size limit) during the muzzleloader and general-gun season.

19. Hunters may take hog (no size or bag limit), and a maximum of two deer per day, during the limited deer gun hunt and limited youth gun deer hunt, except only one deer may be a buck for each of the 2-day limited hunts.

20. Hunters may take hog (no size or bag limit) during the limited hog hunt.

21. We prohibit all other public entry or use of the hunting area during the limited hog, limited gun, and limited youth deer hunts. During the limited gun hunt and limited hog hunt, the Dixie Mainline road will remain open to all public vehicles, but we prohibit firearms except for permit holders.

22. Hunters must check all game harvested during all deer and hog hunts.

23. You may only take turkey during the State spring turkey hunting season.

24. You may only take bearded turkeys during the spring turkey hunt.

25. Shooting hours for spring turkey begin ½ hour before legal sunrise and end at 1 p.m.

26. We only allow shotguns with shot no larger than size 2 common shot or bows and arrows for spring turkey hunting.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Anglers may take game and nongame fish only with pole and line or rod and reel.

2. We prohibit taking of frogs and turtles (see § 27.21 of this chapter).

3. We prohibit leaving boats on the refuge overnight (see § 27.93 of this chapter).

4. We prohibit consumption of alcohol or possession of open alcohol containers in the public use areas of Shired Island boat launch/fishing and parking lot area and the Shell Mound fishing/recreational area (see § 32.2(j)).

Merritt Island National Wildlife Refuge

A. Migratory Game Bird Hunting.

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2. You must possess and carry a refuge waterfowl hunting quota permit while hunting areas 1 or 4, from the beginning of the regular waterfowl season through December 31.

3. You may hunt Wednesdays, Saturdays, Sundays, and all Federal holidays that fall within the State's waterfowl season.

4. You may hunt in four designated areas of the refuge as delineated in the refuge hunting regulations map. We prohibit hunters entering the normal or expanded restricted areas of the Kennedy Space Center.

5. You may only hunt on refuge-established hunt days from legal shooting time until 1 p.m.

* * * * *

D. Sport Fishing. We allow you to fish, crab, clam, oyster, and shrimp in designated areas of the refuge as delineated in the refuge fishing regulations map in accordance with State regulations subject to the following conditions:

1. You must possess and carry a current, signed refuge fishing permit at all times while fishing on the refuge.

* * * * *

3. We allow launching of boats at night only from Bair's Cove, Beacon 42, and Bio Lab boat ramps.

4. We prohibit crabbing or fishing, and access for the purpose of crabbing or fishing, from Black Point Wildlife Drive or any side road connected to Black Point Wildlife Drive except L Pond Road.

* * * * *

6. Anglers and crabbers must attend their lines at all times.

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11. We prohibit fishing within the normal or expanded restricted areas of the Kennedy Space Center.

12. We prohibit the use of internal combustion engines within the two zones in Mosquito Lagoon. The zones include the posted waters located north of WSEG Boat Ramp and west of the Intra Coastal Waterway and the posted waters on Tiger Shoals extending from the northeast refuge boundary southward to the waters just south of Preachers Island.

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St. Marks National Wildlife Refuge

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C. Big Game Hunting. * * *

1. We require refuge permits issued by lottery. Lottery applications are available at the refuge office each year beginning in July. There is a fee for permits. Permits are nontransferable. There is an additional fee for duplicate permits. Each hunter must possess and carry a signed permit when participating in a hunt. Prior to hunting each day, you must check-in at a hunt check station as specified in the refuge hunt brochure. You must check out upon completion of hunting each day.

* * * * *

5. There is a two-deer limit per hunt as specified in C8 and C9 below, except in the youth hunt, where the limit is one deer per hunt as specified in C11 below. The limit for bearded turkey is one per hunt. There is no limit on feral hog.

* * * * *

9. There is a winter archery/muzzleloader hunt. Hunters may harvest doe deer, antlerless deer, bearded turkey, or feral hog. We define "antlerless deer" as deer with antlers less than 1 inch (2.5 cm) above the hairline and "antlered deer" as deer with antlers at least 1 inch (2.5 cm) above the hairline. If the first deer you harvest is an antlerless male, you may harvest another doe or antlerless deer as your second deer. If the first deer you harvest is a doe, you may bring it to the check station, and we will give you a permit to harvest an antlered deer. With the antlered deer permit, you may harvest any deer as your second deer. Archery equipment and muzzleloaders must meet the requirements set by the State. We prohibit other weapons in the hunt area (see § 27.43 of this chapter). Contact the refuge office for specific dates.

10. There are two modern gun hunts. Modern guns must meet State requirements. We will hold one hunt on the Panacea Unit and one on the Wakulla Unit. You may harvest deer as described in C9 above. You may also harvest one bearded turkey or feral hog (no limit). Contact the refuge office for specific dates.

11. There is one youth hunt, for youths ages 10 to 15, on the St. Marks Unit in an area to be specified in the refuge hunt brochure. Hunters may harvest one deer of either sex or feral hog (no limit). An adult, age 21 or older, must accompany each youth hunter, and each adult may accompany only one youth. The adult must possess a refuge permit. Only the youth hunter may handle or discharge firearms. Contact the refuge office for specific dates.

12. There is one mobility-impaired hunt on the Panacea Unit in the area west of County Road 372. Hunters may harvest doe deer, antlerless deer,

bearded turkey, or feral hog. See definition for "antlerless deer" in C9 above. We will give each hunter that harvests a doe deer a permit to harvest an antlered deer, as described in C9 above. Hunters may have an able-bodied hunter accompany them. You may transfer permits issued to able-bodied assistants. We limit those hunt teams to two deer per hunt. Contact the refuge office for specific dates.

13. There is one spring gobbler hunt. You may harvest one bearded turkey per hunt. You may only use shotguns to harvest turkey. Contact the refuge officer for specific dates. You must unload and dismantle or case weapons (see § 27.42(b) of this chapter) after 1 p.m.

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St. Vincent National Wildlife Refuge

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C. Big Game Hunting. * * *

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2. We restrict hunting to three hunt periods: Sambar deer, raccoon, and feral hog—November 17–19; and white-tailed deer, raccoon, and feral hog—December 15–17 and January 5–7. Hunters may check-in and set up camp sites and stands on November 16, December 14, and January 4. Hunters must leave the island and remove all equipment by 11 a.m. on November 20, December 18, and January 8.

* * * * *

■ 10. Amend § 32.29 Georgia by:

■ a. Revising paragraph D. of Banks Lake National Wildlife Refuge;

■ b. Adding paragraphs C.18. and C.19. of Blackbeard Island National Wildlife Refuge;

■ c. Adding paragraph C.18. and C.19. of Harris Neck National Wildlife Refuge;

■ d. Revising paragraphs B.9., D.1., and D.4. of Piedmont National Wildlife Refuge;

■ e. Revising paragraph A.1., adding paragraphs A.4., A.5., and B.8., and revising paragraphs C.5. and C.8. of Savannah National Wildlife Refuge; and

■ f. Adding paragraphs C.19. and C.20. of Wassaw National Wildlife Refuge to read as follows:

§ 32.29 Georgia.

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Banks Lake National Wildlife Refuge

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D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow the use of pole and line or rod and reel, which the angler must attend at all times.

2. We allow sport fishing after legal sunset; but we prohibit all other activity after legal sunset.

3. We prohibit marking of paths or navigational routes.

4. We prohibit swimming, wading, jet skiing, and water skiing.

Blackbeard Island National Wildlife Refuge

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C. Big Game Hunting. * * *

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18. Youth hunters age 15 and under must possess and carry a valid hunter education card in order to hunt.

19. Youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult may supervise no more than one youth hunter.

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Harris Neck National Wildlife Refuge

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C. Big Game Hunting. * * *

* * * * *

18. Youth hunters age 15 and under must possess and carry a valid hunter education card in order to hunt.

19. Youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult may supervise no more than one youth hunter.

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Piedmont National Wildlife Refuge

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B. Upland Game Hunting. * * *

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9. We only allow .22 caliber or smaller rimfire firearms for raccoon and opossum hunting.

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D. Sport Fishing. * * *

1. We allow fishing from April 1 to September 30.

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4. We allow nonmotorized boats on all ponds designated as open to fishing except the Children's pond. We allow boats with electric motors only in Pond 2A and Allison Lake.

* * * * *

Savannah National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. You must possess and carry a signed refuge permit at all times while hunting on the refuge. We only require a fee for the quota youth waterfowl hunt on the Solomon Tract and the wheelchair-dependent hunters' quota deer hunt.

* * * * *

4. Youth hunters age 15 and under must possess and carry a valid hunter education card in order to hunt.

5. Youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult may supervise no more than two youth hunters.

B. Upland Game Hunting. * * *

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8. Conditions A4 and A5 apply.

C. Big Game Hunting. * * *

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5. We only allow shotguns with slugs, muzzleloaders, and bows for deer and hog hunting throughout the designated hunt area during the November gun hunt and the March hog hunt. However, we allow high-powered rifles north of Interstate Highway 95 only. We prohibit handguns.

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8. Conditions B7, A4, and A5 apply.

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Wassaw National Wildlife Refuge

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C. Big Game Hunting. * * *

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19. Youth hunters age 15 and under must possess and carry a valid hunter education card in order to hunt.

20. Youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult may supervise no more than one youth hunter.

* * * * *

■ 11. Amend § 32.32 Illinois by:

■ a. Removing paragraphs A.2. and A.3., redesignating paragraph A.4. as A.2., revising paragraph A.2., and revising paragraph D.2. of Chautauqua National Wildlife Refuge;

■ b. Revising paragraph A.5., adding paragraph A.7.xii., and revising paragraphs B.1., B.2., C.1., and D.1. of Cypress Creek National Wildlife Refuge;

■ c. Revising the introductory text of paragraph A., adding paragraph A.3., revising the introductory text of paragraph B., adding paragraphs B.1., B.2., and revising paragraphs C. and D. of Emiquon National Wildlife Refuge;

■ d. Revising the introductory text of paragraph D. and revising paragraphs D.1. and D.2. of Meredosia National Wildlife Refuge;

■ e. Revising the introductory text of paragraphs B., C., and D. of Middle Mississippi River National Wildlife Refuge;

■ f. Revising paragraph B.3., revising the introductory text of paragraph C., and revising paragraph D.3. of Port Louisa National Wildlife Refuge;

■ g. Revising paragraph D.3. of Two Rivers National Wildlife Refuge; and
■ h. Revising paragraph A.6. of Upper Mississippi River National Wildlife and Fish Refuge to read as follows:

§ 32.32 Illinois.

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Chautauqua National Wildlife Refuge

A. Hunting of Migratory Game Birds.
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2. Hunters must remove boats, decoys, and portable blinds at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).
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D. Sport Fishing. * * *
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2. We allow bank fishing from legal sunrise October 16 to legal sunset January 14 between the boat ramp and the fishing trail in the North Pool and from Goofy Ridge Public Access to west gate of the north pool water control structure.
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Cypress Creek National Wildlife Refuge

A. Migratory Game Bird Hunting.
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5. We allow dove hunting beginning on September 1 and continuing on the following Mondays, Wednesdays, and Saturdays throughout the State season.
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7. * * *
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xii. All hunting parties must hunt over a minimum of 12 decoys at each blind site.
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B. Upland Game Hunting. * * *
1. Conditions A1, A2, A3, and A4 apply.
2. We prohibit hunting after legal sunset, except we allow raccoon and opossum hunting after legal sunset.
C. Big Game Hunting. * * *
1. Conditions A1 and A2 apply.
D. Sport Fishing. * * *
1. Conditions A2 and A3 apply.
* * * * *

Emiquon National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:
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3. We allow the use of motorized boats at no-wake speeds on all refuge waters.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may possess only approved nontoxic shot while hunting all allowed species except wild turkey and coyote (see § 32.2(k)). You may possess lead shot for hunting of wild turkey and coyote.

2. We allow access for hunting from 1 hour before legal sunrise until legal sunset.

C. Big Game Hunting. We allow hunting of big game on designated areas of the refuge in accordance with State regulations subject to the following condition: Hunters must remove hunting stands at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit leaving private boats on refuge waters overnight (see § 27.93 of this chapter).

2. Condition A3 applies.
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Meredosia National Wildlife Refuge

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D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow sport fishing on all areas open to public access from legal sunrise to legal sunset from January 15 to October 15.

2. We allow foot access on refuge land along the east side of Meredosia Lake in Morgan County from legal sunrise to legal sunset from October 16 to January 14. The boat ramp remains open throughout the year for access to Meredosia Lake.
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Middle Mississippi River National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of small game, furbearers, turkey, and nonmigratory game birds on the Beaver, Harlow, Meissner, and Wilkinson Island Division in accordance with State regulations subject to the following conditions:
* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer on the Beaver, Harlow, Meissner, and Wilkinson Island Divisions in accordance with State regulations subject to the following conditions:
* * * * *

D. Sport Fishing. We allow fishing on the Beaver, Harlow, and Wilkinson Island Divisions in accordance with State regulations subject to the following conditions:
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Port Louisa National Wildlife Refuge

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B. Upland Game Hunting. * * *
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3. We allow hunting in designated areas on the Horseshoe Bend Division from September 1 until September 14 and from December 1 until February 28. We allow spring turkey hunting.
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C. Big Game Hunting. We allow hunting of white-tailed deer only on Big Timber Division and in designated areas on Horseshoe Bend Division in accordance with State regulations subject to the following conditions:
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D. Sport Fishing. * * *
* * * * *

3. We close the following Divisions to all public access: Louisa Division—September 14 until January 1; Horseshoe Bend Division—September 14 until December 1; Keithsburg Division—September 15 until January 1.
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Two Rivers National Wildlife Refuge

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D. Sport Fishing. * * *
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3. From October 15 through December 31 we close the Batchtown, Gilbert Lake, and Portage Island Divisions, and the portion of the Calhoun Division north and west of the Illinois River Road, to all public access.
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Upper Mississippi River National Wildlife and Fish Refuge

A. Migratory Game Bird Hunting.
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6. For Pools 12, 13 (excluding the Lost Mound Unit), and 14, we allow the following: hunting from boat blinds or scull boats; construction of permanent blinds from dimensional lumber (however, we prohibit use of nonbiodegradable materials such as metal, plastic, or fiberglass); and use of local, native-only species such as willow, cattail, bulrush, lotus, arrowhead vegetation, and dead wood on the ground for blind building and camouflage. We prohibit bringing nonnative species (alive or dead) onto the refuge and cutting or removing any other trees or vegetation (see § 27.51 of this chapter). Hunters must place an identification card with name, address,

and telephone number inside the permanent blind. Blinds not occupied by 1 hour before legal sunrise are available on a first-come, first-served basis.

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■ 12. Amend § 32.33 Indiana by:
■ a. Revising paragraphs B., C., and D. of Muscatatuck National Wildlife Refuge; and
■ b. Revising paragraph B.1., adding paragraph C.3., and revising the introductory text of paragraph D. and paragraph D.1. of Patoka River National Wildlife Refuge and Management Area to read as follows:

§ 32.33 Indiana.

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Muscatatuck National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of wild turkey, quail, squirrel, and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. For wild turkey hunting, we require a refuge permit.

2. We prohibit discharge of firearms within 100 yards (90 m) of an occupied dwelling.

3. Shotgun hunters may possess only approved nontoxic shot on the refuge (see § 32.2(k)).

4. We allow the use of hunting dogs for hunting rabbit and quail only.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge during the State archery and muzzleloader seasons in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit during the State muzzleloader season.

2. We only allow bow and arrow and muzzleloaders, except that hunters with a State handicapped hunting permit may use crossbows.

3. We prohibit the construction and use of permanent blinds, platforms, or ladders (see § 27.92 of this chapter).

4. Condition B2 applies.

5. We allow access to the refuge during posted hours during refuge deer hunts.

6. Hunters may only take one deer per day from the refuge.

7. We allow only permitted muzzleloader hunters during the State muzzleloader season.

8. We allow archery hunting during the refuge-designated seasons.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit the use of boats and belly boats on all refuge waters except for Stanfield Lake and Richart Lake.

2. We only allow fishing with rod and reel or pole and line.

3. We allow fishing from legal sunrise to legal sunset.

4. We prohibit harvesting of frogs and turtles (see § 27.21 of this chapter).

Patoka River National Wildlife Refuge and Management Area

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B. Upland Game Hunting. * * *

1. You may only possess approved nontoxic shot while hunting on the refuge (see § 32.3(k)).

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C. Big Game Hunting. * * *

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3. We prohibit marking trails with tape, ribbons, paper, paint, tacks, tree blazes, or other devices.

D. Sport Fishing. We allow sport fishing in accordance with State regulations on the main channel of the Patoka River, but all other refuge waters are subject to the following conditions:

1. We allow fishing from legal sunrise to legal sunset.

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■ 13. Amend § 32.34 Iowa by removing paragraph B.1., redesignating paragraphs B.2. through B.4. as paragraphs B.1. through B.3., and adding a new paragraph B.4. of Neal Smith National Wildlife Refuge to read as follows:

§ 32.34 Iowa.

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Neal Smith National Wildlife Refuge

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B. Upland Game Hunting. * * *

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4. We prohibit shooting on or over any refuge road within 50 feet (15 m) from the centerline.

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■ 14. Amend § 32.36 Kentucky by:
■ a. Revising Clarks River National Wildlife Refuge; and
■ b. Revising paragraph C.1., and removing paragraph C.5. of Reelfoot National Wildlife Refuge to read as follows:

§ 32.36 Kentucky.

* * * * *

Clarks River National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of mourning dove, woodcock, common snipe, Canada and snow goose, coot, and waterfowl listed in 50 CFR 10.13 under DUCKS on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge is a day-use area only, with the exception of legal hunting/fishing activities.

2. We prohibit the use of motorized off-road vehicles (e.g., ATVs) on the refuge (see § 27.31(f) of this chapter).

3. We prohibit target practice with any weapon or nonhunting discharge of firearms (see § 27.42 of this chapter).

4. We prohibit the use of horses and mules on refuge property during the State muzzleloader and modern gun deer hunts. We allow horseback riding on refuge roads and portions of the abandoned railroad tracks owned by the refuge for access purposes while engaged in wildlife activities. We prohibit horses and mules off these secondary access routes for any reason.

5. You must possess and carry a valid refuge permit while hunting and/or fishing on the refuge.

6. To retrieve or track game from a posted closed area of the refuge, the hunter must first request permission from the refuge manager at 270–527–5770 or the law enforcement officer at 270–703–2836.

7. We prohibit the use of flagging tape, reflective tacks, or nonbiodegradable devices used to identify paths to and mark tree stands, blinds, and other areas.

8. We close those portions of abandoned railroad tracks within the refuge boundary to vehicle access (see § 27.31 of this chapter).

9. We prohibit discharge of firearms or carrying loaded firearms on or within 100 feet (90 m) of any home, the abandoned railroad tracks, graveled roads, and hiking trails.

10. We prohibit possession and/or use of herbicides (see § 27.51 of this chapter).

11. We prohibit possession or use of alcoholic beverages while hunting (see § 32.2(j)).

12. We prohibit the use of electronic calls *with the exception for taking crow during crow season.*

13. An adult, age 21 or older, must supervise all youth hunters, age 15 and under. Youth hunters must remain in sight and normal voice contact with the adult. On small game hunts, the adult may supervise no more than two youths; on big game hunts, the adult may supervise no more than one youth.

14. All persons born after January 1, 1975 must possess a valid hunter education card while hunting.

15. Waterfowl hunters must pick up decoys and equipment (see §§ 27.93 and 27.94 of this chapter), unload firearms (see § 27.42(b) of this chapter), and be

out of the field by 2 p.m. daily during the State waterfowl season.

16. You may only use portable or temporary blinds that must be removed (see §§ 27.93 and 27.94 of this chapter) from the refuge daily.

17. We close, as posted, the Sharpe-Elva Water Management Unit from November 1 through March 15 to all entry with the exception of drawn permit holders and their guests.

18. We only allow waterfowl hunting on the Sharpe-Elva Water Management Unit on specified Saturdays and Sundays during the State waterfowl season. We only allow hunting by individuals in possession of a refuge draw permit and their guests. State regulations and the following conditions apply:

i. Application procedures and eligibility requirements are available from the refuge office.

ii. We allow permit holders and up to three guests to hunt their assigned provided blind on the designated date. We prohibit guests in the blind without the attendance of the permit holder.

iii. We prohibit selling, trading, or bartering of permits. This permit is nontransferable.

iv. You may place decoys out Saturday morning at the beginning of the hunt, and you must remove them by Sunday at the close of the hunt (see §§ 27.93 and 27.94 of this chapter).

v. We prohibit watercraft in the Sharpe-Elva Water Management Unit, except for drawn permit holders to access their assigned blinds and retrieve downed birds as needed.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, quail, raccoon, opossum, crow, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A14 apply.

2. We close squirrel, rabbit, and quail seasons during muzzleloader and modern gun deer hunts.

3. You may not kill or cripple a wild animal without making a reasonable effort to retrieve the animal and harvest a reasonable portion of that animal and include it in your daily bag limit.

4. You may use only rimfire rifles, pistols, shotguns, and legal archery equipment for taking upland game.

5. We prohibit possession and use of lead ammunition, except that you may use rimfire rifle and pistol lead ammunition no larger than .22 caliber for upland game hunting.

6. You may hunt coyote during any daytime refuge hunt with weapons and ammunition allowed for that hunt.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A15 and B3 apply.

2. We only allow the use of portable and climbing stands. You may place stands in the field no earlier than 2 weeks prior to the opening of deer season, and you must remove them from the field within 1 week after the season closes (see §§ 27.93 and 27.94 of this chapter). The hunter's name and address must appear on all stands left in the field.

3. You must use safety belts at all times when occupying the tree stands.

4. We prohibit organized deer drives of two or more hunters. We define "drive" as: the act of chasing, pursuing, disturbing, or otherwise directing deer so as to make animals more susceptible to harvest.

D. Sport Fishing. We allow fishing and frogging on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A15 apply.

* * * * *

Reelfoot National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Conditions B1 through B6 apply.

* * * * *

■ 15. Amend § 32.37 Louisiana by:

■ a. Revising the introductory text of paragraph A., revising paragraph A.8., adding paragraphs A.12., and A.13., revising the introductory text of paragraph B., revising paragraph B.4., and adding paragraph C.10. of Big Branch Marsh National Wildlife Refuge;

■ b. Revising paragraph A.6. of Black Bayou Lake National Wildlife Refuge;

■ c. Adding paragraphs A.9. and A.10., revising paragraph B.7., adding paragraph B.8. and B.9., revising paragraphs C.1., C.3., and C.9., and revising paragraphs D.2. and D.4., and adding paragraph D.6. of Boque Chitto National Wildlife Refuge;

■ d. Revising paragraphs A.5. and A.6. of Cameron Prairie National Wildlife Refuge;

■ e. Revising paragraphs A.1. and A.8., adding paragraphs A.21. through A.25., revising paragraphs B.1. and C.1., redesignating paragraphs C.3. through C.8. as paragraphs C.4. through C.9., adding a new paragraph C.3., revising paragraph C.4., and adding paragraphs C.9., D.10. and D.11. of Cat Island National Wildlife Refuge;

■ f. Revising paragraphs A.2. and A.4., adding paragraphs A.15. and A.16., revising paragraphs B.1. and B.8., adding paragraphs B.9. and B.10., revising paragraphs C.1., C.2., C.3., C.8., adding paragraph C.11., revising paragraph D.1., and adding paragraph D.8. of Catahoula National Wildlife Refuge;

■ g. Revising paragraph A.6. of D'Arbonne National Wildlife Refuge;

■ h. Revising paragraph A.12., adding paragraph A.13., and revising paragraph C.1. of Delta National Wildlife Refuge;

■ i. Revising paragraph A.1., adding paragraphs A.23. through A.29., revising paragraphs B.1., C.1., C.2., C.3., and C.4., adding paragraph C.9., and revising paragraphs D.1. and D.8., and adding paragraphs D.13. through D.15. of Grand Cote National Wildlife Refuge;

■ j. Revising the heading and introductory text of paragraph A., revising paragraphs A.1., A.15., A.16., adding paragraphs A.21., A.22., and A.23. revising paragraphs B.1., B.2., C.1., C.3., C.4., C.6., C.11., C.12., adding paragraphs C.15. through C.17., revising paragraph D.1., and adding paragraphs D.9. and D.10. of Lake Ophelia National Wildlife Refuge; and

■ k. Revising paragraph A.8. of Upper Ouachita National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

Big Branch Marsh National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, coot, goose, snipe, rail, and gallinule on designated areas of the refuge during the State waterfowl season in accordance with State regulations subject to the following conditions:

* * * * *

8. The refuge is open from ½ hour before legal sunrise to ½ hour after legal sunset.

* * * * *

12. Hunters may not enter the refuge before 4 a.m.

13. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, woodcock, and quail on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. Conditions A5 through A13 apply.

* * * * *

C. Big Game Hunting. * * *

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10. Conditions A5 through A13 apply.

* * * * *

Black Bayou Lake National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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6. We prohibit hunting within 150 feet (45 m) of the maintained right-of-way of roads, from or across ATV trails (see § 27.31 of this chapter). We prohibit hunting within 50 feet (15 m), or trespassing on above-ground oil or gas production facilities.

* * * * *

Boque Chitto National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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9. We allow primitive camping within 100 feet (30 m) of designated streams. These include either bank of the Boque Chitto River, Wilson Slough, and West Pearl River south of Wilson Slough, refuge lands along the East Pearl River, and Holmes Bayou.

10. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

B. Upland Game Hunting. * * *

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7. Conditions A3 (upland game hunts), and A5 through A10 apply.

8. During the refuge deer gun season, all hunters except waterfowl hunters must wear a minimum of 400 square inches (2,600 cm2) of unbroken hunter orange as the outermost layer of clothing on the chest and back, and in addition we require a hat or cap of unbroken hunter orange.

9. We allow upland game hunting during the open State season.

C. Big Game Hunting. * * *

1. Conditions A3 (one adult may only supervise one youth hunter during refuge Gun Deer Hunts), A5 through A7, A10, B5, and B8 apply.

* * * * *

3. We allow archery deer hunting during the open State archery season.

* * * * *

9. You may take hogs as incidental game while participating in the refuge archery, primitive weapon and general gun deer hunts only. Additionally, you may take hogs typically during varying dates in January and February, and you must only take them with the aid of trained hog-hunting dogs from legal sunrise until legal sunset. During the special hog season in January and February, hunters may use pistol or rifle ammunition not larger than .22 caliber or a shotgun with nontoxic (steel, bismuth) shot to kill hogs after they have been caught by dogs.

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D. Sport Fishing. * * *

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2. Conditions A9 and B5 apply.

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4. We allow boats in the fishing ponds at the Pearl River Turnaround that do not have gasoline-powered engines attached. These boats must be hand launched into the ponds.

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6. We allow trotlines but the last five feet of trotline must be 100% cotton.

* * * * *

Cameron Prairie National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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5. We allow dove hunting on designated areas during the first split of the State dove season only.

6. We allow snipe hunting on designated areas for the remaining portion of the State snipe season following closure of the State Ducks and Coots season in the West Zone.

* * * * *

Cat Island National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We require hunters and anglers age 16 and older to purchase and carry a signed refuge special recreational activity permit.

* * * * *

8. You must report all harvest game at the refuge check station upon leaving the refuge.

* * * * *

21. We prohibit accessing refuge property by boat from the Mississippi River.

22. Persons using the refuge are subject to inspection of permits, licenses, hunting equipment, bag limits, and boats and vehicles by law enforcement officers.

23. We allow nonmotorized or electric-powered boats only.

24. We prohibit trapping.

25. We prohibit the possession of saws, saw blades, or machetes.

B. Upland Game Hunting. * * *

1. Conditions A1 through A17, A19, A21, and A22 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A17, A19, and A21 through A22 apply.

* * * * *

3. There will be two or three lottery gun hunts (muzzleloader/rifle) in November and December (see refuge brochure for details). We will set hunt dates in July, and we will accept applications from August 1 through August 31. Applicants may apply for more than one hunt. There is a $5 application fee per person for each hunt application and a $15 per person permit for each successful applicant. We will notify successful applicants by September 5.

4. We allow only portable deer stands. Hunters may erect stands 2 days before the beginning of the refuge archery season and must remove them the last day of the State archery season (see § 27.93 of this chapter).

5. We prohibit the use of dogs to trail wounded deer or hogs.

* * * * *

9. We prohibit driving or screwing nails, spikes, or other metal objects into trees or hunting from any tree into which such an object has been driven (see § 32.2(i)).

D. Sport Fishing. * * *

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10. We prohibit boat launching by trailer from all refuge roads and parking lots.

11. We prohibit the harvest of frogs or turtles (see § 27.21 of this chapter).

Catahoula National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

2. We allow goose, duck, and coot hunting on the Bushley Bayou Unit on Tuesdays, Thursdays, Saturdays, and Sundays only from ½ hour before legal sunrise until 12 p.m. (noon) during the State season.

* * * * *

4. We allow ATVs on ATV trails (see § 27.31 of this chapter) designated on the refuge hunt/fish permit from September 1 through the end of rabbit season. We open Bushley Creek, Black Lake, Boggy Bayou, Round Lake, Dempsey Lake Roads, and that portion of Minnow Ponds Road at Highway 8 to Green's Creek Road and then south to Green's Creek Bridget to ATVs year-round. We prohibit the use of an ATV on graveled roads designated for motor vehicle traffic unless otherwise posted. We only allow ATVs for wildlife-dependent activities. We define an ATV

as an off-road vehicle (not legal for highway use) with factory specifications not to exceed the following: weight 750 lbs. (337.5 kg), length 85 inches (212.5 cm), and width 48 inches (120 cm). We restrict ATV tires to those no larger than 25 × 12 with a maximum 1 inch (2.5 cm) lug height and a maximum allowable tire pressure of 7 psi as indicated on the tire by the manufacturer.

* * * * *

15. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds. We only allow dogs after the last deer-muzzleloader hunt, except when we allow them for waterfowl hunting throughout the entire refuge waterfowl season.

16. We prohibit camping or parking overnight on the refuge.

B. Upland Game Hunting. * * *

1. Conditions A1, A4 (at the Bushley Bayou Unit), A7 through A14, and A16 apply.

* * * * *

8. At the Headquarters Unit, we close upland game hunting during high water conditions with an elevation of 42 feet (12.6 m) or above as measured at the Corps of Engineers center of the lake gauge on Catahoula Lake. At the Bushley Bayou Unit, we close upland game hunting during high water conditions with an elevation of 44 feet (13.2 m) or above as measured at the Corps of Engineers center of the lake gauge on Catahoula Lake.

9. On the Bushley Bayou Unit we allow the use of dogs to hunt squirrel, rabbit, and raccoon only after the last deer-muzzleloader hunt.

10. Dog owners must place their names and phone numbers on the collars of all of their dogs.

C. Big Game Hunting. * * *

1. Conditions A1, A4 (at the Bushley Bayou Unit), A7 through A9, A12 through A14, A16, and B4 through B8 (big game hunting) apply.

2. At the Bushley Bayou Unit, we allow deer-archery hunting during the State archery season, except when closed during deer-gun and deer-muzzleloader hunts. We allow either-sex, deer-muzzleloader hunting during the first segment of the State season for Area 1, weekdays only (Monday through Friday) and the third weekend after Thanksgiving Day. We allow either-sex, deer-gun hunting for the Friday, Saturday, and Sunday immediately following Thanksgiving Day and for the second weekend following Thanksgiving Day.

3. At the Headquarters Unit, we allow deer-archery hunting during the State archery season, except when closed during the deer-gun hunt south of the French Fork of the Little River. We allow either-sex, deer-gun hunting on the fourth weekend after Thanksgiving Day on the area south of the French Fork of the Little River.

* * * * *

8. We prohibit the use of organized drives for taking or attempting to take game or using pursuit dogs.

* * * * *

11. We prohibit the use of dogs to trail wounded deer.

D. Sport Fishing. * * *

1. Conditions A4 (at the Bushley Bayou Unit), A7, A9, A13 (as a fishing guide), A14, A16, B5, and B7 apply.

* * * * *

8. We prohibit bank fishing on Bushley Creek and fishing in Black Lake, Dempsey Lake, Long Lake, Rhinehart Lake, and round Lake, during deer-gun and muzzleloader hunts. We prohibit fishing in Black Lake, Dempsey Lake, Long Lake, Rhinehart Lake, and Round Lake during waterfowl hunts.

D'Arbonne National Wildlife Refuge

A. Migratory Game Bird Hunting.

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6. We prohibit hunting within 150 feet (45 m) of the maintained right-of-way roads, from or across ATV trails (see § 27.31 of this chapter). We prohibit hunting within 50 feet (15 m) or trespassing on above-ground oil or gas production facilities.

* * * * *

Delta National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

* * * * *

12. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of weather such payment is for guiding, outfitting, lodging, or club membership.

13. We open the refuge from ½ hour before legal sunrise to ½ hour after legal sunset, with the exception that hunters may enter the refuge earlier, but not before 4 a.m. Condition A10 applies.

* * * * *

C. Big Game Hunting. * * *

1. For archery hunting of deer and hogs, conditions A4 through A13 apply. For A11 each adult may supervise no more than one youth hunter during big game hunting.

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Grand Cote National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. We require hunters and anglers age 16 and older to purchase and carry a signed refuge special recreational activity permit.

* * * * *

23. There will be space-blind waterfowl hunts on designated sections of the refuge during the regular State waterfowl season (see refuge brochure for details). Hunt dates will be Wednesdays and Saturdays until 12 p.m. (noon). There will be a random drawing on each hunt day to select participants. The drawing for each hunt day will be approximately 2 hours before legal sunrise. We will limit blinds to three persons. We will set hunt dates in September, subject to water availability, after the State sets the season.

24. There will youth-only lottery waterfowl hunts on designated sections of the refuge during the regular State waterfowl season (see refuge brochure for details). We will determine hunt dates after the State sets the waterfowl season and limit the hunts to no more than five per season. We will accept applications from November 1 through November 21. We will notify successful applicants by mail.

25. There may be special youth, women, and disabled hunter dove hunts (subject to cropland availability) during the regular State dove season (see refuge brochure for details). We will determine hunt dates after the State sets the season. We will determine the number of hunt days and participants by location of available cropland. We will accept applications from July 1 through July 31, and we may only select individuals for one hunt date. We will notify successful applicants by mail.

26. Individuals utilizing the refuge are subject to inspections of permits, licenses, hunting equipment, bag limits, and boats and vehicles by law enforcement officers.

27. We allow nonmotorized or electric-powered boats only.

28. We prohibit the possession of saws, saw blades, or machetes.

29. We prohibit trapping.

B. Upland Game Hunting. * * *

1. Conditions A1 through A16, A20, and A26 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A16, A20, and A26 apply.

2. We allow archery-only deer hunting on certain sections of the refuge from October 1 through November 30 (see refuge brochure for details).

3. We allow only portable deer stands (see §§ 27.93 and 27.94 of this chapter). Deer stands must have the owner's name, address, and phone number clearly printed on the stand.

4. We prohibit hunters to drive deer or to use pursuit dogs. We prohibit the use of dogs to trail wounded deer or hogs.

* * * * *

9. We prohibit driving or screwing nails, spikes, or other metal objects into trees or hunting from any tree into which such an object has been driven (see § 32.2(i)).

D. Sport Fishing. * * *

1. Conditions A11, A26, C7, and C8 apply

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8. You may harvest 100 lbs. (45 kg) of crawfish per person per day.

* * * * *

13. We prohibit the harvest of frogs or turtles (see § 27.21 of this chapter).

14. We only allow bank fishing in Coulee des Grues along Little California Road.

15. We prohibit launching boats, put or placed, in Coulee des Grues from refuge property.

* * * * *

Lake Ophelia National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, coot, woodcock, snipe, and mourning dove on designated areas of the refuge, as shown in the refuge hunting brochure map, in accordance with State regulations subject to the following conditions:

1. We require hunters and anglers age 16 and older to purchase and carry a signed refuge special recreational activity permit.

* * * * *

15. We allow motors up to 25 hp in Possum Bayou (north of Boat Ramp), Palmetto Bayou, Westcut Lake, Pt. Basse, and Nicholas Lake.

16. We allow electric-powered or nonmotorized boats in Dooms Lake, Lake Long, and Possum Bayou (south of Boat Ramp).

* * * * *

21. We will allow incidental take of mourning dove while migratory bird hunting on days open to waterfowl hunting.

22. Persons using the refuge are subject to inspections of permits, licenses, hunting equipment, bag limits, boats, and vehicles by law enforcement officers.

23. We prohibit trapping.

B. Upland Game Hunting. * * *

1. Conditions A1 through A16, A19, and A22 apply.

2. We allow squirrel and rabbit hunting in Hunt Unit 2B from the opening of the State season through December 15.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A3, A5 through A16, A19, and A22 apply.

* * * * *

3. We allow archery hunting from November 15 through January 1 and January 23 to the end of the State archery season except during the youth and muzzleloader deer hunts when we prohibit archery hunting.

4. We allow archery deer hunting in Hunt Units 1B and 2B from November 15 through December 15.

* * * * *

6. We allow only portable deer stands. Hunters may erect deer stands 2 days before the beginning of the refuge archery season and must remove them the last day of the State archery season.

* * * * *

11. We allow electric-powered or nonmotorized boats in Lake Ophelia from November 1 through December 15.

12. You may kill one deer of either sex per day during the first refuge archery season, and you may kill antlered bucks only during the second refuge archery season.

* * * * *

15. There will be three lottery muzzleloader hunts (see refuge brochure for details). We will set hunt dates in July, and we will accept applications from August 1 through August 31. Applicants may NOT apply for more than one hunt. There is a $5 nonrefundable application fee per person for each hunt application and a $15 per person permit for each successful applicant. We will notify successful applicants by September 15.

16. There will be two lottery deer hunts for youth ages 12 to 15 (see refuge brochure for details). We will set hunt dates in July, and we will accept applications from November 1 through November 21. We will provide blinds. We will require successful applicants to pass a shooting proficiency test in order to qualify for the hunt. We will notify successful applicants by mail.

17. We prohibit driving or screwing nails, spikes, or other metal objects into trees or hunting from any tree in which such an object has been driven (see § 32.2(i)).

D. Sport Fishing. * * *

1. Conditions A1, A3, A5 through A9, A17, A19 (remove boats [see § 27.93 of this chapter]) and A22 apply.

* * * * *

9. We prohibit the harvest of frogs or turtles (see § 27.21 of this chapter).

10. We prohibit crawfishing.

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Upper Ouachita National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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8. We prohibit hunting within 150 feet (45 m) of the maintained right-of-way of roads and from or across ATV trails (see § 27.31 of this chapter). We prohibit hunting within 50 feet (15 m) or trespassing on above-ground oil or gas production facilities.

* * * * *

■ 16. Amend § 32.38 Maine by:

■ a. Revising paragraphs A., B., and C. of Moosehorn National Wildlife Refuge;

■ b. Revising the introductory text of paragraph A., revising paragraphs A.5. and A.6., and adding paragraphs A.7. and A.8., revising paragraph B., revising paragraphs C.1., C.3, C.5., C.6., C.7., C.8., and adding paragraph C.9., and revising paragraph D. of Rachel Carson National Wildlife Refuge; and

■ c. Revising Sunkhaze Meadows National Wildlife Refuge to read as follows:

§ 32.38 Maine.

* * * * *

Moosehorn National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, American woodcock, and Wilson's snipe on designated areas of the Baring and Edmunds Division of the refuge in accordance with State regulations subject to the following conditions:

1. We require every hunter to possess and carry a personally signed refuge hunting permit. Permits and regulations are available at checkpoints throughout the refuge.

2. You must complete a Hunter Information Card at a self-clearing check station after each hunt before leaving the refuge.

3. We allow hunters to enter the refuge 2 hours before legal shooting hours, and they must exit the refuge by 1 hour past legal shooting hours.

4. You may hunt American woodcock and Wilson's snipe on the Edmunds Division and that part of the Baring Division that lies west of State Route 191.

5. You may hunt waterfowl (duck and goose) in that part of the Edmunds Division that lies north of Hobart Stream and west of U.S. Route 1, and in those areas east of U.S. Route 1, and refuge lands that lie south of South Trail, and in that portion of the Baring Division that lies west of State Route 191.

6. We prohibit hunting of migratory birds in the Nat Smith Field and Marsh or Bills Hill Ponds on the Edmunds Division.

7. We prohibit construction or use of any permanent blind.

8. You may only use portable or temporary blinds.

9. You must remove portable or temporary blinds and decoys from the refuge following each day's hunt (see §§ 27.93 and 27.94 of this chapter).

10. We prohibit motorized or mechanized vehicles and equipment in designated Wilderness Areas. This includes all vehicles and items such as winches, pulleys, and wheeled game carriers. Hunters must remove animals harvested within the Wilderness Areas by hand without the aid of mechanical equipment of any type.

B. Upland Game Hunting. We allow hunting of ruffed grouse, snowshoe hare, red fox, red squirrel, gray squirrel, raccoon, skunk, and woodchuck on designated areas of the Baring and Edmunds Divisions of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, and A10 apply.

2. We allow hunters to enter the refuge ½ hour before legal shooting hours, and they must exit the refuge by ½ hour past legal shooting hours except for hunters pursuing raccoons at night.

3. During the firearms big game seasons, you must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 cm^2) of solid-colored, hunter-orange clothing or material.

4. We allow the hunting of ruffed grouse, snowshoe hare, red fox, red squirrel, gray squirrel, raccoon, skunk, and woodchuck on the Edmunds Division and that part of the Baring Division that lies west of State Route 191.

5. We prohibit hunting of upland game on refuge lands from April 1 through September 30.

6. You must register with the refuge office prior to hunting raccoon or red fox with trailing dogs.

C. Big Game Hunting. We allow hunting of black bear, bobcat, eastern coyote, moose, and white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A10, B3, and B5 apply.

2. We allow hunters to enter the refuge ½ hour before legal shooting hours, and they must exit the refuge by ½ hour past legal shooting hours, except for hunters pursuing eastern coyotes at night.

3. We allow bear hunting from October 1 to the end of the State Prescribed Season.

4. We allow eastern coyote hunting from October 1 to March 31 annually.

5. If you harvest a bear, deer, or moose on the refuge, you must notify the refuge office in person or by phone within 24 hours and make the animal available for inspection by refuge personnel.

6. We prohibit construction or use of permanent tree stands, blinds, or ladders.

7. You must use only portable tree stands, blinds, and ladders.

8. You must clearly label any tree stand, blind, or ladder left on the refuge overnight with your name, address, phone number, and hunting license number.

9. You must remove all tree stands, blinds, and ladders from the refuge on the last day of the muzzleloader deer season (see §§ 27.93 and 27.94 of this chapter).

10. You may hunt black bear, eastern coyote, and white-tailed deer during the State archery and firearms deer seasons on that part of the Baring Division that lies east of State Route 191.

11. You may hunt black bear, bobcat, eastern coyote, moose, and white-tailed deer on the Edmunds Division and that part of the Baring Division that lies west of State Route 191.

12. You may only use a long, recurve, or compound bow to hunt during the archery deer season, and a muzzleloader to hunt during the deer muzzleloader season on that part of the refuge that lies east of Route 191.

13. You must register with the refuge office prior to hunting black bear, bobcat, or eastern coyote with trailing dogs.

14. We prohibit hunting in the following areas:

i. The South Magurrewock Area: The boundary of this area begins at the intersection of the Charlotte Road and U.S. Route 1; it follows the Charlotte Road in a southerly direction to a point just south of the fishing pier and observation blind, where it turns in an easterly direction, crossing the East Branch of the Magurrewock Stream, and proceeds in a northerly direction along the upland edge of the Upper and Middle Magurrewock Marshes to U.S. Route 1 where it follows Route 1 in a southerly direction to the point of origin.

ii. The North Magurrewock Area: The boundary of this area begins where the northern exterior boundary of the refuge and Route 1 intersect; it follows the boundary line in a westerly direction to the railroad grade where it follows the main railroad grade and refuge boundary in a southwest direction to the upland edge of the Lower Barn Meadow Marsh; it then follows the upland edge of the marsh in an easterly direction to U.S. Route 1, where it follows Route 1 to the point of origin.

iii. The posted safety zone around the refuge headquarters complex: The boundary of this area starts where the southerly edge of the Horse Pasture Field intersects with the Charlotte Road. The boundary follows the southern edge of the Horse Pasture Field, across the abandoned Maine Central Railroad grade, where it intersects with the North Fireline Road. It follows the North Fireline Road to a point near the northwest corner of the Lane Construction Tract. The line then proceeds along a cleared and marked trail in a northwesterly direction to the Barn Meadow Road. It proceeds south along the Barn Meadow Road to the intersection with the South Fireline Road, where it follows the South Fireline Road across the Headquarters Road to the intersection with the Mile Bridge Road. It then follows the Mile Bridge Road in a southerly direction to the intersection with the Lunn Road, then along the Lunn Road leaving the road in an easterly direction at the site of the old crossing, across the abandoned Maine Central Railroad grade to the Charlotte Road (directly across from the Moosehorn Ridge Road gate). The line follows the Charlotte Road in a northerly direction to the point of origin.

iv. The Southern Gravel Pit: The boundary of this area starts at a point where Cranberry Brook crosses the Charlotte Road and proceeds south along the Charlotte Road to the Barin/Charlotte Town Line, east along the Town Line to a point where it intersects the railroad grade where it turns in a northerly direction, and follows the railroad grade to Cranberry Brook, following Cranbettery Brook in a westerly direction to the point of origin.

* * * * *

Rachel Carson National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, coot, woodcock, and snipe in accordance with State regulations on designated areas of the Brave Boat Harbor, Lower Wells, Upper Wells, Mousam River, Goose Rocks, and Spurwink River Divisions of the refuge subject to the following conditions:

* * * * *

5. You may use seasonal blinds with a Special Use Permit. A permitted seasonal blind is available to permitted hunters on a first-come, first-served

basis. The permit holder for the blind is responsible for the removal of the blind at the end of the season and compliance with all conditions of the Special Use Permit. You must remove temporary blinds, decoys, and boats from the refuge each day (see §§ 27.93 and 27.94 of this chapter).

6. We open the refuge to hunting during the hours stipulated by State regulations but no longer than ½ hour before legal sunrise to ½ hour after legal sunset. We close the refuge to night hunting. You must unload all firearms (see § 27.42(b) of this chapter) outside of legal hunting hours.

7. We prohibit all-terrain vehicles (ATVs or OHRVs) (see § 27.31(f) of this chapter).

8. We close the Moody, Little River, Biddeford Pool, and Goosefare Brook divisions of the refuge to all migratory bird hunting.

B. Upland Game Hunting. We allow hunting of pheasant and grouse on designated areas of the Brave Boat Harbor, Lower Wells, Upper Wells, Mousam River, Goose Rocks, Goosefare Brook, and Spurwink River division of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A6, and A7 apply.

2. You may take pheasant and grouse by falconry during State seasons.

3. You may only possess approved nontoxic shot (see § 32.2(k)) while on the refuge.

4. We close the Moody, Little River, and Biddeford Pool division of the refuge to all upland game hunting.

C. Big Game Hunting. * * *

1. Conditions A1, A6, and A7 apply.

* * * * *

3. You must use only portable tree stands and ladders. We prohibit use of nails, screws, or bolts to attach tree stands and ladders to trees (see § 32.2(i)). You must remove tree stands and ladders from the refuge following each day (see §§ 27.93 and 27.94 of this chapter).

* * * * *

5. We close the Moody and Biddeford Pool divisions of the refuge to white-tailed deer hunting.

6. We only allow archery on those areas of the Little River division open to hunting.

7. You may hunt fox and coyote with archery or shotgun during daylight hours of the State firearm deer season only.

8. Bow hunters with refuge permits may apply for the special "Wells Hunt". We must receive letters of interest by November 1 for consideration in a random drawing. Selected hunters must comply with regulations as set by the State.

9. You must report any deer harvested to the refuge office within 48 hours.

D. Sport Fishing. We allow sport fishing along the shoreline on the following designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. At the Brave Boat Harbor division on the north side (York) of the stream crossing under Route 103, beginning at Route 103 then downstream to the first railroad trestle.

2. At the Moody division on the north side of the Ogunquit River and downstream of Route 1, beginning at the refuge boundary then downstream a distance of 500 feet (150 m).

3. At the Moody division on the east side of Stevens Brook and downstream of Bourne Avenue, beginning at Bourne Avenue then downstream to where the refuge ends near Ocean Avenue.

4. At the Lower Wells division on the west side of the Webhannet River downstream of Mile Road, from Mile Road north to the first creek.

5. At the Upper Wells division on the south side of the Merriland River downstream of Skinner Mill Road, beginning at the refuge boundary and then east along the oxbow to the woods.

6. At the Mousam River division on the north side of the Mousam River downstream of Route 9, beginning at the refuge boundary and then east to a point opposite Great Hill Road. Access is from the Bridle Path along the first tidal creek.

7. At the Goosefare Brook division on the south side of Goosefare Brook where it flows into the Atlantic Ocean.

8. At the Spurwink River division on the west side (Scarborough) of the Spurwink River upstream of Route 77, beginning at Route 77 and then upstream approximately 1,000 feet (300 m) to a point near the fork in the river.

9. You may launch boats from car top from legal sunrise to legal sunset at Brave Boat Harbor division on Chauncey Creek at the intersection of Cutts Island Road and Sea Point Road.

10. We allow car-top launching from legal sunrise to legal sunset at Spurwink River division on the upstream side of Route 77 at the old road crossing.

11. We allow fishing from legal sunrise to legal sunset.

12. We prohibit lead jigs and sinkers.

13. Anglers must attend their lines at all times.

14. We prohibit collection of bait on the refuge.

Sunkhaze Meadows National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following condition: You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

C. Big Game Hunting. We allow hunting of deer, moose, and bear on designated areas of the refuge in accordance with State regulations subject to the following condition: You must wear, in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 cm^2) of solid-colored hunter-orange clothing or material during firearms big game season.

D. *Sport Fishing.* We allow sport fishing on the waters of and from the banks of Baker Brook, Birch Stream, Buzzy Brook, Dudley Brook, Johnson Brook, Little Birch Stream, Little Buzzy Brook, Sandy Stream, and Sunkhaze Stream.

■ 17. Amend § 32.39 Maryland by revising Patuxent Research Refuge to read as follows:

§ 32.39 Maryland.

* * * * *

Patuxent Research Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, and dove on the North Tract in accordance with State regulations subject to the following conditions:

1. We require a fee-hunting permit.

2. We require hunters age 17 and under to have a parent or guardian countersign to receive a hunting permit. An adult, age 21 or older, possessing a hunting permit, must accompany hunters age 16 and younger in the field.

3. You must check-in and out at the Hunter Control Station (HCS) and exchange your hunting permit for a daily hunting pass and a vehicle pass every time you enter or exit the refuge, including breaks, lunch, and dinner.

4. We restrict hunters to the selected area and activity until you check out at the HCS.

5. You must use established and maintained roads and not block traffic (see § 27.31(h) of this chapter).

6. We prohibit hunting on or across any road, within 50 yards (45 m) of a road, within 150 yards (135 m) of any occupied structure, or within 25 yards (22.5 m) from any designated "No Hunting" area. Only those with a State "Hunt from a Vehicle Permit" may hunt from the roadside at designated areas.

7. You must wear at least a fluorescent-orange hat or cap when

walking from your vehicle to your hunting site. "Jump Shooters" must wear at least a fluorescent-orange hat or cap while hunting. If you stop and stand, you may replace the orange hat or cap with a camouflage one.

8. You may only carry one shotgun, 20 gauge or larger, in the field. We prohibit additional firearms.

9. We only allow the taking of Canada goose during the special September and late season for a resident Canada goose.

10. We prohibit hunting of goose, duck, or dove during the deer firearm seasons and the early deer muzzleloader seasons that occur in October.

11. We prohibit dove hunting during any deer muzzleloader or firearms seasons.

12. We require waterfowl hunters to use retrievers on any impounded waters. Retrievers must be of the traditional breeds, such as Chesapeake Bay, Golden, Labrador, etc.

13. We require dogs to be under the immediate control of their owner at all times. Law enforcement officers may seize dogs running loose or unattended (see § 26.21(b) of this chapter).

B. Upland Game Hunting. We allow hunting of turkey, bobwhite quail, grey squirrel, eastern cottontail rabbit, and woodchuck on the North Tract and turkey on the Central Tract in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A6 apply.

2. You must wear a minimum of 400 square inches (2,600 cm^2) of fluorescent orange on your head, chest, and back while hunting upland game except for turkey hunting. We encourage turkey hunters to wear fluorescent orange.

3. We prohibit hunting of upland game during the firearms and muzzleloader seasons.

4. We select turkey hunters by a computerized lottery for youth, disabled, mobility impaired, and general public hunts. We require documentation for disabled and mobility-impaired hunters.

5. We require each turkey hunter to attend a turkey clinic sponsored by the National Wild Turkey Federation.

6. We require turkey hunters to pattern their weapons prior to hunting.

C. Big Game Hunting. We allow hunting of white-tailed deer in accordance with State regulations subject to the following conditions:

1. We require you to pass a proficiency test with each weapon that you desire to use prior to issuing you a hunting permit.

2. Conditions A1 through A6 apply.

3. You must wear a minimum of 400 square inches (2,600 cm^2) of fluorescent orange on your head, chest, and back while hunting. Bow hunters must follow this requirement when moving to and from the deer stand and while tracking. We do not require bow hunters to wear the fluorescent orange when positioning to hunt except during the deer muzzleloader season.

4. We will extract a jaw from each deer harvested before leaving the refuge.

5. We publish the Refuge Hunting Regulations, which include the daily and yearly bag limits and hunting dates for the North, Central, and South Tracts, in July. We give hunters a copy of the regulations with the fee permit, and they must know the specific hunt seasons and regulations.

6. You must use portable tree stands equipped with a safety belt. You must wear the safety belt while in the tree stand. The stand must be at least 10 feet (3 m) off the ground. You must remove tree stands daily from the refuge (see § 27.93 of this chapter). Hunters must use deer stands to hunt the South and Central Tracts. (We will make limited accommodations for disabled hunters for Central Tract lottery hunts.)

7. We prohibit the firing of weapons after legal shooting hours, including the unloading of muzzleloaders.

8. We prohibit use of dogs to hunt or track wounded deer.

9. If you wish to track wounded deer beyond 1½ hours after legal sunset, you must report in person to the HCS. If you are hunting on the refuge's South or Central Tracts, you must call the HCS. The HCS manager will call a refuge law enforcement officer to gain consent to track. We prohibit tracking later than 2½ hours after legal sunset. We may revoke your hunting privileges if you wound a deer and do not make a reasonable effort to retrieve it. This may include next-day tracking.

10. North Tract: We allow shotgun, muzzleloader, and bow hunting in accordance with the following conditions:

i. Conditions C1 through C9 apply.

11. Central Tract: We allow shotgun and bow hunting in accordance with the following conditions:

i. Conditions C1 through C9 apply.

ii. We only allow bow hunters to hunt on the Schafer Farm.

iii. We select Central Tract shotgun and bow hunters by a computerized lottery. You will be assigned a specific hunting location.

iv. You must carry a flashlight, whistle, and a compass while hunting.

12. South Tract: We allow shotgun, muzzleloader, and bow hunting in accordance with the following regulations:

i. Conditions C1 through C9 and C11iv apply.

ii. You must access South Tract hunting areas A, B, and C off Springfield Road through the Old Beltsville Airport, and South Tract hunting area D off Maryland Route 197 through Gate #4 and park in designated parking areas.

iii. We prohibit shooting into any open meadow or field area.

iv. We prohibit parking along the National Wildlife Visitor Center road or in the visitor center parking lot.

D. Sport Fishing. We allow sport fishing in accordance with State regulations subject to the following conditions:

1. We require a free refuge fishing permit, which you must carry with you at all times while fishing. Organized groups may request a group permit. The group leader must carry a copy of the permit and stay with the group at all times while fishing.

2. You may take one additional licensed adult or two youths age 15 or under to fish under your permit and in your presence.

3. You may only use earthworms for live bait.

4. We prohibit harvesting bait on the refuge.

5. You must attend all fishing lines.

6. We prohibit fishing from all bridges except the south side of Bailey Bridge.

7. You may take the following species: Chain pickerel, catfish, golden shiner, eel, and sunfish (includes bluegill, black crappie, warmouth, and pumpkinseed).

8. You must catch and release all bass.

9. North Tract: We allow sport fishing in accordance with the following conditions:

i. We allow sport fishing at Lake Allen, Rieve's Pond, New Marsh, Cattail Pond, Bailey Bridge Pond, Bailey Bridge (south side), and Little Patuxent River (downstream only from Bailey's Bridge).

ii. Conditions D1 through D8 apply.

iii. We require a free North Tract refuge access permit that you must possess and carry at all times. If you are age 17 or under, you must have a parent or guardian countersign to receive an access permit. A parent or legal guardian must accompany those anglers age 17 and under.

iv. You may fish year-round at Lake Allen, New Marsh, Cattail Pond, Bailey Bridge Pond, Bailey Bridge (south side), and the Little Patuxent River (downstream only from Bailey Bridge) except during the white-tailed deer muzzleloader and shotgun seasons and the waterfowl hunting season. We also reserve the right to close Lake Allen at any time.

v. You may fish at Rieve's Pond from February 1 to August 31 and on Sundays from September 1 to January 31.

vi. We allow wading, for fishing purposes only, downstream from Bailey Bridge on the Little Patuxent River. We prohibit wading in other bodies of water.

vii. We prohibit the use of any type of watercraft.

10. South Tract: We allow sport fishing in accordance with the following conditions:

i. Conditions D1 through D8 apply.

ii. You must park your vehicle in the parking lot located behind Refuge Gate #8 off Maryland Route 197.

iii. You must display your fishing permit on your vehicle dashboard.

iv. We allow sport fishing at the pier and designated shorelines at Cash Lake. See Refuge Fishing Regulations for areas opened to fishing. We post other areas with "No fishing beyond this point".

v. You may fish from mid-June until mid-October.

vi. You may fish between the hours of 6 a.m. until legal sunset. We open refuge trails from legal sunrise until 5:30 p.m. daily.

vii. We prohibit boat trailers.

viii. You may use watercraft for fishing in accordance with the State boating laws subject to the following conditions: You may use car-top boats 14 feet (4.2 m) or less, canoes, kayaks, and inflatable boats. You may only use electric motors, 4 hp or less. We prohibit sailboats.

■ 18. Amend § 32.40 Massachusetts by:

■ a. Adding Assabet River National Wildlife Refuge;

■ b. Adding Great Meadows National Wildlife Refuge; and

■ c. Revising Oxbow National Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

* * * * *

Assabet River National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of woodcock on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. We allow woodcock hunting within the portions of the refuge located north of Hudson Road, except those areas north of Hudson Road that are designated as "archery only" hunting on the current refuge hunting map. These archery only hunting areas north of Hudson Road are those portions of the refuge that are external to Patrol Road from its southerly intersection with White Pond Road, northwesterly and then easterly, to its intersection with Old Marlborough Road.

2. We require refuge permits.

3. You must possess and carry all applicable hunting licenses, permits, stamps, and a photographic identification while hunting on the refuge.

4. We prohibit use of motorized vehicles on the refuge. The refuge will provide designated parking areas for hunters. Consult the refuge manager for further details.

5. During any season when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters to wear a minimum of 500 square inches (3,250 cm^2) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head. During all other times, if you are engaged in woodcock hunting on the refuge, you must wear a minimum of a solid-orange hat.

6. We prohibit the use of electronic calls during any hunting season.

7. We prohibit trimming or cutting of branches larger than the diameter of a quarter (see § 27.61 of this chapter).

8. We prohibit the marking any tree or other refuge feature with flagging, paint, reflective material, or any other substance (see § 27.61 of this chapter).

9. You may scout hunting areas on the refuge once you have obtained a refuge permit. Scouting may begin no earlier than 1 month from the opening day of the hunting season. We prohibit the use of dogs during scouting.

10. We allow hunters to enter the refuge 1½ hours before legal hunting hours, and they must leave the refuge no later than 1½ hours after legal sunset.

11. For seasons wherein State regulations allow use of dogs, we allow no more than two dogs per hunting party. We prohibit the training of dogs on the refuge.

B. Upland Game Hunting. We allow upland game hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow shotgun hunting for ruffed grouse, cottontail rabbit, and gray squirrel within those portions of the refuge located north of Hudson Road, except those areas north of Hudson Road designated as "archery only" hunting on the current refuge hunting map. These archery only hunting areas north of Hudson Road are those portions of the refuge that are external to Patrol Road from its southerly intersection with White Pond Road, northwesterly and then easterly, to its intersection with Old Marlborough Road.

2. Conditions A2, A3, A4, A6, A7, A8, A9, A10, and A11 apply.

3. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

4. We prohibit construction or use of any permanent structure while hunting on the refuge. You must remove all temporary blinds each day (see §§ 27.93 and 27.94 of this chapter).

5. During seasons when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters, including archers and small game hunters, to wear a minimum of 500 square inches (3,250 cm^2) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head. During all other times, if you are engaged in ruffed grouse, squirrel, or cottontail rabbit hunting on the refuge, you must wear a minimum of a solid-orange hat.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow shotgun and muzzleloader hunting of white-tailed deer, as well as shotgun hunting of turkey, within the portions of the refuge located north of Hudson Road, except those areas north of Hudson Road that are designated as "archery only" hunting on the current refuge hunting map. These archery only hunting areas north of Hudson Road are those portions of the refuge that are external to Patrol Road from its southerly intersection with White Pond Road, northwesterly and then easterly, to its intersection with Old Marlborough Road.

2. We allow archery deer and archery turkey hunting within all portions of the refuge during the hunting seasons for these species.

3. We require refuge permits. We limit the numbers of deer and turkey hunters allowed to hunt on the refuge. If the number of applications to hunt these species received is greater than the number of permits available, we will issue permits by random selection.

4. Conditions A3, A4, A6, A7, A8, A9, and A10 apply.

5. During seasons when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters, including archers, to wear a minimum of 500 square inches (3,250 cm^2) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head.

6. You may use decoys to hunt turkey.

7. We prohibit driving deer by any means on the refuge.

8. We prohibit construction or use of permanent structures while hunting. We prohibit driving a nail, spike, screw, or other metal object into any tree or hunting from any tree into which a nail, spike, screw, or other object has been driven (see § 32.2(i)).

9. You may use temporary tree stands while engaged in hunting deer during

the applicable archery, shotgun, or muzzleloader deer seasons. You must remove all stands or any blinds by legal sunset each day (see §§ 27.93 and 27.94 of this chapter). We require all tree stands to have the name and address of the owner clearly printed on the stand.

10. We prohibit possession of buckshot while hunting during any season on the refuge.

D. Sport Fishing. We allow sport fishing in Puffer Pond in accordance with State regulations subject to the following conditions:

1. We allow fishing from nonmotorized canoes and car-top boats, as well as from designated locations on the banks of Puffer Pond. We prohibit the use of trailers to launch or retrieve canoes or boats on the refuge.

2. We allow catch and release fishing only.

3. We prohibit the use of live bait.

4. We prohibit lead sinkers.

5. We prohibit taking of frogs or turtles on the refuge (see § 27.21 of this chapter).

6. You may fish on Puffer Pond from ½ hour before legal sunrise to ½ hour after legal sunset.

7. We prohibit night fishing or ice fishing on the refuge.

8. We prohibit open fires anywhere on the refuge.

9. The refuge will provide designated parking areas for anglers. Consult the refuge manager for further details.

Great Meadows National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of ducks and geese on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge permits. We limit the numbers of waterfowl hunters allowed to hunt on the refuge. If the number of applications received to hunt waterfowl is greater than the number of permits available, we will issue permits by random selection.

2. We will provide waterfowl hunters maps showing the portions of the refuge designated as open.

3. You must possess and carry all applicable hunting licenses, permits, stamps, and a photographic identification while hunting on the refuge.

4. We prohibit construction or use of any permanent structure while hunting on the refuge. You must remove all temporary blinds by legal sunset each day (see §§ 27.93 and 27.94 of this chapter).

5. We prohibit use of motorized vehicles on the refuge.

6. Except while hunting waterfowl from a blind or from a boat, you must wear a minimum of 500 square inches (3,250 cm^2) of solid-orange clothing or material in a conspicuous manner on your chest, back, and head during any season when it is legal to hunt deer with a shotgun or muzzleloader.

7. We prohibit the use of electronic calls during any hunting season.

8. We prohibit trimming or cutting of branches larger than the diameter of a quarter (see § 27.61 of this chapter).

9. We prohibit the marking any tree or other refuge feature with flagging, paint, reflective material or any other substance (see § 27.61 of this chapter).

10. You may scout hunting areas on the refuge once you have obtained a refuge permit. Scouting may begin no earlier than 1 month from the opening day of the hunting season. We prohibit the use of dogs during scouting.

11. We allow hunters to enter the refuge 1½ hours before legal hunting hours, and they must leave the refuge no later than 1½ hours after legal sunset.

12. We allow no more than two dogs per hunting party. We prohibit the training of dogs on the refuge.

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. We allow archery hunting of whitetail deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow archery hunting of whitetail deer within the portions of the Concord Unit of the refuge that are located north of Massachusetts Route 225. We also allow archery hunting of whitetail deer within the portions of the Sudbury Unit of the refuge that are located north of Stonebridge Road in Wayland, Massachusetts and south of Lincoln Road/Sherman's Bridge Road on the Sudbury and Wayland Town Line.

2. We prohibit the use of firearms for hunting deer on the refuge. However, you may archery hunt in the portions of the refuge that are open for deer hunting during the archery, shotgun, and muzzleloader seasons established by the State.

3. We require refuge permits. We limit the numbers of deer hunters allowed to hunt on the refuge. If the number of applications received to hunt deer on the refuge is greater than the number of permits available, we will issue permits by random selection.

4. Conditions A3, A5, A7, A8, A9, A10, and A11 apply.

5. During seasons when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters, including archers, to wear a minimum of 500 square inches (3,250 cm^2) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head.

6. We prohibit the use of decoys to hunt deer on the refuge.

7. We prohibit driving deer by any means on the refuge.

8. We prohibit construction or use of permanent structures while hunting. We prohibit driving nails, spikes, screws, or other metal object into any tree or hunting from any tree in which a nail, spike, screw, or other object has been driven (see § 32.2(i)).

9. You may use temporary tree stands while engaged in hunting deer. You must remove all stands or any blinds by legal sunset (see §§ 27.93 and 27.94 of this chapter). We require all tree stands to have the name and address of the owner clearly printed on the stand.

D. Sport Fishing. We allow sport fishing in designated areas of the refuge in accordance with State regulations subject to the following condition: We allow fishing along the main channels of the Concord and Sudbury Rivers and from designated banks of Heard Pond. We limit access to Heard Pond to foot traffic only.

Oxbow National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of waterfowl, woodcock, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow waterfowl and common snipe hunting within the portions of the refuge located south of Massachusetts Route 2 and west of the B&M railroad tracks.

2. We allow woodcock hunting within the portions of the refuge south of Massachusetts Route 2 and west of the B&M railroad tracks; north of Massachusetts Route 2 and south of Hospital Road; as well as within the portions of the refuge along the westerly side of the Nashua River located north of the commuter rail tracks in Shirley, Massachusetts.

3. We require refuge permits. We limit the numbers of waterfowl hunters allowed to hunt on the refuge. If the number of applications received to hunt waterfowl is greater than the number of permits available, we will issue permits by random selection.

4. You must possess and carry all applicable hunting licenses, permits, stamps, and a photographic identification while hunting on the refuge.

5. We prohibit construction or use of any permanent structure while hunting on the refuge. You must remove all temporary blinds each day (see §§ 27.93 and 27.94 of this chapter).

6. We prohibit use of motorized vehicles on the refuge.

7. With the exception of waterfowl hunters hunting within a blind or from a boat, during any season when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters to wear a minimum of 500 square inches (3,250 cm^2) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head. During all other times, if you are engaged in woodcock hunting on the refuge, you must wear a minimum of a solid-orange hat.

8. We prohibit the use of electronic calls during any hunting season.

9. We prohibit trimming or cutting of branches larger than the diameter of a quarter (see § 27.51 of this chapter).

10. We prohibit the marking any tree or other refuge feature with flagging, paint, reflective material, or any other substance (see § 27.51 of this chapter).

11. You may scout hunting areas on the refuge once you have obtained a refuge permit. Scouting may begin no earlier than 1 month from the opening day of the hunting season. We prohibit the use of dogs during scouting.

12. We allow hunters to enter the refuge 1½ hours before legal hunting hours, and they must leave the refuge no later than 1½ hours after legal sunset.

13. For seasons wherein State regulations allow use of dogs, we allow no more than two dogs per hunting party. We prohibit the training of dogs on the refuge.

B. Upland Game Hunting. We allow upland game hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow shotgun hunting of ruffed grouse, cottontail rabbit, and gray squirrels within the areas of the refuge located south of Massachusetts Route 2 and west of the B&M railroad tracks; north of Massachusetts Route 2 and south of Hospital Road; and, within the portions of the refuge along the westerly side of the Nashua River located north of the commuter rail tracks in Shirley, Massachusetts, subject to the following conditions:

2. We require refuge permits.

3. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

4. Conditions A4, A5, A6, A8, A9, A10, A11, A12, and A13 apply.

5. With the exception of waterfowl hunters hunting within a blind or from a boat, during seasons when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters, including archers and small game hunters, to wear a minimum of 500 square inches (3,250 cm^2) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head. During all other times, if you are engaged in ruffed grouse, squirrel, or cottontail rabbit hunting on the refuge, you must wear a minimum of a solid-orange hat.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow shotgun, archery, and muzzleloader hunting of white-tailed deer, as well as shotgun and archery hunting of turkey, within the portions of the refuge located south of Massachusetts Route 2 and west of the B&M railroad tracks.

2. We allow archery deer and archery turkey hunting within the portions of the refuge located south of Massachusetts Route 2 and east of the B&M railroad tracks, as well as within the portions of the refuge along the easterly side of the Nashua River located north of the commuter rail tracks in Ayer, Massachusetts.

3. We allow archery deer hunting as well as shotgun and archery turkey hunting within the portions of the refuge located north of Massachusetts Route 2 and south of Hospital Road; and, within the portions of the refuge along the westerly side of the Nashua River located north of the commuter rail tracks in Shirley, MA.

4. We require refuge permits. We limit the numbers of deer and turkey hunters allowed to hunt on the refuge. If the number of applications received to hunt these species is greater than the number of permits available, we will issue permits by random selection.

5. Conditions A4, A6, A8, A9, A10, A11, and A12 apply.

6. With the exception of waterfowl hunters hunting within a blind or from a boat, during seasons when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters, including archers, to wear a minimum of 500 square inches (3,250 cm^2) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head.

7. Hunters may only use decoys to hunt turkey.

8. We prohibit driving deer by any means on the refuge.

9. We prohibit construction or use of permanent structures while hunting. You may not drive nails, spikes, screws or other metal object into any tree or hunt from any tree in which a nail, spike, screw or other object has been driven (see § 32.2(i)).

10. You may use temporary tree stands while engaged in hunting deer during the applicable archery, shotgun, or muzzleloader deer seasons. You must remove all stands or any blinds by legal sunset (see §§ 27.93 and 27.94 of this chapter). We require all tree stands to have the name and address of the owner clearly printed on the stand.

11. We prohibit possession of buckshot while hunting during any season on the refuge.

D. Sport Fishing. We allow sport fishing along the banks of the Nashua River in accordance with State regulations.

* * * * *

■ 19. Amend § 32.42 Minnesota by:

■ a. Revising paragraph C. of Agassiz National Wildlife Refuge;

■ b. Revising the introductory text of paragraph B., adding paragraphs B.4. and B.5. and revising paragraph C. of Big Stone National Wildlife Refuge;

■ c. Adding Big Stone Wetland Management District;

■ d. Revising Detroit Lakes Wetland Management District;

■ e. Revising paragraph A.3., adding paragraphs A.4. through A.6., revising paragraph B., adding paragraph C.3., and revising paragraph D.1. of Fergus Falls Wetland Management District;

■ f. Adding Glacial Ridge National Wildlife Refuge;

■ g. Adding paragraph A.5., revising paragraph B., and adding paragraphs C.3. and D.3. of Litchfield Wetland Management District;

■ h. Revising paragraph A., and adding paragraphs B.4. and C.7. of Minnesota Valley National Wildlife Refuge;

■ i. Adding Minnesota Valley Wetland Management District;

■ j. Revising paragraph A.3., adding paragraph A.4., revising paragraph B., adding paragraph C.3., and revising paragraph D.1. of Morris Wetland Management District;

■ k. Adding paragraphs A.4. and A.5., revising paragraph B.2., and adding paragraphs B.4., C.4. and D. of Northern Tallgrass Prairie National Wildlife Refuge;

■ l. Adding paragraphs A.2. through A.4., B.3., C.5., and D.4. of Rice Lake National Wildlife Refuge;

■ m. Adding paragraph C.5. and revising paragraph D. of Rydell National Wildlife Refuge;

■ n. Revising the introductory text of paragraphs A., B., and C., revising paragraph A.4., and adding paragraphs A.6., A.7., B.3., C.5., and C.6. of Sherburne National Wildlife Refuge;

■ o. Revising the introductory text of paragraphs A., B., and C., revising paragraph A.2., and adding paragraphs

A.3., A.4., B.5., C.4., D.5., and D.6. of Tamarac National Wildlife Refuge; and
■ p. Revising paragraphs A., C., and D. of Windom Wetland Management District to read as follows:

§ 32.42 Minnesota.

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Agassiz National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer and moose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters may use portable stands. Hunters may not construct or use permanent blinds, permanent platforms, or permanent ladders.

2. You must remove all stands and personal property from the refuge by legal sunset each day (see §§ 27.93 and 27.94 of this chapter).

3. We prohibit hunters occupying ground and tree stands that are illegally set up or constructed.

4. We prohibit the use of snowmobiles and ATVs.

5. We allow the use of wheeled, nonmotorized conveyance devices (*i.e.*, bikes, retrieval carts) except in the Wilderness Area.

6. We allow the use of nonmotorized boats and canoes.

7. We prohibit entry into the "Closed Areas".

8 We prohibit camping.

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Big Stone National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of partridge, pheasant, wild turkey, gray and fox squirrel, cottontail and jack rabbit, red and gray fox, raccoon, and striped skunk on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (see § 26.21(b) of this chapter).

5. We prohibit camping.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters may use portable stands. Hunters may not construct or use permanent blinds, permanent platforms, or permanent ladders.

2. You must remove all stands and personal property from the refuge by legal sunset each day (see §§ 27.93 and 27.94 of this chapter).

3. We prohibit hunters occupying ground and tree stands that are illegally set up or constructed.

4. We prohibit camping.

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Big Stone Wetland Management District

A. Migratory Game Bird Hunting. We allow hunting of migratory game birds throughout the district in accordance with State regulations subject to the following conditions:

1. We prohibit the use of motorized boats.

2. We prohibit the construction or use of permanent blinds, stands, or scaffolds.

3. You must remove all personal property, which includes boats, decoys, and blinds brought onto the WPA each day (see §§ 27.93 and 27.94 of this chapter).

4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (see § 26.21(b) of this chapter).

5. We prohibit camping.

B. Upland Game Hunting. We allow upland game hunting throughout the district in accordance with State regulations subject to the following conditions: Conditions A4 and A5 apply.

C. Big Game Hunting. We allow big game hunting throughout the district in accordance with State regulations subject to the following conditions:

1. Hunters may use portable stands. Hunters may not construct or use permanent blinds, permanent platforms, or permanent ladders.

2. You must remove all stands and personal property from the WPAs each day (see §§ 27.93 and 27.94 of this chapter).

3. We prohibit hunters occupying ground and tree stands that are illegally set up or constructed.

4. Condition A5 applies.

D. Sport Fishing. We allow fishing throughout the district in accordance with State regulations subject to the following conditions:

1. We prohibit the use of motorized boats.

2. You must remove all ice fishing shelters and all other personal property from the WPAs each day (see § 27.93 of this chapter).

3. Condition A5 applies.

Detroit Lakes Wetland Management District

A. Migratory Game Bird Hunting. We allow hunting of migratory game birds throughout the district in accordance with State regulations, except that we prohibit hunting on the Headquarters Waterfowl Production Area (WPA) in Becker County, the Hitterdal WPA in Clay County, and the McIntosh WPA in Polk County. The following conditions apply:

1. We prohibit the use of motorized boats.

2. We prohibit the construction or use of permanent blinds, stands, or scaffolds (see §§ 27.93 and 27.94 of this chapter).

3. You must remove all personal property, which includes boats, decoys, and blinds brought onto the WPAs each day (see §§ 27.93 and 27.94 of this chapter).

4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season.

5. We prohibit camping.

B. Upland Game Hunting. We allow upland game hunting in accordance with State regulations throughout the district (except that we allow no hunting on the Headquarters Waterfowl Production Area [WPA] in Becker County, the Hitterdal WPA in Clay County, and the McIntosh WPA in Polk County) subject to the following conditions: Conditions A4 and A5 apply.

C. Big Game Hunting. We allow big game hunting in accordance with State regulations throughout the district, except that we prohibit hunting on the Headquarters Waterfowl Production Area (WPA) in Becker County, the Hitterdal WPA in Clay County, and the McIntosh WPA in Polk County. The following conditions apply:

1. Hunters may use portable stands. Hunters may not construct or use permanent blinds, permanent platforms, or permanent ladders.

2. You must remove all stands and personal property from the WPAs each day (see §§ 27.93 and 27.94 of this chapter).

3. We prohibit hunters occupying ground and tree stands that are illegally set up or constructed.

4. Condition A5 applies.

D. Sport Fishing. We allow fishing in accordance with State regulations throughout the district subject to the following conditions:

1. You must remove all ice fishing shelters and all other personal property from the WPAs each day (see § 27.93 of this chapter).

2. Condition A5 applies.

Fergus Falls Wetland Management District

A. Migratory Game Bird Hunting.

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3. During the State-approved hunting season, we allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times (see § 26.21(b) of this chapter).

4. We prohibit the construction or use of permanent blinds, stands, or scaffolds (see §§ 27.93 and 27.94 of this chapter).

5. We prohibit hunters occupying ground and tree stands that are illegally set up or constructed.

6. We prohibit camping.

B. Upland Game Hunting. We allow upland game hunting throughout the district (except that we prohibit hunting on the Townsend, Headquarters, Mavis, and Gilmore WPAs in Otter Tail County, and Larson WPA in Douglas County) in accordance with State regulations subject to the following conditions: Conditions A3 and A6 apply.

C. Big Game Hunting. * * *

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3. Condition A6 applies.

D. Sport Fishing. * * *

1. Conditions A1 and A6 apply.

Glacial Ridge National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, woodcock, snipe, rail, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit all types of watercraft.

2. We restrict vehicles to designated parking lots (see § 27.31 of this chapter).

B. Upland Game Hunting. We allow hunting of prairie chicken and sharp-tailed grouse on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Only those hunters selected by the Minnesota Department of Natural Resources to hunt prairie chicken may hunt sharp-tailed grouse.

2. Condition A2 applies.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must remove all stands from the refuge at the end of each day's hunt.

2. Condition A2 applies.

D. Sport Fishing. [Reserved]

Litchfield Wetland Management District

A. Migratory Game Bird Hunting.

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5. We prohibit camping.

B. Upland Game Hunting. We allow upland game hunting throughout the district (except we prohibit hunting on the Phare Lake Waterfowl Production Area in Renville County) in accordance with State regulations subject to the following conditions: Conditions A4 and A5 apply.

C. Big Game Hunting. * * *

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3. Condition A5 applies.

D. Sport Fishing. * * *

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3. Condition A5 applies.

Minnesota Valley National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require permit for special hunts.

2. We prohibit the use of motorized boats.

3. We prohibit the construction or use of permanent blinds, stands, or scaffolds.

4. You must remove all personal property, which includes boats, decoys, and blinds brought onto the refuge each day (see §§ 27.93 and 27.94 of this chapter).

5. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season.

6. We prohibit entry to hunting areas earlier than 2 hours before legal shooting hours.

7. We prohibit camping.

B. Upland Game Hunting. * * *

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4. Conditions A5 and A7 apply.

C. Big Game Hunting. * * *

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7. Conditions A6 and A7 apply.

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Minnesota Valley Wetland Management District

A. Migratory Game Bird Hunting. We allow hunting of migratory game birds throughout the district in accordance with State regulations subject to the following conditions:

1. We prohibit the use of motorized boats.

2. We prohibit the construct or use of permanent blinds, stands, or scaffolds.

3. You must remove all personal property, which includes boats, decoys, and blinds brought onto the WPAs each day (see §§ 27.93 and 27.94 of this chapter).

4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (see § 26.21(b) of this chapter).

5. We prohibit camping.

B. Upland Game Hunting. We allow upland game hunting throughout the district in accordance with State regulations subject to the following conditions: Conditions A4 and A5 apply.

C. Big Game Hunting. We allow big game hunting throughout the district in accordance with State regulations subject to the following conditions:

1. Hunters may use portable stands. Hunters may not construct or use permanent blinds, permanent platforms, or permanent ladders.

2. Hunters may not possess single shot projectiles (shotgun slugs or bullets) on the Soberg Waterfowl Production Area.

3. You must remove all stands and personal property from the WPAs at the end of each day (see §§ 27.93 and 27.94 of this chapter).

4. We prohibit hunters occupying ground and tree stands that are illegally set up or constructed.

5. Condition A5 applies.

D. Sport Fishing. We allow sport fishing throughout the district in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A5 apply.

2. You must remove all ice fishing shelters and all other personal property from the WPAs each day (see §§ 27.93 and 27.94 of this chapter).

Morris Wetland Management District

A. Migratory Game Bird Hunting.

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3. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (see § 26.21(b) of this chapter).

4. We prohibit camping.

B. Upland Game Hunting. We allow hunting of upland game, except that we prohibit hunting on the designated portions of the Edward-Long Lake Waterfowl Production Area in Stevens County, in accordance with State regulations subject to the following conditions: Conditions A3 and A4 apply.

C. Big Game Hunting. * * *

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3. Condition A4 applies.

D. Sport Fishing. * * *

1. Conditions A1 and A4 apply.

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Northern Tallgrass Prairie National Wildlife Refuge

A. Migratory Game Bird Hunting.

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4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (see § 26.21(b) of this chapter).

5. We prohibit camping.

B. Upland Game Hunting. * * *

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2. We prohibit the use of dogs for hunting furbearers. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (see § 26.21(b) of this chapter).

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4. Condition A5 applies.

C. Big Game Hunting. * * *

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4. Condition A5 applies.

D. Sport Fishing. [Reserved]

Rice Lake National Wildlife Refuge

A. Migratory Game Bird Hunting.

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2. We require that the visible portion of at least one article of clothing worn above the waist be blaze orange.

3. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (see § 26.21(b) of this chapter).

4. We prohibit camping.

B. Upland Game Hunting. * * *

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3. Conditions A3 and A4 apply.

C. Big Game Hunting. * * *

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5. Condition A4 applies.

D. Sport Fishing. * * *

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4. Condition A4 applies.

Rydell National Wildlife Refuge

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C. Big Game Hunting. * * *

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5. We prohibit camping.

D. Sport Fishing. We allow sport fishing on Tamarac Lake in accordance with State regulations subject to the following conditions:

1. We only allow fishing from designated fishing piers.

2. We allow fishing from May 1 to November 1.

3. We allow parking at designated parking lots only (see § 27.31 of this chapter).

4. Condition C5 applies.

Sherburne National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, rail, woodcock, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. We prohibit entry to hunting areas earlier than 2 hours before legal shooting hours.

* * * * *

6. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times, during the State-approved hunting season (see § 26.21(b) of this chapter).

7. We prohibit camping.

B. Upland Game Hunting. We allow hunting of ruffed grouse, ring-necked pheasant, gray and fox squirrel, snowshoe hare, cottontail rabbit, and jackrabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

3. Conditions A6 and A7 apply.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulation subject to the following conditions:

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5. We prohibit deer pushes or deer drives in the areas closed to deer hunting.

6. Conditions A4 and A7 apply.

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Tamarac National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow the hunting of goose, duck, coot, woodcock, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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2. You must remove all personal property, which includes boats, decoys, and blinds brought onto the refuge each day (see §§ 27.93 and 27.94 of this chapter).

3. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times, during the State-approved hunting season (see § 26.21(b) of this chapter).

4. We prohibit camping.

B. Upland Game Hunting. We allow hunting of ruffed grouse, red, gray, and fox squirrel, cottontail rabbit, jackrabbit, snowshoe hare, red fox, raccoon, and striped skunk on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

5. Conditions A3 and A4 apply.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. Condition A4 applies.

D. Sport Fishing. * * *

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5. You must remove all ice fishing shelters and all other personal property from the refuge each day (see §§ 27.93 and 27.94 of this chapter).

6. Condition A4 applies.

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Windom Wetland Management District

A. Migratory Game Bird Hunting. We allow hunting of migratory game birds throughout the district in accordance with State regulations subject to the following conditions:

1. We prohibit hunting on the Worthington Waterfowl Production Area (WPA) in Nobles County, or designated portions of the Wolf Lake WPA in Cottonwood County.

2. We prohibit the use of motorized boats.

3. You must remove all personal property, which includes boats, decoys, and blinds brought onto the WPAs at the end of each day (see §§ 27.93 and 27.94 of this chapter).

4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (see § 26.21(b) of this chapter).

5. We prohibit camping.

* * * * *

C. Big Game Hunting. We allow hunting of big game throughout the district in accordance with State regulations subject to the following conditions:

1. We prohibit hunting on the Worthington WPA in Nobles County, Headquarters WPA in Jackson County, and designated portions of the Wolf Lake WPA in Cottonwood County.

2. We allow the use of portable stands. Hunters may not construct or use permanent blinds, permanent platforms, or permanent ladders.

3. You must remove all stands and personal property from the WPAs at the end of each day (see §§ 27.93 and 27.94 of this chapter).

4. We prohibit hunters occupying ground and tree stands that are illegally set up or constructed.

D. Sport Fishing. We allow fishing throughout the district in accordance with State regulations subject to the following conditions:

1. Conditions A2 and A5 apply.

2. You must remove all ice fishing shelters and other personal property

from the WPAs each day (see § 27.93 of this chapter).

■ 20. Amend § 32.43 Mississippi by revising paragraph D. of Noxubee National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

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Noxubee National Wildlife Refuge

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D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The sport fishing, boating, and bow fishing seasons extend from March 1 through October 31, except for the Noxubee River and borrow pit areas along Highway 25 that are open year-round.

2. We prohibit anglers leaving boats overnight on the refuge (see § 27.93 of this chapter).

3. Anglers must keep boat travel at idle speed, and they must not create a wake when moving.

4. We prohibit limb lines, snag lines, and hand grappling in Ross Branch, Bluff, and Loakfoma Lakes.

5. Anglers must tag pole and set hooks with their name and address when using them in rivers, creeks, and other water bodies. Anglers must remove these devices when not in use.

6. Trotlining:

i. Anglers must label each end of the trotline floats with the owner's name and address.

ii. We limit trotlines to one line per person, and we allow no more than two trotlines per boat.

iii. Anglers must tend all trotlines every 24 hours and remove them when not in use.

7. Jug fishing:

i. Anglers must label each jug with their name and address.

ii. Anglers must attend all jugs every 24 hours and remove them when not in use.

8. We require a Special Use Permit for night time bow fishing.

* * * * *

■ 21. Amend § 32.44 Missouri by:

■ a. Revising the introductory text of paragraph C., revising paragraph C.5. and adding paragraph C.6. of Big Muddy National Fish and Wildlife Refuge;

■ b. Adding paragraph A.3., revising paragraph B.1., adding paragraphs B.8. and B.9., revising paragraph C.4., adding paragraphs C.5. through C.8., and revising paragraph D.8. of Mingo National Wildlife Refuge; and

■ c. Revising paragraph A. of Squaw Creek National Wildlife Refuge to read as follows:

§ 32.44 Missouri.

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Big Muddy National Fish and Wildlife Refuge

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C. Big Game Hunting. We allow hunting of deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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5. You must unload or dismantle and case all firearms while transporting them in a motor vehicle (see § 27.42(b) of this chapter).

6. We restrict deer hunters on the Boone's Crossing Unit to archery methods only except for hunters on Johnson Island where State-allowed methods of take are in effect.

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Mingo National Wildlife Refuge

A. Migratory Game Bird Hunting.

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3. We prohibit the use of paint, flagging, reflectors, tacks, or other manmade materials to mark trails or hunting locations (see § 27.61 of this chapter).

B. Upland Game Hunting. * * *

1. The Public Hunting Area and the road leading to the area from the Hunter Sign-In Station are open 1½ hours before legal sunrise until 1½ hours after legal sunset.

* * * * *

8. We require that all hunters wear a hat and a shirt, vest, or coat of hunter orange that is plainly visible from all sides during the overlapping portion of the squirrel and archery deer seasons.

9. Condition A3 applies.

C. Big Game Hunting. * * *

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4. Condition B8 applies.

5. We prohibit the use of salt or mineral blocks.

6. We only allow portable tree stands from 2 weeks before to 2 weeks after the State archery deer season. You must clearly mark all stands with the owner's name, address, and phone number.

7. We only allow one tree stand per deer hunter.

8. Condition A3 applies.

D. Sport Fishing. * * *

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8. We allow the take of common snapping turtle and soft-shelled turtle only using pole and line. We require all anglers immediately release all alligator snapping turtles (see § 27.21 of this chapter).

Squaw Creek National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of light geese on designated areas of the refuge in accordance with State regulations during the spring conservation order season subject to the following conditions:

1. Hunters must remain within direct sight of the guide in the hunt boundary at all times.

2. We allow the guide and hunters into the hunt boundary up to 2 hours prior to legal shooting time.

3. Hunting will stop at 12 p.m. (noon), and hunters must be out of the fields by 2 p.m.

4. We allow hunting dogs, portable blinds, and decoys at the discretion of the guide.

5. We prohibit pit blinds.

6. Hunting dogs must be under the immediate control of their handlers at all times (see § 26.21 of this chapter).

7. We prohibit retrieving crippled geese outside of the hunt boundary, including adjacent private land. This includes retrieval by hunting dogs.

8. We prohibit vehicles beyond the established parking area located adjacent to State Highway 118 (see § 27.31 of this chapter).

9. We prohibit ATV use on the refuge.

10. Both the guide and hunters are responsible for ensuring that all trash, including spent shotgun shells are removed from the hunt area each day (see §§ 27.93 and 27.94 of this chapter).

11. Violations of these rules may result in the revocation of the guide's Special Use Permit as deemed appropriate by the refuge manager.

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■ 22. Amend § 32.45 Montana by:

■ a. Revising paragraphs A. and B. of Black Coulee National Wildlife Refuge;

■ b. Revising paragraphs A. and B. of Bowdoin National Wildlife Refuge;

■ c. Revising paragraph C. of Charles M. Russell National Wildlife Refuge; and

■ d. Revising paragraph A. of Hewitt Lake National Wildlife Refuge to read as follows:

§ 32.45 Montana.

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Black Coulee National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow nonmotorized boats on refuge waters.

2. You must remove all boats, decoys, portable blinds, other personal property,

and any materials brought onto the refuge for blind construction by legal sunset (see §§ 27.93 and 27.94 of this chapter).

B. Upland Game Hunting. We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shot (see § 32.2(k)).

2. Fox and coyote hunters may only use centerfire rifles, rimfire rifles, or shotguns with approved nontoxic shot.

3. We require game bird hunters to wear at least one article of blaze-orange clothing visible above the waist.

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Bowdoin National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must check-in and check out of the refuge daily. Before hunting, each hunter must record the date, their name, and the time checking into the refuge on a register inside the Hunter Registration Kiosk at refuge headquarters. After hunting, each hunter must record hunting data (hours hunted waterfowl and/or upland game and the number of birds harvested) before departing the refuge.

2. We prohibit air-thrust boats or boats with motors greater than 25 hp.

3. You must remove all boats, decoys, portable blinds, other personal property, and any materials brought onto the refuge for blind construction by legal sunset (see §§ 27.93 and 27.94 of this chapter).

B. Upland Game Hunting. We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Condition A1 applies.

2. You must possess and carry a refuge Special Use Permit to hunt fox and coyotes.

3. You may only possess approved nontoxic shot (see § 32.2(k)).

4. Fox and coyote hunters may only use centerfire rifles, rimfire rifles, or shotguns with approved nontoxic shot.

5. We require game bird hunters to wear at least one article of blaze-orange clothing visible above the waist.

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Charles M. Russell National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of big game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow the use of portable blinds and stands. You may install stands and blinds no sooner than August 1, and you must remove them by December 15 of each year. We limit each hunter to three stands or blinds. The hunter must have their name, address, phone number, and automated licensing system number (ALS) visibly marked on the stand.

2. We allow hunting of elk on designated areas of the refuge. You must possess and carry a refuge permit to hunt elk on the refuge.

* * * * *

Hewitt Lake National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit air-thrust boats and boats with motors greater than 25 hp.

2. You must remove all boats, decoys, portable blinds, other personal property, and any materials brought onto the refuge for blind construction by legal sunset (see §§ 27.93 and 27.94 of this chapter).

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■ 23. Amend § 32.46 Nebraska by revising the introductory text of paragraph B. of Crescent Lake National Wildlife Refuge to read as follows:

§ 32.46 Nebraska.

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Crescent Lake National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of cottontail rabbit, jack rabbit, furbearer, coyote, ring-necked pheasant, and prairie grouse on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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■ 24. Amend § 32.48 New Hampshire by adding Silvio O. Conte National Fish and Wildlife Refuge to read as follows:

§ 32.48 New Hampshire.

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Silvio O. Conte National Fish and Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, common snipe, sora, Virginia rail, common moorhen, and American woodcock on the Pondicherry Division of the refuge in accordance with State regulations subject to the following conditions:

1. You may only use portable blinds. You must remove all blinds, decoys, shell casings, and other personal equipment and refuse from the refuge by legal sunset (see §§ 27.93 and 27.94 of this chapter).

2. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back, a minimum of 400 square inches (2,600 cm^2) of hunter-orange clothing or material, except when hunting waterfowl.

3. We allow the use of retrieving dogs but dogs must be under voice command at all times (see § 26.21 of this chapter).

4. We allow hunting during the hours stipulated under the State's hunting regulations but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset. We prohibit night hunting. You must unload all firearms (see § 27.42 of this chapter) outside of legal hunting hours.

5. We prohibit all-terrain vehicles (ATV's or OHV's).

B. Upland Game Hunting. We allow hunting of coyote, fox, raccoon, woodchuck, red squirrel, eastern gray squirrel, porcupine, skunk, American crow, snowshoe hare, ring-necked pheasant, and ruffed grouse on the Pondicherry Division of the refuge in accordance with State regulations subject to the following conditions:

1. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back, a minimum of 400 square inches (2,600 cm^2) of hunter-orange clothing or material.

2. Conditions A3, A4, and A5 apply.

3. We allow hunting of snowshoe hare and coyote with dogs from October 1 to March 15. You may hunt with trailing dogs on the refuge subject to the following conditions:

i. We will only allow dog training outside the established hunting seasons under a Special Use Permit issued by the refuge manager.

ii. We allow a maximum of four dogs per hunter.

iii. You must pick up all dogs the same day you release them (see § 26.21(b) of this chapter).

C. Big Game Hunting. We allow hunting of white-tailed deer, moose, black bear, and wild turkey on the Pondicherry Division of the refuge in accordance with State regulations subject to the following conditions:

1. We allow bear hunting with dogs during the established State hound season. Hunting with trailing dogs on

the refuge will be subject to the following conditions:

i. We allow a maximum of four dogs per hunter.

ii. You must pick up all dogs the same day you release them (see § 26.21(b) of this chapter).

2. We prohibit the use of bait (see § 32.2(h)).

3. We allow temporary tree stands and blinds, but you must remove them (see §§ 27.93 and 27.94 of this chapter) by the end of the season. Your name and address must be clearly visible on the tree stand. We prohibit nails, screws, or screw-in climbing pegs to build or access a stand or blind (See § 32.2(i)).

4. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back a minimum of 400 square inches (2,600 cm^2) of hunter-orange clothing or material, except when hunting turkey or while engaged in archery hunting.

5. Conditions A5 and A6 apply.

6. We allow prehunt scouting of the refuge; however, we prohibit firearms during prehunt scouting.

7. We will only allow dog training outside the established hunting seasons under a Special Use Permit issued by the Refuge Manager.

D. Sport Fishing. [Reserved]

■ 25. Amend § 32.50 New Mexico by revising paragraphs A.2. and B.3. of Bosque del Apache National Wildlife Refuge to read as follows:

§ 32.50 New Mexico.

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Bosque del Apache National Wildlife Refuge

A. Migratory Game Bird Hunting.

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2. We allow hunting of light goose on Monday, Wednesday, and Friday during a week in January to be determined by refuge staff. We will announce hunt dates by September 1 of the previous year. Hunters must report to the refuge headquarters by 4:45 a.m. each hunt day. Legal hunting hours will run from ½ hour before legal sunrise and will not extend past 11:00 a.m. local time.

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B. Upland Game Hunting. * * *

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3. We allow cottontail rabbit hunting between December 1 and the last day of February.

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■ 26. Amend § 32.51 New York by:

■ a. Revising paragraphs A.3.iii. and C.2.ii., and adding paragraph D.7. of Iroquois National Wildlife Refuge; and

■ b. Revising paragraph C. of Wertheim National Wildlife Refuge to read as follows:

§ 32.51 New York.

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Iroquois National Wildlife Refuge

A. Migratory Game Bird Hunting.

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iii. Each youth must hunt with a preapproved, nonhunting adult (see refuge manager for details), who must be properly licensed to participate in the program.

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C. Big Game Hunting. * * *

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ii. Only youth hunters ages 12 to 17, accompanied by a properly licensed, preapproved nonhunting adult (see refuge manager for details), may hunt at the refuge on the first Sunday of the season. All youth hunters must register at the refuge headquarters and attend a mandatory orientation.

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D. Sport Fishing. * * *

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7. We allow fishing and frogging from Schoolhouse Marsh dike and Center Marsh dike from July 15 to September 30.

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Wertheim National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of whitetail deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow archery and shotgun hunting of white-tailed deer within portions of the refuge on specific days between October 1 and January 31.

2. We require refuge permits. We limit the number of deer hunters allowed to hunt on the refuge. We will issue permits by random selection.

3. You must take the specified number of antlerless deer as noted in the refuge hunting regulations before taking an antlered deer.

4. You must possess and carry all applicable and valid hunting licenses, permits, stamps, and a photographic identification while hunting on the refuge.

5. You must possess proof of completion of the refuge-specific orientation program upon check-in at the designated refuge hunting location.

6. You must limit driving to designated access roads and park only in designated areas (see § 27.31 of this chapter). We prohibit use of motorized vehicles on the refuge to retrieve white-tailed deer.

7. You must display refuge parking permits face-up on the vehicle dashboard while hunting.

8. We allow hunters to enter the refuge 1 hour before legal hunting hours. Hunters must leave the refuge no later than 1 hour after legal sunset.

9. We prohibit the use of dogs to hunt or pursue game. We prohibit driving deer by any means on the refuge. We prohibit the use of decoys to hunt deer on the refuge.

10. We prohibit carrying a loaded weapon and/or discharge of a firearm within the designated 500-foot (150 m) "No Hunt Buffer", vehicles, or parking areas (see § 27.42(b) of this chapter).

11. We prohibit shooting directly into or towards the 500-foot (150 m) "No Hunt Buffer".

12. We prohibit the killing or crippling of any deer without the hunter making reasonable effort to retrieve the deer and retain it in his/her actual custody.

13. Hunters assigned to Unit 5 must hunt from portable tree stands and must direct aim away from a public road and/or dwelling.

14. You must have only shotgun shells loaded with slugs during the firearms season.

15. You must wear a minimum of 400 square inches (2,600 cm^2) of solid-orange clothing, visible on head, chest, and back during the firearms season. Camouflage orange does not qualify.

16. We prohibit construction or use of permanent structures while hunting. We prohibit driving a nail, spike, screw or other metal object into any tree or hunting from any tree on the refuge in which a nail, spike, screw or other object has been driven (see § 32.2(i)).

17. You may use temporary or portable tree stands while hunting deer. You must remove all stands or any blinds by legal sunset (see §§ 27.93 and 27.94 of this chapter). We require all tree stands to have the name and address of the owner clearly printed on the stand.

18. You must report all accidents and injuries to refuge personnel as soon as possible and by no later than your departure from the refuge.

19. Failure to comply with Federal, State, and/or refuge regulations will lead to dismissal from the refuge and elimination of participation in future hunts.

20. You must abide all rules and regulations listed on the hunting permit.

21. We prohibit the use of any bait, salt, or enticement (see § 32.2(h)).

22. A nonhunting adult (see the refuge manager for details) with a valid State hunting license must accompany junior hunters.

23. We prohibit the marking of any tree, trail, or other refuge feature with flagging, paint, reflective material or any other substance.

24. You may scout hunting areas on the refuge only during designated times and days. We prohibit the use of dogs during scouting.

25. We prohibit the use of electronic calls during any hunting season.

26. We prohibit the trimming or cutting of branches larger than the diameter of a quarter (see § 27.61 of this chapter).

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■ 27. Amend § 32.52 North Carolina by:
■ a. Revising paragraph A.5., adding paragraphs A.6., and A.7., and revising paragraphs B. and C. of Alligator River National Wildlife Refuge; and
■ b. Revising paragraph C.4. of Pocosin Lakes National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

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Alligator River National Wildlife Refuge

A. Migratory Game Bird Hunting.

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5. You may only possess approved nontoxic shot in the field (see § 32.2(k)).

6. We allow retrieving dogs in designated areas. We prohibit the use of dogs in the Gum Swamp Unit.

7. We open the refuge to daylight use only, except that we allow hunters to enter and remain in open hunting areas from 1 hour before legal shooting time until one hour after legal shooting time.

B. Upland Game Hunting. * * *

1. Conditions A1, A4, A5, and A7 apply.

2. We only allow dog training during the corresponding hunt season.

3. We require a Special Use Permit to hunt raccoon or opossum from ½ hour after legal sunset until ½ hour before legal sunrise.

4. We allow the use of dogs in designated areas as shown in the refuge Hunting Regulations and Permit Map brochure.

C. Big Game Hunting. * * *

1. Conditions A1, A4 (an adult may only supervise one youth hunter), A7 and B2 apply.

2. We close the Hyde county portion of the refuge to all hunting during State bear seasons.

3. We only allow pursuit/trailing dogs in designated areas as shown in the Refuge Hunting Regulations and Permit Map brochure.

4. Unarmed hunters may walk to retrieve stray dogs from closed areas and "no dog hunting" areas.

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Pocosin Lakes National Wildlife Refuge

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C. Big Game Hunting. * * *

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4. You may only possess approved nontoxic shot (see § 32.2(k)) while hunting turkeys west of Evans Road and on the Pungo unit. You may use slugs, buckshot, and muzzleloader ammunition containing lead for deer hunting in these areas. We prohibit boar hunting on the Pungo Unit (they are only known to occur in the Frying Pan area of the refuge).

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■ 28. Amend § 32.53 North Dakota by:
■ a. Revising paragraphs B., C., and D. of Arrowwood National Wildlife Refuge;
■ b. Alphabetically adding Arrowwood Wetland Management District;
■ c. Alphabetically adding Audubon Wetland Management District;
■ d. Revising paragraph C. of Chase Lake National Wildlife Refuge;
■ e. Alphabetically adding Chase Lake Wetland Management District;
■ f. Alphabetically adding Crosby Wetland Management District;
■ g. Revising Devils Lake Wetland Management District;
■ h. Alphabetically adding J. Clark Salyer Wetland Management District;
■ i. Alphabetically adding Kulm Wetland Management District;
■ j. Revising paragraphs A., B., and C. of Lake Alice National Wildlife Refuge;
■ k. Alphabetically adding Long Lake Wetland Management District;
■ l. Alphabetically adding Lostwood Wetland Management District;
■ m. Removing the listing for Rock Lake National Wildlife Refuge;
■ n. Alphabetically adding Tewaukon Wetland Management District;
■ o. Revising paragraph B.2. and D.13.ii. of Upper Souris National Wildlife Refuge; and
■ p. Alphabetically adding Valley City Wetland Management District to read as follows:

§ 32.53 North Dakota.

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Arrowwood National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of pheasant, sharp-tailed grouse, partridge, cottontail rabbit, and fox on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting on the day following the close of the State firearm deer season through the end of the regular upland bird season.

2. We allow hunting of cottontail rabbit and fox on the day following the close of the State firearm deer season through March 31.

3. We allow access by foot travel only.

4. We prohibit open fires (see § 27.95(a) of this chapter) and camping on the refuge.

C. Big Game Hunting. We allow deer hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit entering the refuge before legal shooting hours on the opening day of firearms deer season. Thereafter, you may enter, but not shoot, prior to legal hours. We require all hunters to be off the refuge 1½ hours after legal sunset.

2. We allow deer hunting on the refuge during the State Youth Deer Season except in designated closed areas around refuge headquarters, the wildlife observation area, and the auto tour route. Consult the refuge hunting map for open and closed hunting areas during the State Youth Deer Season.

3. Firearm deer hunters may not enter the refuge after harvesting a deer unless unarmed (see § 27.42(b) of this chapter) and wearing blaze orange.

4. We allow access by foot travel only. You may use a vehicle on designated refuge roads and trails to retrieve deer during the following times only: 9:30 to 10 a.m.; 1:30 to 2 p.m.; and ½ hour after legal sunset for 1 hour.

5. We allow only temporary tree stands and blinds. You must remove all tree stands and blinds at the end of each day (see §§ 27.93 and 27.94 of this chapter).

6. Condition B4 applies.

D. Sport Fishing. We allow fishing in accordance with State regulations subject to the following conditions:

1. We only allow boats, up to a maximum of 25 hp, on Arrowwood Lake and Jim Lake from May 1 to September 30 of each fishing year.

2. We allow bank fishing along major road rights-of-way during the entire State fishing season.

3. We allow bank fishing on interior portions of the refuge from May 1 through September 30 of each fishing year. We only allow walk-in access, except for designated areas.

4. We allow fishing in the bypass channel during the regular State fishing season. We allow walk-in access along maintenance trails from June 1 through September 30 of each fishing year.

5. We allow bow fishing for rough fish along road rights-of-way in accordance

with State regulations from May 1 through September 30 of each fishing year. We prohibit the use of crossbows.

6. We allow ice fishing on Arrowwood Lake, Jim Lake, and the south ⅓ of Mud Lake. We allow fish houses and vehicles (automobiles and trucks only) on the ice as conditions permit. You must remove fish houses by March 15. You may use portable fish houses after March 15, but you must remove them from the refuge each day (see § 27.93 of this chapter).

7. We prohibit snowmobiles and ATVs on the refuge (see § 27.31(f) of this chapter).

8. We prohibit water activities not related to fishing (sailing, skiing, tubing, etc.)

9. We prohibit open fires (see § 27.95(a) of this chapter) and camping on the refuge.

Arrowwood Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by legal sunset (see §§ 27.93 and 27.94 of this chapter).

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Audubon Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

Chase Lake National Wildlife Refuge

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C. Big Game Hunting. We allow deer hunting on the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit deer hunting until the start of the State deer gun season.

2. We prohibit the use of horses for any purpose.

3. Hunters may only enter the refuge on foot.

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Chase Lake Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

Crosby Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

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Devils Lake Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We prohibit hunting on Lambs Lake Waterfowl Production Area in Nelson County; Pleasant Lake Waterfowl Production Area in Benson County; and Hart, Nelson, Little Goose, and Vold Waterfowl Production Areas in Grand Forks County.

2. We prohibit hunting on portions of Kellys Slough Waterfowl Production Area in Grand Forks County, as posted.

3. You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A2 apply.

2. We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following conditions: Conditions A1, A2, and B2 apply.

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We prohibit fishing on Hart, Nelson, Vold, and Kellys Slough Waterfowl Production Areas in Grand Forks County.

2. You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

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J. Clark Salyer Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

Kulm Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

Lake Alice National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions;

1. Refer to the refuge hunting map for designated hunting areas and information on hunting in specific zones.

2. We prohibit the use of motorized (gas and electric) boats.

3. We prohibit shooting from, on, or across any refuge road.

4. You must remove all boats, decoys, portable blinds, other personal property, and any materials brought onto the refuge for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter).

5. We prohibit pit blinds.

6. We prohibit retrieval of waterfowl in the Archery Only or Deer and Late Season Pheasant areas; refer to refuge hunting map for information on hunting in specific zones.

B. *Upland Game Hunting.* We allow hunting of ring-necked pheasants, sharp-tailed grouse, gray partridge, cottontail rabbit, jackrabbit, snowshoe hare, and fox on designated areas of the refuge in accordance with State regulations subject to the following condition: Refer to the refuge hunting map for designated hunting areas and restrictions.

C. Big Game Hunting. We allow deer and fox hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Condition A1 applies.

2. We allow archery hunting on designated areas of the refuge only; refer to the refuge hunting map for information on hunting in specific zones.

3. We prohibit the use of horses for any purpose.

4. We prohibit trapping, baiting, and spotlighting.

5. We prohibit permanent tree stands. We allow portable tree stands that hunters must remove from the refuge by the end of each day (see § 27.93 of this chapter). We prohibit the use of screw-in tree steps or similar objects that may damage trees (see § 32.2(i)).

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Long Lake Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on

Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

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Lostwood Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

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Tewaukon Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas and Wildlife Development Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

Upper Souris National Wildlife Refuge

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B. Upland Game Hunting. * * *

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2. We require hunters, and nonhunters accompanying hunters, to wear the State-required, legal-orange clothing when hunting game birds during the deer gun season.

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D. Sport Fishing. * * *

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ii. SILVER BRIDGE—We allow bank fishing from the road right-of-way around the bridge abutments. You may walk onto the ice from this area for ice fishing.

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Valley City Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

■ 29. Amend § 32.55 Oklahoma by:

■ a. Revising the introductory text of paragraph C. and redesignating paragraphs C.4., C.5., and C.6. as paragraphs C.5., C.6., and C.7, adding a new paragraph C.4., and revising paragraph C.6. of Deep Fork National Wildlife Refuge;

■ b. Revising paragraph A.2. and adding paragraph C.5. of Little River National Wildlife Refuge;

■ c. Removing paragraphs B.2. and B.3. of Optima National Wildlife Refuge;

■ d. Adding paragraph A.10. of Sequoyah National Wildlife Refuge; and

■ e. Removing paragraph B.2. and redesignating paragraph B.3. as B.2. of Washita National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

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Deep Fork National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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4. You may hunt feral hog during any established refuge hunting season. Refuge permits and legal weapons apply for the current hunting season.

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6. You may use tree stands, but you must remove them (see § 27.93 of this chapter) immediately following the end of the hunt season.

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Little River National Wildlife Refuge

A. Migratory Game Bird Hunting.

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2. We prohibit building and use of permanent blinds. You may only use portable blinds. You must remove blinds, decoys, and all personal equipment from the refuge daily (see §§ 27.93 and 27.94 of this chapter).

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C. Big Game Hunting. * * *

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5. You may only hunt big game during designated refuge seasons.

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Sequoyah National Wildlife Refuge

A. Migratory Game Bird Hunting.

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10. We prohibit hunters entering the Sandtown Bottom Unit prior to 5 a.m. during hunting season. Hunters must leave the Sandtown Bottom Unit by 1 hour after legal sunset during hunting season.

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■ 30. Amend § 32.56 Oregon by:

■ a. Adding paragraphs A.9. and B.3. of Cold Springs National Wildlife Refuge;

■ b. Revising the introductory text of paragraph A. and revising paragraphs A.2., B., C., and D. of Malheur National Wildlife Refuge;

■ c. Adding paragraphs A.8. and B.1. of McKay Creek National Wildlife Refuge; and

■ d. Adding paragraphs A.8, B.4., and revising paragraph C. of Umatilla National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

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Cold Springs National Wildlife Refuge

A. Migratory Game Bird Hunting.

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9. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

B. Upland Game Hunting. * * *

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3. Condition A9 applies.

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Malheur National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of dove, goose, duck, merganser, coot, snipe, and pigeon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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2. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

B. Upland Game Hunting. We allow hunting of pheasant, quail, partridge, chukar, coyote, and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting of pheasant, quail, partridge, chukar, and rabbit from the third Saturday in November until the end of the State pheasant season on designated areas of the Blitzen Valley east of Highway 205. We allow hunting of pheasant, quail, partridge, chukar, and rabbit on designated areas on Malheur Lake concurrent with the State pheasant season.

2. We allow hunting of all upland game species during authorized State seasons on designated areas of the refuge west of Highway 205 and south of Foster Flat Road.

3. You may possess only approved nontoxic shot while in the field (see § 32.2(k) of this chapter) on designated areas east of Highway 205 and on Malheur Lake.

C. Big Game Hunting. We allow hunting of deer and pronghorn on designated areas of the refuge west of Highway 205 and south of Foster Flat Road in accordance with State regulations.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing year-round in the Blitzen River, East Canal, and Mud Creek upstream from and including Bridge Creek. We allow fishing in Krumbo Reservoir from the fourth Saturday in April until the end of October.

2. We prohibit boats, except for nonmotorized boats and boats with electric motors, on Krumbo Reservoir.

McKay Creek National Wildlife Refuge

A. Migratory Game Bird Hunting.

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8. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

B. Upland Game Hunting. * * *

1. Conditions A1, A2, and A8 apply.

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Umatilla National Wildlife Refuge

A. Migratory Game Bird Hunting.

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8. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

B. Upland Game Hunting. * * *

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4. Condition A8 applies.

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting by special refuge permit only. You must possess and carry the special refuge permit at all times while hunting.

2. Condition A8 applies.

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■ 31. Amend § 32.57 Pennsylvania by revising paragraphs A.2., A.3., B., C.2., C.4., D.1., D.3., D.4., D.5., and adding paragraphs D.8. and D.9. of Erie National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

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Erie National Wildlife Refuge

A. Migratory Game Bird Hunting.

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2. We only allow nonmotorized boats for waterfowl hunting. Hunters must remove boats (see § 27.93 of this chapter) from the refuge by legal sunset.

3. We require that hunters remove blinds and decoys from the refuge by legal sunset (see §§ 27.93 and 27.94 of this chapter)

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B. Upland Game Hunting. We allow hunting of grouse, squirrel, rabbit, woodchuck, pheasant, quail, raccoon, fox, coyote, skunk, and opossum on

designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting on the refuge from September 1 through the end of February.

2. We require all persons to possess and carry a refuge Special Use Permit while hunting fox, coyote, and raccoon on the refuge.

3. We allow dogs for hunting; however, they must be under the immediate control of the hunter at all times (see § 26.21(b) of this chapter).

C. Big Game Hunting. * * *

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2. Hunters must remove blinds, scaffolds, tree stands, and decoys (see § 27.93 of this chapter) from the refuge by legal sunset.

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4. We require all persons to possess and carry a refuge Special Use Permit while hunting bear on the refuge.

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D. Sport Fishing. * * *

1. We allow bank fishing only on the Seneca Unit of the refuge. We prohibit wading.

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3. We prohibit the use of watercraft for fishing, with the exception of Area 5 where we allow nonmotorized watercraft use from the second Saturday in June through September 15. They must remain in an area from the dike to 3,000 feet (900 m) upstream.

4. We require that all anglers must remove watercraft from the refuge by legal sunset (see § 27.93 of this chapter).

5. We allow ice fishing in Areas 5 and 7 only.

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8. We prohibit the possession of live baitfish on the Seneca Unit.

9. We prohibit the taking or possession of shellfish on the Seneca Unit of the refuge.

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■ 32. Amend § 32.60 South Carolina by:
■ a. Adding paragraphs C.15. and C.16. of Pinckney Island National Wildlife Refuge; and
■ b. Adding paragraph B.4. of Waccamaw National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

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Pinckney Island National Wildlife Refuge

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C. Big Game Hunting. * * *

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15. Hunters age 15 and younger must possess and carry a valid hunter education card in order to hunt.

16. Youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult may supervise no more than one youth hunter.

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Waccamaw National Wildlife Refuge

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B. Upland Game Hunting. * * *

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4. We prohibit squirrel hunting from a boat or other water conveyance on the refuge.

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■ 33. Amend § 32.61 South Dakota by:
■ a. Revising Huron Wetland Management District;
■ b. Revising Lake Andes Wetland Management District;
■ c. Revising Madison Wetland Management District;
■ d. Removing the listing of Pocasse National Wildlife Refuge;
■ e. Revising Sand Lake Wetland Management District; and
■ f. Revising Waubay Wetland Management District to read as follows:

§ 32.61 South Dakota.

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Huron Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys. portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands and free-standing elevated platforms on Waterfowl Production Areas from the first Saturday after August 25 through February 15.

2. You must label portable tree stands and free-standing elevated platforms with your name and address or current hunting license number so it is legible from the ground.

3. We prohibit the use of horses for any purpose.

4. You must remove portable ground blinds and other personal property by the end of each day (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

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Lake Andes Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands and free-standing elevated platforms on Waterfowl Production Areas from the first Saturday after August 25 through February 15.

2. You must label portable tree stands and free-standing elevated platforms with your name and address or current hunting license number so it is legible from the ground.

3. We prohibit the use of horses for any purpose.

4. You must remove portable ground blinds and other personal property by the end of each day (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove

boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

Madison Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands and free-standing elevated platforms on Waterfowl Production Areas from the first Saturday after August 25 through February 15.

2. You must label portable tree stands and free-standing elevated platforms with your name and address or current hunting license number so it is legible from the ground.

3. We prohibit the use of horses for any purpose.

4. You must remove portable ground blinds and other personal property by the end of each day (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

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Sand Lake Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands and free-standing elevated platforms on Waterfowl Production Areas from the first Saturday after August 25 through February 15.

2. You must label portable tree stands and free-standing elevated platforms with your name and address or current hunting license number so it is legible from the ground.

3. We prohibit the use of horses for any purpose.

4. You must remove portable ground blinds and other personal property by the end of each day (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

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Waubay Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter). We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands and free-standing elevated platforms on Waterfowl Production Areas from the first Saturday after August 25 through February 15.

2. You must label portable tree stands and free-standing elevated platforms with your name and address or current hunting license number so it is legible from the ground.

3. We prohibit the use of horses for any purpose.

4. You must remove portable ground blinds and other personal property by the end of each day (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

■ 34. Amend § 32.63 Tennessee by:

■ a. Revising paragraphs A.3., A.5., B.2., B.3., C.1., C.4., and D. of Chickasaw National Wildlife Refuge;

■ b. Revising Hatchie National Wildlife Refuge; and

■ c. Revising paragraphs A.3., A.5., A.8., B.2., B.3., C.1., C.4., C.5., D.4., and D.7. of Lower Hatchie National Wildlife Refuge to read as follows:

§ 32.63 Tennessee.

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Chickasaw National Wildlife Refuge

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A. Migratory Game Bird Hunting. * * *

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3. You must possess and carry a signed refuge permit and report game taken as specified within the permit.

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5. Mourning dove, woodcock, and snipe seasons close during all firearms and muzzleloader deer seasons.

* * * * *

B. Upland Game Hunting. * * *

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2. Spring squirrel season is closed on the refuge.

3. Squirrel, rabbit, and quail seasons close during all firearms and muzzleloader deer seasons.

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C. Big Game Hunting. * * *

1. Conditions A1 through A3, and A7 through A8 (each adult may supervise only one youth hunter) apply.

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4. We only allow the use of portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment (see §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day's hunt.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing from legal sunrise to legal sunset.

2. We only allow fishing with pole and line or rod and reel.

3. We prohibit possession of unauthorized fishing gear, including trotlines, limblines, juglines, yo-yos, nets, spears, and snag hooks, while fishing on the refuge.

4. We allow the use of bow and arrow or a gig to take nongame fish on refuge waters.

5. We prohibit taking frog or turtle on the refuge (see § 27.21 of this chapter).

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Hatchie National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge is a day-use area only, with the exception of legal hunting/fishing activities.

2. We prohibit the use of motorized off-road vehicles (e.g., ATVs) on the refuge (see § 27.31(f) of this chapter).

3. You must possess and carry a signed refuge permit and report game taken as specified within the permit.

4. We only allow waterfowl hunting on Tuesdays, Thursdays, and Saturdays. Legal hunting hours for duck, goose, coot, and merganser are ½ hour before legal sunrise to 12 p.m. (noon).

5. Mourning dove, woodcock, and snipe seasons close during all firearms and muzzleloader deer seasons.

6. We allow only portable blinds, and hunters must remove all boats, blinds, and decoys (see §§ 27.93 and 27.94 of this chapter) from the refuge by 1 p.m. daily.

7. We allow hunters to access the refuge no more than 2 hours before legal sunrise, and they must leave the refuge no more than 2 hours after legal sunset.

8. Each youth hunter (under age 16) must remain within sight and normal voice contact of an adult (age 21 or older).

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, quail, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3 and A7 through A8 apply.

2. Spring squirrel season is closed on the refuge.

3. Squirrel, rabbit, and quail seasons close during all firearms and muzzleloader deer seasons.

4. Hunting hours for raccoon and opossum are legal sunset to legal sunrise.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3, A7, and A8 (each adult may supervise only one youth hunter) apply.

2. You may only participate in the refuge deer gun hunts with a special quota permit issued through random drawing. Information for permit applications and season dates is available at the refuge headquarters.

3. You may only possess approved nontoxic shot (see § 32.2(k)) while hunting turkey.

4. We only allow the use of portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment (see §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day's hunt.

5. We allow archery-only hunting between State Highway 76 and Interstate 40.

6. We only allow archery hunting the first 16 days of the State season.

7. We are closed to Youth-Deer hunting.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A2 apply.

2. We only allow fishing with pole and line or rod and reel.

3. We prohibit possession of unauthorized fishing gear, including trotlines, limblines, juglines, yo-yos, nets, spears, and snag hooks, while fishing on the refuge.

4. We allow use of a bow and arrow or gig to take nongame fish on refuge waters.

5. We prohibit taking frog or turtle on the refuge (see § 27.21 of this chapter).

6. We seasonally close the sanctuary areas of the refuge to the public November 15 through March 15.

7. We open Oneal Lake for fishing during a restricted season and for authorized special events. Information on event and season dates is available at the refuge headquarters.

8. You must immediately release all largemouth bass under 14 inches (30 cm) in length on Goose and Quail Hollow Lakes.

9. We allow the use of nonmotorized boats and boats with electric motors only.

10. We only allow bank fishing on Goose Lake.

Lower Hatchie National Wildlife Refuge

A. Migratory Game Bird Hunting.

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3. You must possess and carry a signed refuge permit and report game taken as specified within the permit.

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5. Mourning dove, woodcock, and snipe seasons close during all firearms and muzzleloader deer seasons.

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8. We close Sunk Lake Public Use Natural Area to all migratory game bird hunting, and we close the southern unit of Sunk Lake Public Use Natural Area to all hunting.

* * * * *

B. Upland Game Hunting. * * *

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2. Spring squirrel season is closed on the refuge.

3. Squirrel, rabbit, and quail seasons close during all firearms and muzzleloader deer seasons.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A3, and A7 through A9 (each adult may supervise only one youth hunter) apply.

* * * * *

4. We only allow the use of portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment (see §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day's hunt.

5. We allow archery-deer hunting only on the northern unit of Sunk Lake Public Use Natural Area.

D. Sport Fishing. * * *

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4. We allow use of a bow and arrow or a gig to take nongame fish on refuge waters.

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7. We allow the use of nonmotorized boats and boats with electric motors only on Sunk Lake Public Use Natural Area.

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■ 35. Amend § 32.63 Texas by:

■ a. Redesignating paragraphs A.1. through A.18. as paragraphs A.2. through A.19., adding a new paragraph A.1., and revising paragraphs A.12., A.13., and A.14. of Anahuac National Wildlife Refuge;

■ b. Redesignating paragraphs A.1. through A.3. as paragraphs A.2. through A.4. and adding a new paragraph A.1. of Big Boggy National Wildlife Refuge;
■ c. Redesignating paragraphs A.1. through A.4. as paragraphs A.2. through A.5., adding a new paragraph A.1., and revising paragraph D. of Brazoria National Wildlife Refuge;
■ d. Revising paragraphs C.2., C.3., C.5., C.6., and adding paragraph C.17. of Laguna Atascosca National Wildlife Refuge;
■ e. Revising the introductory text of paragraph A., redesignating paragraphs A.1. through A.15. as paragraphs A.2. through A.16., adding a new paragraph A.1., revising paragraphs A.4. and A.5., revising paragraph D.5., and removing paragraph D.6. of McFaddin National Wildlife Refuge;
■ f. Redesignating paragraphs A.1. through A.4. as paragraphs A.2. through A.5., adding a new paragraph A.1., revising paragraph A.2., and revising paragraph D. of San Bernard National Wildlife Refuge;
■ g. Redesignating paragraphs A.1. through A.13. as paragraphs A.2. through A.14., adding a new paragraph A.1., revising paragraphs A.5., A.6., A.11., A.13., and revising paragraph D.4. of Texas Point National Wildlife Refuge; and
■ h. Revising paragraphs B.2., B.4., and the introductory text of paragraph D. of Trinity River National Wildlife Refuge to read as follows:

§ 32.63 Texas.

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Anahuac National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we will prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

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12. We prohibit the use of airboats, marsh buggies, ATVs (see § 27.31(f) of this chapter) and personal watercraft.

13. On inland waters of refuge hunt areas open to motorized boats, we restrict the operation of motorized boats to lakes, ponds, ditches, and other waterways. We prohibit the operation of motorized boats on or through emergent wetland vegetation.

14. On inland waters of the refuge hunt areas open to motorized boats, we restrict the use of boats powered by air-cooled or radiator-cooled engines to those powered by a single engine of 25 hp or less and utilizing a propeller 9 inches (22.5 cm) in diameter or less.

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Big Boggy National Wildlife Refuge

A. Migratory Game Bird Hunting.

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1. Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we will prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

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Brazoria National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we will prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

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D. Sport Fishing. We allow fishing in accordance with State regulations subject to the following conditions:

1. We allow fishing only on Nick's Lake, Salt Lake, and Lost Lake and along the Salt Lake Weir Dike and the Bastrop Bayou Public Fishing Areas.

2. We allow access for shore fishing at Bastrop Bayou, Clay Banks and Salt Lake Public Fishing Areas, and Salt Lake Weir Dike.

3. We open Bastrop Bayou to fishing 24 hours a day; we prohibit camping.

4. We open all other fishing areas from legal sunrise to legal sunset.

5. We only allow nonmotorized boat launching at the Salt Lake Public Fishing Area. The refuge provides no other boat launching facilities.

6. We prohibit the use of trotlines, sail lines, set lines, jugs, gigs, spears, bush hooks, snatch hooks, crossbows, or bows and arrows of any type.

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Laguna Atascosa National Wildlife Refuge

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C. Big Game Hunting. * * *

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2. We allow archery and firearm hunting on designated units of the refuge. Units 1, 2, 3, 5, 6, and 8 are open to archery hunting during designated dates. Units 2, 3, 5, 6, and 8 are open to firearm hunting during designated dates. We close the following areas to hunting: Adolph Thomae, Jr. County Park in Unit 3, posted "No Hunting Zones" within all hunt units, La Selva Verde Tract (Armstrong), Waller Tract, COHYCO, Inc. Tract, Bahia Grande Unit, and South Padre Unit.

3. We offer hunting during specific portions of the State hunting season. We determine specific deer hunt dates annually, and they usually fall within November, December, and January. We may provide special feral pig and nilgai antelope hunts to reduce populations at any time during the year.

* * * * *

5. We require hunters to visibly wear 400 square inches (2,600 cm^2) of hunter orange, which includes wearing a minimum of 144 square inches (936 cm^2) visible on the chest, a minimum of 144 square inches (936 cm^2) visible on the back, and a hunter-orange hat or cap visible on the head when in the field. We allow hunter-orange camouflage patterns. We allow archery hunters during the archery-only hunts to remove their hunter orange in the field only when hunting at a stationary location.

6. Each youth hunter, ages 12 to 17, must be accompanied by and remain within sight and normal voice contact of an adult age 18 or older. Hunters must be at least age 12.

* * * * *

17. We require written documentation from a licensed physician to certify a hunter as temporarily or permanently disabled or mobility impaired no later than 10 calendar days before the start of the scouting or hunt period. We allow the use of all-terrain vehicles (ATVs), which excludes motorcycles and full-size passenger vehicles, for hunters with mobility impairments and other disabilities through the issuance of a Special Use Permit.

* * * * *

McFaddin National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we will prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

* * * * *

4. You may access hunt areas by foot, nonmotorized watercraft, outboard motorboat, or airboat. Airboats may not exceed 10 hp with direct drive with a propeller length of 48 inches (120 cm) or less. Engines may not exceed 2 cylinders and 484 cc. We prohibit all other motorized vehicles. We prohibit marsh buggies, ATVs, and personal watercraft (see § 27.31(f) of this chapter).

5. On inland waters of the refuge open to motorized boats, we restrict the use of boats powered by air-cooled or radiator-cooled engines to those powered by a single engine of 25 hp or less and utilizing a propeller 9 inches (22.5 cm) in diameter or less.

* * * * *

D. Sport Fishing. * * *

* * * * *

5. Conditions A5 and A6 apply.

San Bernard National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we will prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

2. We prohibit the building or use of pits and permanent blinds (see §§ 27.92 and 27.93 of this chapter).

* * * * *

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing only on the refuge portions of Cow Trap Lakes, Cedar Lakes, and along Cedar Lake Creek.

2. We prohibit the use of trotlines, sail lines, set lines, jugs, gigs, spears, bush hooks, snatch hooks, crossbows, or bows and arrows of any type.

Texas Point National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we will prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

* * * * *

5. You may access hunt areas by foot, nonmotorized watercraft, outboard motorboat, or airboat. Airboats may not exceed 10 hp with direct drive with a propeller length of 48 inches (120 cm) or less. Engines may not exceed 2 cylinders and 484 cc. We prohibit all other motorized vehicles. We prohibit marsh buggies, ATVs, and personal watercraft (see § 27.31(f) of this chapter).

6. On inland waters of the refuge open to motorized boats, we restrict the use of boats powered by air-cooled or radiator-cooled engines to those powered by a single engine of 25 hp or less and utilizing a propeller 9 inches (22.5 cm) in diameter or less.

* * * * *

11. We prohibit pits and permanent blinds. We allow portable binds or temporary natural vegetation blinds. You must remove portable blinds (see §§ 27.93 and 27.94 of this chapter) from the refuge daily.

* * * * *

13. Dogs accompanying hunters must be under the immediate control of handlers at all times (see § 26.21(b) of this chapter).

* * * * *

D. Sport Fishing. * * *

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4. Conditions A6 and A7 apply.

Trinity River National Wildlife Refuge

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B. Upland Game Hunting. * * *

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2. We allow hunting during a designated 23-day season. Hunters may enter the refuge and park in an assigned parking area no earlier than 4:30 a.m. We allow hunting from ½ hour before legal sunrise to legal sunset. We require hunters to return a data log card.

* * * * *

4. We prohibit the use of dogs, feeders, baiting (see § 32.2(h)), campsites, fires (see § 27.95(a) of this chapter), horses, bicycles, and all-terrain vehicles.

* * * * *

D. Sport Fishing. We allow fishing on most refuge tracts in accordance with State regulations subject to the following conditions:

* * * * *

■ 36. Amend § 32.64 Utah by revising paragraph A.1. of Bear River Migratory Bird Refuge to read as follows:

§ 32.64 Utah.

* * * * *

Bear River Migratory Bird Refuge

A. Migratory Game Bird Hunting.

* * *

1. Hunters may not shoot or hunt within 100 yards (90 m) of principal refuge roads (the tour route).

* * * * *

■ 37. Amend § 32.66 Virginia by:

■ a. Revising paragraph C.2.vi. of Chincoteague National Wildlife Refuge;

■ b. Revising paragraphs C.7. through C.12. and adding paragraph C.13. of James River National Wildlife Refuge;

■ c. Revising paragraphs A.3. and A.7. of Plum Tree Island National Wildlife Refuge;

■ d. Revising paragraphs C.1., C.5. through C.8., and adding paragraph C.9. of Presquile National Wildlife Refuge; and

■ e. Revising paragraph C., D.1., D.2., and D.5. of Rappahannock River Valley National Wildlife Refuge to read as follows:

§ 32.66 Virginia.

* * * * *

Chincoteague National Wildlife Refuge

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C. Big Game Hunting. * * *

* * * * *

2. * * *

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vi. We reserve Zone 2 for hunters confined to wheelchairs. Hunters confined to wheelchairs must remain on the paved trail or overlook platform on Woodland Trail. Hunters confined to wheelchairs who require assistance retrieving or dressing harvested animals

must have a nonhunting assistant available.

* * * * *

James River National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

7. During firearms season, all hunters must wear in a visible manner on head, chest, and back a minimum of 400 square inches (2,600 cm²) of solid-colored, hunter-orange clothing or material.

8. During archery only season, archers must wear in a visible manner a solid-colored, hunter-orange hat or cap while moving to and from their stand.

9. We require that firearm hunters remain within 25 feet (7.5 m) of their assigned stand unless tracking or retrieving a wounded deer.

10. We allow hunters to retrieve wounded deer from closed areas with prior consent from a refuge employee only.

11. We require hunters to unload all weapons while on the refuge (see § 27.42(b) of this chapter), except when at their assigned stand.

12. We prohibit the discharge of firearm or archery equipment across or within refuge roads, including roads closed to vehicles.

13. You must be at least age 18 to hunt without an accompanying, qualified adult. Youth hunters between ages 12 and 17 may only hunt when accompanied by an adult age 21 or older, who must also possess and carry a valid hunting license. The minimum age for hunters is 12.

* * * * *

Plum Tree Island National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

* * * * *

3. You may hunt from: the location of your choice, unimproved shore locations, camouflaged boats (float blinds) anchored to the shore, or temporary blinds erected on the interior of the island.

* * * * *

7. On all hunt days, hunters must retrieve and remove all decoys, temporary blinds, and equipment and leave Cow Island by 1 p.m. (see §§ 27.93 and 27.94 of this chapter).

* * * * *

Presquile National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. We require hunters to purchase a refuge hunt permit. You may obtain permits by contacting the Charles City office at (804) 829–9020. The hunter must possess and carry the signed permit while on refuge property.

* * * * *

5. We allow only portable tree stands that hunters must remove at the end of each hunt day (see §§ 27.93 and 27.94 of this chapter).

6. We require hunters to wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 cm2) of solid-colored, hunter-orange clothing or material.

7. We require hunters to remain within 25 feet (7.5 m) of their designated stand unless tracking or retrieving a wounded deer.

8. We require all hunters to unload all firearms while on the refuge, except when at their assigned stand (see § 27.42(b) of this chapter).

9. You must be at least age 18 to hunt without an accompanying, qualified adult. Youth hunters between ages 12 and 17 may only hunt when accompanied by an adult age 21 or older who must also possess and carry a valid hunting license. The minimum age for hunters is 12.

* * * * *

Rappahannock River Valley National Wildlife Refuge

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to purchase a refuge hunt permit. You may obtain permits by contacting the refuge headquarters at (804) 333–1470. The hunter must possess and carry the permit while on refuge property.

2. We allow shotgun, muzzleloader, and archery hunting on designated refuge hunt days.

3. We allow the take of two deer of either sex per day.

4. We prohibit dogs.

5. We allow only portable tree stands that hunters must remove at the end of each hunt day (see §§ 27.93 and 27.94 of this chapter).

6. During firearm seasons, all hunters must wear in a visible manner on head, chest, and back a minimum of 400 square inches (2,600 cm²) of solid-colored, hunter-orange clothing or material.

7. During archery only season, archers must wear in a visible manner a solid-colored, hunter-orange hat or cap while moving to and from their stand.

8. We prohibit the possession of loaded firearms or nocked arrows while on the refuge roads.

9. We require hunters to unload all weapons while traveling between the hunting sites (see § 27.42(b) of this chapter).

10. We prohibit the discharge of a firearm or archery equipment across or within refuge roads, including roads closed to vehicles.

11. We allow hunters to retrieve wounded deer from closed areas only with prior consent from a refuge employee.

12. You must be at least age 18 to hunt without an accompanying, qualified adult. Youth hunters between ages 12 and 17 may only hunt when accompanied by an adult age 21 or older who must also possess and carry a valid hunting license. The minimum age for hunters is 12.

D. Sport Fishing. * * *

1. We allow fishing access from legal sunrise to legal sunset.

2. We allow fishing from the Wilna Pond pier, banks of the dam, and watercraft. We prohibit fishing from the aluminum catwalk.

* * * * *

5. We prohibit the use of lead sinkers.

* * * * *

■ 38. Amend § 32.67 Washington by:

■ a. Adding paragraphs A.3., B.3., and C.3. of Columbia National Wildlife Refuge;

■ b. Revising paragraphs A. and C. of Conboy Lake National Wildlife Refuge;

■ c. Adding paragraph A.5., removing paragraphs B.4., B.5., adding a new paragraph B.4., removing paragraphs C.3., and C.4., and adding a new paragraph C.3. of Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge;

■ d. Revising paragraphs A. and C. of Julia Butler Hansen Refuge for the Columbian White-Tailed Deer;

■ e. Revising paragraphs A., B., and C. of Little Pend Oreille National Wildlife Refuge;

■ f. Adding paragraphs A.14. and B.5. and revising paragraph C. of McNary National Wildlife Refuge;

■ g. Revising paragraphs A. and D. of Ridgefield National Wildlife Refuge;

■ h. Adding paragraphs A.9 and B.4. of Toppenish National Wildlife Refuge;

■ i. Adding paragraphs A.9. and B.3, and revising paragraph C. of Umatilla National Wildlife Refuge; and

■ j. Adding paragraphs A.7. and B.5, revising the introductory text of paragraph C., revising paragraph C.3., and adding paragraph C.5. of Willapa National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Columbia National Wildlife Refuge

A. Migratory Game Bird Hunting.
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* * * * *

3. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

B. Upland Game Hunting. * * *
* * * * *

3. Condition A3 applies.

C. Big Game Hunting. * * *
* * * * *

3. Condition A3 applies.
* * * * *

Conboy Lake National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of dove, goose, duck, coot, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

2. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.
* * * * *

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following condition: Condition A2 applies.
* * * * *

Hanford Reach National Monument/ Saddle Mountain National Wildlife Refuge

A. Migratory Game Bird Hunting.
* * *
* * * * *

5. We prohibit shooting or discharging any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

B. Upland Game Hunting. * * *
* * * * *

4. Condition A5 applies.

C. Big Game Hunting. * * *
* * * * *

3. Condition A5 applies.
* * * * *

Julia Butler Hansen Refuge for the Columbian White-Tailed Deer

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, and common snipe on designated areas of the Hunting Island Unit in accordance with State regulations subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

2. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.
* * * * *

C. Big Game Hunting. We allow hunting of elk on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We conduct the refuge hunt by State permit only. We require hunters to possess and carry current Washington State elk licenses, valid for the refuge's hunt unit.

2. We allow a maximum of ten hunters to use the refuge in any one day, with one hunt period consisting of 5 consecutive days (Monday through Friday only).

3. We allow a maximum of four hunt periods per hunt season; two regular permit hunts, and if required, two "as needed" permit hunts.

4. We will use the State Second Elk Tag As-Needed hunt program as necessary to control elk numbers during months outside the normal hunting season, except we prohibit hunting during the period April through August.

5. The State will publish the hunting dates, number of permits to be issued, and other regulations for the refuge hunt in the State's Big Game hunting pamphlet. You may also obtain this information by contacting the refuge headquarters.

6. We allow hunting of elk using muzzleloading firearms only.

7. We require hunters to attend a refuge-specific orientation session each year prior to hunting on the refuge.

8. We allow hunting on Mondays through Fridays only. We close the refuge to hunting on weekends and Federal holidays.

9. We require hunters to sign in and out each day at the refuge headquarters. When signing out for the day, you must report hunting success, failure, and any hit-but-not retrieved animals.

10. No more than one unlicensed person may assist each licensed hunter during the hunt.

11. Additional persons may assist hunters during elk retrieval only.

12. We prohibit hunters from operating motorized vehicles on the refuge.

13. Condition A2 applies.
* * * * *

Little Pend Oreille National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit waterfowl hunting on any creek or stream.

2. We allow hunting during approved State hunting seasons occurring September through December and during the State spring wild turkey season only. We prohibit hunting and discharge of firearms during all other periods.

3. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit use of dogs except for hunting and retrieving upland game birds.

2. Conditions A2 and A3 apply.

C. Big Game Hunting. We allow hunting of big game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit all use of dogs for hunting of big game.

2. Conditions A2 and A3 apply.
* * * * *

McNary National Wildlife Refuge

A. Migratory Game Bird Hunting.
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14. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

B. Upland Game Hunting. * * *
* * * * *

5. Condition A14 applies.

C. Big Game Hunting. We allow hunting of deer only on the Stateline, Juniper Canyon, and Wallula Units in accordance with State regulations subject to the following conditions:

1. On the Wallula Unit, we only allow shotgun and archery hunting.

2. Condition A14 applies.
* * * * *

Ridgefield National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting by special refuge permit only. You must possess and carry the special refuge permit at all times while hunting.

2. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

* * * * *

D. Sport Fishing. We allow fishing and frogging on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing and frogging from March 1 through September 30 only.

2. We allow fishing and frogging from legal sunrise to legal sunset only.

Toppenish National Wildlife Refuge

A. Migratory Game Bird Hunting.

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9. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

B. Upland Game Hunting. * * *

* * * * *

4. Condition A9 applies.

* * * * *

Umatilla National Wildlife Refuge

A. Migratory Game Bird Hunting.

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* * * * *

9. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

B. Upland Game Hunting. * * *

* * * * *

3. Condition A9 applies.

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting by special refuge permit only. You must possess and carry the special refuge permit at all times while hunting.

2. Condition A9 applies.

* * * * *

Willapa National Wildlife Refuge

A. Migratory Game Bird Hunting.

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* * * * *

7. You may not shoot or discharge any firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

B. Upland Game Hunting. * * *

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5. Condition A7 applies.

C. Big Game Hunting. We allow hunting of deer, elk, and bear on Long Island, and deer and elk only on designated areas of the refuge north of the Bear River and east of Wallapa Bay, in accordance with State regulations subject to the following conditions:

* * * * *

3. We prohibit bear hunting on any portion of the refuge except Long Island.

* * * * *

5. Condition A7 applies.

* * * * *

■ 39. Amend § 32.69 Wisconsin by revising paragraphs B.1. and B.4., adding paragraph B.6., and revising paragraph C. of Necedah National Wildlife Refuge to read as follows:

§ 32.69 Wisconsin.

* * * * *

Necedah National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. Shotgun hunters may possess only approved nontoxic shot while hunting on the refuge (see § 32.2(k)). This includes turkey hunters.

* * * * *

4. You may use dogs only when hunting migratory game birds and upland game (except raccoon).

* * * * *

6. You may possess only unloaded guns in the retrieval zone of the Refuge Area 2 between 20th Street West and Suk-Cerney flowage during the State waterfowl hunting season, except while hunting deer during the deer gun season.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit possession of a loaded firearm or a nocked arrow on a bow within 50 feet (15 m) of the centerline of all public roads. Also, during the gun deer season, we prohibit possession of a loaded firearm within 50 feet (15 m) of the center of refuge trails, and we prohibit discharge of guns from, across, down, or alongside these trails.

2. We prohibit possession of a centerfire rifle capable of holding more than seven cartridges.

3. We prohibit construction or use of permanent blinds, stands, or ladders.

4. You may use portable elevated devices but must lower them to ground level at the close of shooting hours each day. You must remove all blinds, stands, platforms, and ladders from the refuge at the end of the hunting season (see §§ 27.93 and 27.94 of this chapter).

5. Hunters must clearly mark all non-natural blinds, stands, platforms, and ladders on the exterior with the owner's name and address in letters that are 1 inch (2.5 cm) high. You may also use an attached metal tag with stamped or engraved lettering that is clearly visible.

6. We permanently close Refuge Area 1 to all hunting.

7. Refuge Area 2 is open to deer hunting during State archery, gun, and muzzleloader seasons, except for any October special Zone-T gun hunts.

8. Refuge Area 3 is open to deer hunting during the State regular gun, muzzleloader, and late archery seasons. Unarmed deer hunters may enter Area 3 to scout beginning the Saturday prior to the gun deer season

9. We prohibit target or practice shooting.

10. You may utilize clothes pins marked with flagging or reflective material. We allow no other types of marking. You must clearly identify the owner's name and address on the clothes pin or the flagging itself. Hunters must remove all clothes pins by the last day of archery season.

11. Beginning the Saturday prior to the opening of the State regular gun deer season, you may use nonmotorized boats on Sprague-Goose Pools until freeze-up in order to access areas for deer hunting.

* * * * *

Dated: August 26, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–17792 Filed 9–12–05; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
September 13, 2005

Part IV

Department of Housing and Urban Development

24 CFR Part 891

Mixed-Finance Development for Supportive Housing for the Elderly or Persons With Disabilities and Other Changes to 24 CFR Part 891; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 891

[Docket No. FR–4725–F–02]

RIN 2502–AH83

Mixed-Finance Development for Supportive Housing for the Elderly or Persons With Disabilities and Other Changes to 24 CFR Part 891

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements statutory changes that enable the use of mixed-finance and for-profit participation in the Section 202 Supportive Housing program for the elderly and the Section 811 Supportive Housing program for persons with disabilities, as well as makes other changes to those programs. The rule uses the mixed-finance development model to leverage the capital and expertise of the private developer community to create attractive and affordable supportive housing developments for the elderly and for persons with disabilities. In addition, the rule provides for the leveraging of low-income housing tax credits as well as other sources of funding. The rule sets standards for the participation of limited partner investors (who may be for-profit entities) in partnership with a sole-purpose nonprofit general partner; describes eligible fees and expenses; lays out the use of capital advances in the mixed-finance context; and covers other matters relevant to mixed-finance development of these projects. This final rule follows an interim rule published on December 1, 2003, and takes into consideration public comments on the interim rule.

DATES: *Effective Date:* October 13, 2005.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–3000 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The American Homeownership and Economic Opportunity Act of 2000, Public Law 106–569 (AHEO Act), amended both the Section 202 Supportive Housing program (Section 202 program) for the elderly and the Section 811 Supportive Housing program (Section 811 program) for persons with disabilities. These amendments allow the participation of for-profit limited partnerships and the use of mixed-finance development methods. Section 831 of the AHEO Act further amended section 202(k)(4) of the Housing Act of 1959 (12 U.S.C 1701q(k)(4)), to add a for-profit limited partnership to the existing statutory definition of "private nonprofit organization," by stipulating that the sole general partner of one is a nonprofit organization meeting the requirements under 12 U.S.C. 1701q(k)(4)(A)–(C). Section 841 of the AHEO Act amended section 811(k)(6) of the National Affordable Housing Act (42 U.S.C. 8013(k)(6)) to add a for-profit limited partnership to the definition of "nonprofit organization," by stipulating that the sole general partner of one is a nonprofit organization meeting the requirements of 42 U.S.C. 8013(k)(6)(A)–(D). The statutory and/or regulatory requirements for the nonprofit organization include a nonprofit organizational structure, a governing board that includes the representation of the views of the community and is responsible for operating the development, and approval as to financial responsibility by HUD (see 12 U.S.C. 1701q(k)(4) and 42 U.S.C. 8013(k)(6), as amended). Sections 832 and 842 of the AHEO Act (12 U.S.C. 1701q(h)(6) and 42 U.S.C. 8011(h)(5), respectively) broadened the funding sources that may be used for amenities for, and the design and construction suitable for supportive housing for the elderly or persons with disabilities. Excess amenities may not be funded with the capital advance under either program, and, if other funds are used, the cost of such amenities is not taken into account in determining the amount of Federal assistance or the rent contribution of tenants.

These sections also added language stating that "[N]otwithstanding any other provision of law, assistance amounts provided under this section may be treated as amounts not derived from a Federal grant." (12 U.S.C. 1701q(h)(6) and 42 U.S.C. 8013(h)(5)). "Assistance amounts provided under this section" include capital advances. HUD does not consider capital advance funds to be grant funds. Significantly, 24 CFR part 84 of HUD's regulations codifies HUD's uniform rules for grants to institutions of higher education, hospitals, and other nonprofit organizations. Section 84.2 of these regulations, in accordance with Office of Management and Budget's (OMB's) governmentwide circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" on which 24 CFR part 84 is based (59 FR 47010, 47012), defines "award" as "financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by HUD to an eligible recipient * * * the term does not include * * * capital advances under the Sections 202 and 811 programs." Additionally, "recipient" is defined as "an organization receiving financial assistance directly from HUD to carry out a project or program," also in accordance with OMB's circular (see 59 FR 47013). However, consistent with HUD's treatment of capital advances, the term "recipient" in 24 CFR 84.2 is specifically defined to exclude project owners that receive capital advances under the Section 202 and 811 programs. Therefore, in its part 84 rule governing grants, HUD has distinguished capital advances from the grants covered by that part, and has treated capital advances in the same manner as mortgages insured or held by HUD. The added statutory language supports HUD's treatment of capital advances.

Sections 834 and 844 of the AHEO Act, 114 Stat. 3021–22 and 3023 amended, respectively, 12 U.S.C. 1701q(j) and 42 U.S.C. 8013(j), by adding a new paragraph to each statute relating to the use of project reserve accounts under the existing supportive housing for the elderly and persons with disabilities programs. Under these new sections, project reserves may be used to reduce the number of units by combining and retrofitting units that are obsolete or unmarketable, subject to HUD approval.

Sections 835 and 845 of the AHEO Act amended section 202(h)(1) of the Housing Act of 1959 (12 U.S.C. 1701q(h)(1)), and section 811(h)(1) of the National Affordable Housing Act (42 U.S.C. 8031(h)(1)), respectively, by clarifying that commercial facilities for the benefit of residents of the project and the community in which the project is located, may be located and operated in a supportive housing project for the elderly or persons with disabilities. Such commercial facilities cannot be subsidized with Section 202 or Section 811 funds.

Section 833 of the AHEO Act amended sections 202(b) and 202(h)(2) of the Housing Act of 1959 (12 U.S.C. 1701q(b) and 1701q(h)(2)), by removing the limitation in the Section 202 program that existing housing be acquired only from the Resolution Trust Corporation (RTC). Section 202 owners may now acquire property from other sources without the need for rehabilitation for use in supportive housing. In the case of Section 811, the statute does not limit acquisition to RTC properties (see 42 U.S.C. 8013(b)(2)).

II. Changes Made at the Final Rule Stage

In response to public comments, HUD has made some substantive changes to the December 1, 2003, interim rule (68 FR 67316) in this final rule.

A number of commenters opined that the interim rule was overly specific in its provisions in § 891.808 regarding the loan of the capital advance from the nonprofit organization to the partnership that functions as the mixed-finance owner, and that these requirements could interfere with the ability of mixed-finance developments to qualify for favorable treatment for Low Income Housing Tax Credit (LIHTC) purposes. In response, HUD has revised this section to merely provide that the sponsor may transfer the fund reservation directly to the mixed-finance owner. The parties are free, subject to compliance with legal requirements and HUD review, to structure this transaction in the way most appropriate for the development. In accordance with this less specific, more flexible approach, this final rule also removes § 891.828 of the interim rule, entitled "loan of capital advance funds to mixed-finance owner." In addition, in accordance with the goal of offering participants increased flexibility, the definition of "mixed-finance owner" in § 891.805 is revised to state that the sponsor may also, as long as it meets the statutory and regulatory criteria, be the general partner of the owner, and § 891.808 is revised to take this possibility into account.

A number of commenters stated that the cap on the amount of the developer's fee in the interim rule (a maximum of nine percent of the total project replacement cost, with no more than eight percent of the capital advance payable toward the fee) was too strict, and that the interim rule was overly specific as to the costs that could be paid from the developer's fee. In response, HUD is revising § 891.815 in this final rule to allow for developer's fees up to the percentage of total project replacement costs allowed by the tax credit allocating agency in the state where the development is sited, up to a ceiling of 15 percent. The final rule removes the list of approved uses of the fee. The fee may be paid upfront or on a deferred basis, and may not be paid from capital advances or project rental assistance under the Section 202 or Section 811 program or tenant rents.

A major change from the interim rule is that detailed firm commitment application, mixed-finance proposal, and evidentiary material submission requirements are being removed from the rule in response to comments that these sections were overly detailed and restrictive. Instead, HUD will provide separate program guidance on these requirements. Specifically, § 891.818 is simplified to a single sentence stating that the sponsor will submit the firm commitment application in a form required by HUD. Interim § 891.820 on the mixed-finance proposal is deleted from the rule in its entirety (elements of the mixed-finance proposal will be included along with the firm commitment application process in forthcoming program guidance). Interim § 891.823 on HUD review and approval of the firm commitment application is simplified to state that HUD will review and may approve or disapprove the firm commitment application and the mixed-finance proposal. The provisions of § 891.825 on submission of evidentiary materials are replaced by the more specific term "mixed-finance closing documents," and the details in the interim rule will be moved to forthcoming program guidance. The final rule will specify that the mixed-finance closing documents must be submitted before the capital advance.

In response to comments that the conflict and identity-of-interest provisions in the interim rule could cause problems for mixed-finance development, this final rule modifies those provisions. Where there is no FHA-insured or risk-sharing project, the conflict and identity-of-interest provisions in 24 CFR 891.130 will apply. However, where an FHA-insured or risk-sharing project is provided, the conflict and identity-of-interest policies that are used in the FHA program involved will instead apply, with the exception that the nonprofit general partner must continue to adhere to the provisions of § 891.130. The conflict-of-interest provision is at § 891.832 of the final rule, along with a new cross-reference that has been added in a new § 891.130(c).

The interim rule provided for a three-month operating reserve at § 891.860. In response to comments, HUD is clarifying that this is a minimum, not a ceiling, by adding the words "at least" in this final rule.

Discussion of the public comments received on the December 1, 2003, interim rule follows.

III. Discussion of Public Comments

The comment period for the interim rule closed on January 30, 2004. Seventeen commenters submitted comments during the comment period on a wide variety of issues related to the interim rule. The commenters included a variety of entities, including public housing authorities, housing finance agencies, and professional associations. A summary of the issues raised by the commenters follows, organized by regulatory section.

Section-by-Section Summary of Public Comments

Definition of Replacement Reserve Account (24 CFR 891.105)

Comment: There is a conflict between the definition of replacement reserve account, which states that the funds in the account may be used for repairs, replacements, or capital improvements to the project, and another section, interim rule § 891.855, which limits the use of replacement reserves to Section 202 or 811 units. The commenter would prefer to be able to use the replacement reserve for the general needs of the project, not just the Section 202 or 811 units.

HUD Response: Section 891.105 of the regulations requires that a replacement reserve account be established for the Section 202 or 811 units. Repairs to the Section 202 and 811 units are to be funded from this reserve account. Repairs to non-Section 202 or 811 units would be funded with other monies according to the financing and management structure for those units. Repairs to common elements would be prorated based on the percentage of Section 202 or 811 units. For example, if a building needed roof repairs (assuming the roof is a common element), and half the units were Section 202 or 811 units, half the repair money could be taken from the Section 202 or 811 replacement reserve. The owner could then set up a separate repair or reserve for replacement account for the non-HUD units; the rule only requires a replacement reserve account for the HUD-funded units.

Definitions of Mixed-Finance Owner and Nonprofit Organization (24 CFR 891.805)

Comment: A commenter asked whether the statutory inclusion of for-

profit limited partnerships with a nonprofit general partner (see 12 U.S.C. 1701q(k)(4) and 42 U.S.C. 8013(k)(6)) allows for limited liability companies (LLCs) in which the sole managing member is an eligible nonprofit corporation. This commenter states that in the HOPE VI program, LLCs and partnerships are treated equally. This commenter states that the statutory provision would appear to allow for an interpretation that an LLC is an eligible for-profit organization in its use of the phrase "or a corporation wholly owned and controlled by" an eligible nonprofit organization as part of the definition of "private nonprofit organization." Another commenter stated that an LLC should be included as a possible mixed-finance owner, and that more than one nonprofit general partner should be allowed within the definition of private nonprofit organization. Another commenter stated that the rule should allow LLCs as ownership entities, as the statute already permits LLCs, and that depending on state law and the preference of investors, LLCs are becoming more popular as the ownership entity in LIHTC projects. Another commenter stated that LLCs are often preferable for reasons of state law.

Some commenters stated that the definition of "mixed-finance owner" should be expanded to include a for-profit limited partnership in which a for-profit affiliate of a private nonprofit organization is the sole general partner. These commenters stated that this is the preferred structure to comply with some states' corporation laws and may be necessary to comply with local law and meet Internal Revenue Service (IRS) rules for LIHTC projects.

HUD Response: The regulatory definition of "mixed-finance owner" follows the statutory requirements of the AHEO Act of 2001, including that there be a sole general partner meeting specified requirements, specifically, requirements related to being a nonprofit organization, and that the mixed-finance owner be a limited partnership. HUD believes that the statutory definition precludes the use of LLCs as the ownership entity or the general partner or the use of more than one general partner (see 12 U.S.C. 1701q(k)(3) and (4) and 42 U.S.C. 8013(k)(5) and (6)) .

Comment: A commenter stated that the definition of "nonprofit organization" stated in the rule creates difficulties for regional and national nonprofit Section 202 and Section 811 developers. The definitions require that the nonprofit have a governing board selected in a manner to ensure that there is significant representation of the views of the community in which the housing is located. The commenter stated that it is not practical to meet this test at the level of the parent organization or sponsor. HUD should clarify that the community representation requirements can be satisfied by the general partner of the project owner.

HUD Response: As the preamble of the rule states, and the definition of eligible nonprofit and nonprofit organizations reference, the statutorily required requirement of representation of the views of the community in the Section 202 program (12 U.S.C. 1701q(k)(4)(B)) can be fulfilled by the general partner. No further clarification is required. (See § 891.805 of this final rule, and §§ 891.205 and 891.305 of the 202/811 program rules.) The governing body of the general partner must be selected in such a manner as to assure that there is significant representation of the community in which the housing is located, as required by §§ 891.205 and 891.305.

This commenter also stated that in its experience, the IRS has on policy grounds refused to confer tax-exempt status under section 501(c)(3) of the Internal Revenue Code for any entity serving as the general partner in a tax credit limited partnership. As a result, it will not be possible for the general partner entity to obtain its own section 501(c)(3) tax exemption.

HUD Response: The nature of the partnership structure is determined by the governing statute. HUD suggests that partnerships work with the IRS to determine how to structure their partnerships, within the statute and regulations, to obtain the maximum tax benefits available.

Recipient of Fund Reservation (Preamble at 68 FR 67317 and 24 CFR 891.808(a))

Comment: The requirement that the nonprofit general partner be created by a sponsor that has received a Section 202 or 811 fund reservation is not based on the statute. As long as the nonprofit general partner meets the statutory criteria for a private nonprofit organization, or nonprofit organization, as applicable, that should be sufficient assurance that the mixed-finance owner is eligible.

HUD Response: In accordance with this comment, HUD is revising this final rule to include the possibility that a sponsor that meets the statutory and regulatory requirements may either form an entity to act as the general partner of the single-purpose mixed finance owner, or itself be the general partner.

Mixed-Finance Loan Terms (24 CFR 891.808)

Comment: The rule is overly specific in its direction with respect to loan terms for the capital advance, and should be more flexible. A commenter stated that the parties to the mixed-finance transaction should define the loan terms for the capital advance rather than the rule, and recommended that the rule be redrafted to permit each transaction to be structured to meet tax credit requirements as well as the requirements of that transaction, with HUD retaining the right to review, approve, or disapprove the financial structure. Another commenter stated that the requirement that the general partner be the party that loans the funds to the mixed-finance owner could adversely impact the allocation of LIHTCs to the investors. The rule should provide that the funds can be provided to the mixed-finance owner in accordance with the terms of the HUD-approved mixed-finance proposal. Another commenter stated that the rule should permit the funds to go directly to the sponsor, which would then lend them to the mixed-finance owner.

HUD Response: HUD has revised this section to provide that the sponsor may transfer the fund reservation directly to the mixed-finance owner. The parties are free, subject to compliance with legal requirements and HUD review, to structure this transaction in the way most appropriate for the development.

Comment: A number of commenters stated that the loan to the mixed-finance owner should be at the applicable federal rate (AFR), consistent with IRS tax credit law, rather than the Section 202/811 rate.

HUD Response: HUD has removed the specific interest rate provisions from this final rule. The parties are free, subject to compliance with legal requirements and HUD review, to structure this transaction in a way most appropriate for the development.

Comment: The interim rule's characterization of the loan from the general partner to the mixed-finance owner as non-repayable will jeopardize the treatment of the loan in an LIHTC transaction because it may not be considered a true debt. HUD should clarify whether the loan must be forgiven after 40 years of operation in compliance with HUD's rules, and whether it must be non-amortizing. A possible solution might be interest-only payments for 40 years with a balloon payment of principal at the end. For similar reasons, two commenters stated that any "pass through" of HUD funds runs the risk of negative consequences

in an LIHTC transaction. A commenter stated that the repayment requirement in § 891.808(a) appears to be in conflict with preamble language stating that repayment is not required so long as the project remains available in accordance with the use restrictions (68 FR 67318).

HUD Response: The interim rule stated that the loan from the general partner to the mixed-finance owner is a non-amortizing loan to be repaid within 40 years. The non-repayment provision is a statutory provision that applies to the capital advance from HUD and repayment to HUD, and applies only so long as the use restrictions remain in effect for the entire period required.

Comment: A commenter stated that the sentence reading "however, the number of section 202 or 811 units in the development funded with the capital advance must be not less than the number of units that could have been developed with the capital advance without the use of mixed funding sources." The commenter stated that it is unlikely that capital advance funds will be "diluted" when combined with other financing.

HUD Response: This language ensures that the capital advance is used for the number of units upon which the award was based. While, in most cases, HUD funds are used appropriately, HUD believes that this regulatory control is necessary to ensure the appropriate use of limited federal funds in all cases.

Project Rental Assistance (891.810)

Comment: Four commenters stated that project rental assistance should be characterized as rental assistance payments rather than as a federal grant. One commenter stated that few or no financings will be feasible unless and until the IRS makes a specific ruling that project rental assistance payments related to the Section 202 program are not federal grants with respect to a building or its operation, and asked that the IRS expedite such a ruling. One commenter stated that HUD should work with the IRS to clarify that project rental assistance will not be treated as federal grants to mixed-finance Section 202 projects for tax credit purposes. This commenter stated that in the absence of such a clarification, rental assistance payments may cause a dollar-for-dollar reduction in the projects eligible basis for LIHTC purposes, with a resulting reduction in the amount of available tax credits. Also, without this clarification, project rental assistance payments may cause the rent due on the unit to exceed the IRS limitation on gross rent so that the unit will fail to qualify as a rent-restricted unit. This commenter also stated that such a ruling regarding project rental assistance is "critical to prevent reductions in LIHTC eligible basis with respect to such assistance."

HUD Response: HUD believes that project rental assistance should not be treated as a Federal grant. Whether or not project rental assistance is to be treated as a Federal grant for LIHTC purposes is a determination that the IRS must make. HUD is in the process of discussing this matter with the IRS.

Developer's Fee (24 CFR 891.815)

Comment: Some commenters objected to the limitation on the developer's fee of nine percent of the total project replacement cost. A number of commenters suggested that the rule adopt HUD's public housing mixed-finance cost control and safe harbor standards, which the commenter states provide for a safe harbor developer's fee of nine percent of the project costs subject to a maximum developer's fee up to 12 percent of the project costs. A commenter also stated: "We think that HUD should establish a maximum developer fee that can be paid from the Section 202/811 capital advance to be used for developer overhead and profit, but also provide for some flexibility and deference to state housing finance agencies in LIHTC transactions with respect to the amount of the developer fee and the uses to which such fees can be put when paid from other sources such as LIHTC equity."

Four commenters objected to limiting profit and overhead to six percent of construction cost. Two commenters stated that HUD could limit the amount of the fee paid from HUD funds, but should not limit the portion of the fee paid from other sources. Three commenters stated that because a mixed-finance developer will have to invest more equity and other guarantees to make projects feasible, "this arbitrary limitation on the amount of developer fees that are ordinarily available from other financing programs * * * should be removed from the rule."

Three commenters agreed, suggesting that the developer's fee be in any amount allowed by the state tax credit allocating agency (which can be up to approximately 15 percent of the project cost), provided that no more than eight percent of the capital advance funds be used toward the fee. A commenter stated that the fee should be able to exceed 12 percent with the approval of the state housing finance agency, provided that the increased fee is justified by increased developer's risk. These commenters also stated that there should be no limitations on the use of cash flow from the non-Section 202 or 811 units so that it can be used to pay the deferred portion of the developer's fee. Some commenters stated that any portion of the developer's fee not required to cover the eligible uses of the fee should be made available to the nonprofit developer once the project has been completed, reasoning that the developer should not be penalized for any cost savings it achieves and that reserve accounts can still be adequately funded. Another commenter stated that, in order to maximize eligible basis and resulting LIHTC equity, there should be a developer's fee higher than the interim rule allows, but within the higher limit of the LIHTC program.

HUD Response: After consideration of these comments, HUD is amending the final rule to lift the cap on developer's fees in Section 202 and 811 mixed-finance projects to the amount allowed by the state tax credit allocating agency of the state in which the project is sited, up to a ceiling of 15 percent of the total project replacement cost, payable from project sources other than capital advances, project rental assistance, or tenant rents.

Comment: A commenter stated that the rule should explicitly allow the project sponsor to receive the developer's fee.

HUD Response: The developer's fee would usually be paid to the project owner, and HUD plans to follow this practice in the mixed-finance program.

Eligible Uses of Developer's Fee (24 CFR 891.815(c))

Comment: A commenter stated that the limitation on eligible uses of the developer's fee may not work well in situations where there are LIHTCs and other sources of funding. Another commenter stated that the eligible uses of the developer's fee differ from the definition of developer's fee in the LIHTC program, and stated that the rule "should acknowledge the validity of a fee for development efforts and also allow flexibility in use of other funding sources for these items." Another commenter stated that "we are unclear as to why the description of eligible uses are considered to be part of the developer's fee." This commenter stated that most of these uses would be funded with the capital advance as part of the development budget. This is problematic for two reasons. First, the ability of the sponsor to recoup its overhead and costs is essential to its financial viability. Second, a developer's fee is generally includable in the eligible basis of the project for LIHTC purposes, generating additional tax credit equity. To the extent that the fee be used for expenses already

included in the budget, and further requiring that any portion of the fee not so spent be placed in the replacement reserve account, the interim rule decreases the eligible tax basis. Two commenters stated that the local tax credit agency's rules should apply to the uses of the fee. One commenter stated that the prescribed uses of the developer's fee are "not realistic for mixed finance transactions." Another commenter stated that more flexibility is needed on the allowed uses of the developer's fee. Another commenter stated that the following items under § 891.815(c)(1) of the interim rule are common development costs that should be paid out of the capital advance rather than the developer's fee: § 891.815(c)(1)(B), (F), (H), (I), (J), (K), (L), (M), and (N).

A commenter questioned the prohibition on using the developer's fee to pay attorney's and architect's fees "above those contractually agreed to," and stated that limits on these fees from the Section 202 program are quite restrictive and should be reviewed and potentially increased to reflect the greater complexity involved in a mixed-finance transaction, which may involve re-capitalization and reconfiguration of residential and commercial spaces.

HUD Response: In accordance with the comments and to increase program flexibility, HUD is removing the specific list of eligible uses from this final rule.

General Comments on the Firm Commitment Application (24 CFR 891.818)

Comment: Commenters stated that the regulation is not the best place for a long list of submission requirements and suggested that these requirements be placed in a handbook or other program guidance. Two commenters stated generally that HUD should develop streamlined submission requirements for mixed-finance transactions.

HUD Response: In accordance with the comment, HUD is removing the detailed submission requirements and will provide separate program guidance on the particulars of these requirements. Although the language of § 891.818(a)(8) is being removed from the rule, owners are still obligated to comply with the design and construction requirements of the Fair Housing Act, and the accessibility requirements of section 504 of the Rehabilitation Act of 1973. The architecture and engineering review includes an analysis of the project design to determine if it meets the design and construction standards of the Fair Housing Act and the accessibility requirements of section 504, as well as relevant design standards stated in 24 CFR 891.120, 891.210, and 891.310.

Specific Comments on the Firm Commitment Application (§ 891.818)

Comment: A commenter stated that § 891.818(a)(2), requiring submission of the organizational documents of the nonprofit organization and the mixed-finance owner, should be part of the evidentiary submission, since the investor limited partner, which is usually highly involved in the organizational documents of the mixed-finance owner, will probably not be selected until after there is a firm commitment. Two other commenters similarly stated that the details of the partnership might not be finished before there is a firm commitment. Another commenter stated that the rule should make clear that it is the initial partnership agreement that is required, not the agreement that is subject to negotiation with the investor. Alternatively, these documents could be submitted with the mixed-finance closing documents.

One commenter stated, as to § 891.818(a)(4), requiring a balance sheet showing that the mixed finance owner is adequately capitalized, that HUD should provide some guidance on how it will determine that the owner is adequately capitalized. Another commenter stated that HUD should accept a demand note as a means of establishing adequate capitalization. A commenter stated that, since most tax credit investors will not disburse tax credit equity until HUD has approved a drawdown of capital advance funds, the paragraph should be modified, perhaps to require a pro forma balance sheet as of the day of closing. One commenter stated that the capitalization requirement of § 891.818(a)(4) should be deleted because prior to outside investment, it is unlikely that the mixed-finance owner will be capitalized to any significant extent.

A commenter stated that § 891.818(a)(8) should state the form that the evidence of compliance with fair housing and accessibility standards should take.

A commenter stated that the requirement for obtaining zoning approvals at the time of the firm commitment application (§ 891.818(a)(7)) may not be feasible in all cases.

A commenter stated that a life cycle cost analysis (§ 891.818(a)(15)) is no longer required for HOPE VI projects, and stated that HUD should reconsider its utility for Section 202/811 projects.

A commenter stated that because of the requirement to have a final contractor's cost breakdown and analysis (§ 891.818(a)(18)), and the fact that it is impossible to secure a contractor's bid for an unlimited period of time, there should be a time limit on HUD's review of the firm commitment application, from submission to initial closing, such as 60 days.

HUD Response: Pursuant to comments, HUD is removing from the final rule the various elements that commenters cited. HUD will be issuing program guidance that will deal with these issues, and will consider these comments in issuing this guidance. Regarding the issue of a time limit on HUD's review of the firm commitment application, HUD will endeavor to process these applications in a timely manner but, because of the likely complexity and uniqueness of mixed-finance projects, HUD declines to adopt a time limit on its review.

Mixed-Finance Proposal (§ 891.820)

Comment: A commenter stated generally that the requirement of a full mixed-finance proposal is not necessary, and the firm commitment application should serve in lieu of a mixed-finance proposal. More thorough review of documents should be handled at the evidentiary stage.

A commenter stated that experience in the public housing mixed-finance program shows that submission of all financing documents at the proposal stage (§ 891.820(b)) is not really practical. HUD should be provided with enough information about the financing to determine that the proposal is practical; however, the actual documentation of the financing should be part of the evidentiary package submission and not part of the proposal. Another commenter stated that such financing documents are duplicative of evidentiary requirements and also may not be available at the time of submission of the proposal.

A commenter stated that the certifications and assurances of legal authority to enter into the mixed-finance arrangement required by § 891.820(n) are not necessary with respect to the mixed-finance owner. The commenter stated that "it is unlikely that at the proposal stage, the mixed-finance owner will be formed and there is no need for a certification that the mixed-finance owner has authority under state and local law to develop the housing." Another commenter stated that these certifications and assurances should be part of a streamlined process.

A commenter stated that in § 891.820(b), the next-to-last sentence, which requires official confirmation of the award of tax credits from the state

allocating agency if tax credits are being used, should be modified. The commenter stated that, with respect to a nine percent tax credit project, the rule should clarify that a copy of the allocating agency's executed credit reservation contract will meet this requirement. For a four percent tax credit project using tax-exempt bonds, a credit reservation contract is not used. This commenter and one other stated that for these projects, the rule should clarify that a copy of the allocating agency's executed IRC Section 42(m) letter will meet this requirement.

A commenter stated that, because four percent credits can be derived from an issuance of tax-exempt bonds, rather than an award of tax credits, the rule be revised to add language reflecting that possibility, adding at the end of the current sentence the following:

"* * * or evidence of the issuance or intention to issue bonds on behalf of the project by the agency which will issue such bonds accompanied by a schedule illustrating the amount of credits that the project is expected to yield as a result of such bonds."

A commenter stated that the rule should clarify what constitutes a "firm and irrevocable financing commitment," as most financing commitments have some contingencies, such as final review of due diligence, appraisal, and environmental studies, and final approval by the lender's loan committee. Another commenter stated that HUD should accept funding commitments that are conditioned upon the actual certification of basis eligible costs per accepted four percent tax credit procedure. Another commenter similarly stated that conditions on financing commitments, including review of final plan specifications, review of environmental testing, and other typical due diligence items, typically are not satisfied at the stage when a firm commitment package is submitted to HUD.

HUD Response: The rule is being streamlined so that these elements are being removed in favor of forthcoming program guidance that will combine elements of the firm commitment application and the mixed-finance proposal. HUD will consider the comments received in response to the interim rule in formulating its program guidance.

HUD Review and Approval (§ 891.823)

Comment: One commenter stated as to § 891.823(b)(1) that there is no reason for HUD to make a determination that the mixed-finance owner has the legal capacity to enter into all necessary contracts and agreements. While HUD may need to determine that the nonprofit organization has the legal capacity to participate in the transaction, there is no reason for this determination with respect to the mixed-finance owner. There are numerous checks in the closing process, including owner counsel opinions, that should provide sufficient assurance to HUD.

This commenter also stated as to § 891.823(b)(6) and (7) that these items (covenants and use restrictions, and state, local, and federal approvals and zoning changes or variances) should be submitted as part of the evidentiary review process and not the proposal process. Another commenter stated that the covenants and use restrictions are more appropriately part of the mixed-finance closing documents.

HUD Response: Rather than attempting to provide every detail about HUD review and approval, the final rule states that HUD has the authority to review and approve or disapprove firm commitment applications.

Mixed-Finance Closing Documents (§ 891.825) ("Evidentiary Materials" in the Interim Rule)

Comment: One commenter recommended streamlined evidentiary material requirements. Three commenters objected to the conflict-of-interest provisions in § 891.825(a)(1)(ii), particularly the provision that the mixed-finance owner not be under the control of the persons or firms seeking to derive profit or gain from the mixed-finance owner. One of the commenters stated that this provision is at odds with the basic purpose of the mixed-finance rule, to bring for-profit entities into the Section 202/811 program to expand the affordable housing choices of the elderly and persons with disabilities. This broad prohibition on profit or gain by participants and investors is not a realistic position. This provision relates back to when the Section 202/811 program was limited to nonprofit entities. HUD will have sufficient opportunity to review financing proposals and evidentiary documents to assure itself that the financing structure is reasonable. As to the same provision, another of these commenters stated that the rule should clarify that the limited partner will not be deemed to be controlling or directing the mixed-finance owner so long as the general partner has day-to-day decision-making authority and the limited partner's control is limited to approval rights over major decisions. Another of these commenters stated that "the investor intends to derive profit from the transaction, and whether the investor controls or directs the partnership in the manner intended by the regulation would be impossible to determine * * *. In addition, to the extent the developer is permitted a profit, and the developer is the general partner, this requirement would also not be satisfied." This commenter states that there is no similar requirement in the HOPE VI program, and HUD's review of the proposal and mixed-finance closing documents should give sufficient assurance.

A commenter stated as to § 891.825(a)(3), requiring a deed or ground lease, that in some cases the mixed-finance owner may have already obtained a fee or leasehold interest in the property. This commenter stated that "it may be more helpful to delete any reference to a conveyance document."

Five commenters stated as to § 891.825(a)(12), requiring a legal opinion that counsel has examined the financing and that such financing has been irrevocably committed for use in carrying out the project, that the rule should not require such a legal opinion. Three of these commenters stated that attorneys would not be able to opine that funds are "irrevocably committed" to the project. Another commenter similarly stated that the legal opinion should only address customary legal issues such as the legal existence of entities, execution of documents, and the enforceability of agreements, rather than financing and irrevocability of commitments. Another commenter agreed and further stated that "* * * many law firms do not permit their attorneys to give opinions regarding the priority of recorded documents. HUD should rely on the title policy to confirm the priority of the * * * Restrictive Covenants."

Two commenters stated that the no-assignment clause in § 891.825(a)(13) could cause problems with the project, such as in the areas of enforceability of contract provisions and assurance of continued funding in the event of a default by the mixed-finance owner.

A commenter objected to § 891.825(a)(15)(ii), which requires the owner to comply with all deed restrictions, including an agreement not to dispose of the development without HUD's prior written approval during the entire period that the assisted housing use restrictions remain in effect. The commenter states that this will preclude a lender from foreclosing on the project and thus effectively eliminate the ability to obtain private financing. The commenter suggests that the rule be clarified so that this restriction does not apply to lenders whose loans are

secured by the property and the ability to transfer the property upon foreclosure, as long as the property remains subject to the use restrictions. The regulations should also permit transfer of the property to a single-asset nonprofit entity upon expiration of the initial 15-year tax credit compliance period.

Another commenter stated that the lender's deed of trust securing bond financing (for a four percent LIHTC project) must be in a superior position to all other monetary liens on the property's title. A commenter stated that the length of the use restrictions could cause serious underwriting issues for potential tax credit investors because it restricts the tenants to whom the units can be rented even if the necessary subsidies are not secured. This severely limits the investors' ability to underwrite alternate scenarios. This commenter asked that HUD consider language that at least allows an owner out of this requirement if the rental assistance is not renewed.

HUD Response: HUD plans to address the details of the mixed-finance closing documents (referred to as "evidentiary materials" in the interim rule) in separate program guidance. HUD will consider these comments in formulating that guidance.

Regarding the comments on the use restrictions, use restrictions are required by statute (12 U.S.C. 1701q(d)) and cannot be eliminated. Regarding the comment on control by the limited partners, HUD is adding modified conflict and identity-of-interest provisions in § 891.832 of the final rule. Where a mixed-finance project has an FHA-insured or risk-sharing mortgage, rather than following the conflict and identity-of-interest provisions of § 891.130, the conflict and identity-of-interest provisions of the insured or risk-sharing housing program shall apply, except that the provisions of § 891.130 shall continue to apply to the nonprofit general partner. A new § 891.130(c) has been added to contain a clarifying cross-reference to § 891.832.

Loan of Capital Advance Funds to Mixed-Finance Owner (§ 891.828)

Comment: One commenter stated that the language from § 891.808 regarding the loan or pass-through of capital advance funds from the general partner to the mixed-finance owner should be repeated in this section. In addition, the loan on a mixed-finance project using nine percent LIHTC should be "allowed as a true debt obligation."

One commenter stated that rather than the nonprofit organization, the sponsor should execute the capital advance agreement and loan the capital advance funds to the mixed-finance owner. This commenter also stated that the Project Rental Assistance Contract (PRAC) should be executed by the mixed-finance owner, rather than the nonprofit organization, because the nonprofit organization is not technically the owner of the project.

HUD Response: HUD has determined that the fund reservation may be transferred directly from the sponsor to the mixed-finance owner, and that the detailed loan or pass-through language should no longer be part of this rule. Regarding whether the loan is a "true debt obligation," the rule leaves the parties free to structure the transaction in a manner that is beneficial to the project subject to HUD review and approval of the firm commitment application. HUD agrees that the mixed-finance owner will execute the capital advance agreement and the PRAC. However, the particulars of these elements will be outlined in separate program guidance rather than this rule in accordance with other comments, and so § 891.828 is being removed in this final rule.

Comment: A commenter commented on the requirement in this section that the mixed-finance owner provide a note evidencing a non-amortizing loan of the capital advance funds for a period of not less than 40 years. The commenter stated that the loan should not be from the nonprofit organization serving as general partner to the mixed-finance owner, or from any party that is related to the nonprofit organization under IRS rules. This commenter also suggested that there be a definition for the term "note."

HUD Response: The final rule is amended to be more flexible regarding the transfer of the capital advance funds to the mixed-finance owner and no longer contains the language to which the commenter is referring. As to the relationship between the general partner and the owner, HUD recommends that program participants work within the regulations to obtain the maximum tax benefits available, including favorable treatment for LIHTC purposes. HUD suggests that program participants consult with their attorneys and the IRS regarding how best to maximize these benefits.

The term "note" is no longer being used in this context in this final rule, so a definition is not necessary.

Drawdown (§ 891.830)

Comment: This section requires that the capital advance be drawn down in an approved ratio to other funds, in accordance with a drawdown schedule. One commenter states that HUD should provide more flexibility in drawing down funds. For example, in some cases, it may be advantageous to draw down "soft" money first to minimize costs. Also, if faster drawdown of the capital advance allows deferral of some portion of the equity pay-in until 50 percent completion, the transaction may benefit from increased equity. HUD has shown some flexibility in early pay-in of HOPE VI funds and should do the same here. Another commenter stated that HUD should permit delaying, into the calendar year following substantial completion, the drawdown of the HUD funds required to take out that portion of tax-exempt bonds used only for construction financing as required to meet the (IRS) 50 percent test (for four percent tax credit projects).

HUD Response: The rule requires capital advance funds to be used for eligible costs actually incurred. Eligible costs are generally those referenced in the statutory sections on development cost limitations (12 U.S.C. 1701q(h) and 42 U.S.C. 8013(h)). Capital advance funds may not be used to pay for a portion of bond funding, bridge financing, or as debt service for financing. While HUD generally expects the capital advance funds to be drawn down in a one-to-one ratio for eligible costs actually incurred, HUD may permit, on a case-by-case basis, some variance from the drawdown requirement as needed for the success of the project. Further clarification of the uses of the capital advance funds will be provided in forthcoming program guidance.

Comment: A commenter stated that in certain bond-financed four percent LIHTC projects, bond proceeds are expended prior to other financing so that bond proceeds can be spent on the capitalized costs for the purpose of meeting certain legal requirements. There exists nothing in the interim rule that would preclude the use of the capital advance funds from being held and drawn down following the project's completion to pay off a portion of the bonds. This commenter suggested clarification that capital advance funds may be used to pay bridge or construction financing. Another commenter stated that the rule should allow capital advance funds to be used to collateralize tax-exempt bonds.

HUD Response: Capital advance funds may be used only for eligible expenses actually incurred. Eligible expenses are expenses of the types stated in 12 U.S.C. 1701q(h) and 42 U.S.C. 8013(h), and do not include paying off bridge or construction financing, or repaying or collateralizing bonds.

Comment: Capital advances should be usable to pay construction debt used to finance costs actually incurred, and that the rule should add a clause to that effect at the end of § 891.830(c)(4).

HUD Response: Capital advance funds must be used for eligible costs actually incurred, and may not be used to pay debt financing for costs actually incurred. The types of expenses that are eligible are the costs enumerated in 12 U.S.C. 1701q(h) and 42 U.S.C. 8013(h).

Comment: Construction lenders should have the right to exercise remedies to complete the project and to force the sponsor to use capital advances to repay loan advances made by the lender. The rule should also address the lien priority which may be required by housing finance agencies or private lenders that advance funds in excess of the capital advance. HOPE VI may provide some examples.

HUD Response: It would not be legally permissible to permit the construction lender to advance funds that would be repayable from the capital advance or PRAC funds. Capital advance funds may be used for eligible expenses actually incurred. Furthermore, the use of capital advance or PRAC funds in the event of default is subject to statutory and regulatory limitations on the use of such funds and compliance with the capital advance agreement.

Eligible Uses of Project Rental Assistance (§ 891.835)

Comment: Interim § 891.835(b)(1) would prohibit project rental assistance from being used to pay debt service. One commenter stated that it would be beneficial if Section 202 rental assistance could be used to support debt.

HUD Response: The statute requires project rental assistance to be used to pay the costs of units occupied by eligible families that are not met from project income (12 U.S.C. 1701q(c)(2)). The limitations on project rental assistance in the rule are consistent with the statutory requirements.

Replacement Reserves (§§ 891.855, 891.405(d))

Comment: One commenter stated that uses of the replacement reserves cannot be limited to the Section 202/811 units. There are many costs that will need to be incurred on a pro rata basis, such as roof repairs. Another commenter stated that income from the HUD units should be used to meet the replacement reserve requirement.

HUD Response: In the case of repairs to common elements, the Section 202/811 replacement reserve can be used on a pro rata basis based on the percentage of Section 202 or 811 units in the building whose common elements are being repaired.

Comment: HUD should provide additional guidance to field offices so that the authority to retrofit obsolete units can be implemented.

HUD Response: HUD does not believe additional formal guidance for field offices on using replacement reserves for retrofitting is needed at this time. HUD will address issues that arise in this regard on a case-by-case basis. If it should appear in the future that such guidance may be advisable, HUD may consider it at that time.

Comment: Interim § 891.405(d) should recognize that in some cases retrofitting an obsolete unit may not be possible, and that conversion of an unmarketable unit to some other form of amenity would also be permitted.

HUD Response: The idea behind this requirement is to use retrofitting to increase the supply of marketable units, such as by combining two unmarketable efficiencies into one, one-bedroom unit. Removing units entirely from the housing stock for other uses is not contemplated by this provision.

Operating Reserve (§ 891.860)

Comment: The proposed three-month operating reserve should be a minimum and that if the parties agree to establish a larger reserve out of tax credit equity or other sources they are free to do so. The mixed-finance owner should have the discretion to increase the operating reserve beyond three months.

HUD Response: If there are funds available, the operating reserve may be larger than a three-month reserve. This provision has been revised in this final rule to provide in § 891.860 that the operating reserve must be sufficient for "at least" three months.

Comment: Income from the HUD units should be used to meet the operating reserve requirement.

HUD Response: 24 CFR 891.860(b) states that project income can be used to fund the operating reserve account. However, as § 891.860(c) states, income derived from Section 202 or 811 units may be used only for operating expenses of those units.

Comment: One commenter requested clarification as to why the rule limits funding the reserve to profits and tax credit equity. Although these are the most common sources of reserve funding, sponsors might find other sources of funding. Another commenter questioned the requirement of an operating reserve, stating that one is not required in the regular Section 202/811 program; however, given the fact that this rule requires an operating reserve, the commenter stated that it wants clarification that project income usable for this purpose includes income from the Section 202 or 811 units. This commenter stated that such operating reserves should be available for the entire development, and § 891.835(b)(3), disallowing the use of project rental assistance for the creation of reserves for non-Section 202 or 811 units, should be removed.

HUD Response: The rule permits the operating reserve to be funded with project income and tax credit equity, but imposes no limitation on other funds that may be used for the reserve. As to the issue of the usage of operating reserve, the Section 202 or 811 reserve account may be used only for the 202 or 811 units. Project rental assistance is limited to payment for the costs of the Section 202 or 811 units.

Maintenance as Supportive Housing Units for Elderly Persons or Persons With Disabilities (§ 891.863)

Comment: One commenter stated that the requirement that the use restrictions for Section 202 and 811 projects be superior to any foreclosure will reduce the likelihood that conventional lenders will provide financing. This commenter states that, upon foreclosure, the use restriction should allow for higher income levels, such as moderate income. Another commenter stated that the nonprofit organization or other qualified nonprofit approved by HUD and others providing funding to the project should have the right of first refusal and option to purchase the property from the partnership, so long as the use restrictions remain in effect as required by this section.

HUD Response: The use limitations are statutory, and hence required (12 U.S.C. 1701q(d)(1) and 42 U.S.C. 8013(e)(1)). According to statute, if the use restrictions do not remain in place for the full statutory period of 40 years, the capital advance becomes repayable to HUD. The final rule is revised to take into account the possibility of ownership changes or transfers during the 40-year use period.

General and Miscellaneous Comments

Comment: HUD should remain faithful to the congressional intent of the AHEO Act, which is to provide additional development options to increase the supply of affordable housing for elderly and disabled families.

HUD Response: HUD believes that this final rule fulfills these objectives.

Comment: The rule should have sufficient flexibility to accommodate the

real-world complexities of layered-subsidy development deals. Because these transactions are likely to be extremely complicated, this commenter stated that HUD should appoint a contact person at Headquarters who would be responsible for providing field staff and the general public "clear, consistent, and timely guidance" on HUD's mixed-finance development requirements.

HUD Response: As explained elsewhere in this preamble, HUD has provided additional flexibility in this final rule. As to the issue of an agency contact, participants in the mixed-finance program, as in the regular Section 202 or Section 811 program, should work with their local HUD office staff. Local HUD offices can forward inquiries to Headquarters if necessary.

Comment: HUD should eliminate the "stand-alone bias" in the Section 202 program. The commenter stated that under the interim rule, HUD funds can be combined with other funds only if the other funds are non-amortizing, and there is a condominium structure that provides a "firewall" for HUD funds. The commentator said this creates serious problems with developing mixed-use projects. Eliminating this bias would affect two kinds of projects: ones where the capital advance has not kept pace with the cost of development; and ones which are too small to be viable, or which propose to meet a greater need than the HUD subsidy allows. This commenter suggests that the rule allow HUD financing to be blended with other financing, and that HUD permit its capital advance funding to be subordinate to a bank or housing finance agency mortgage on the property. Similarly, three commenters stated that the rule assumes "that the funding sources for mixed-finance projects will be neatly divided between dwelling units funded by the Section 202 Capital Advance and those dwelling units funded through other sources.* * *" However, according to the commenters, it is likely that the underwriting structure of certain projects will require the combining of several sources. This should be acceptable to HUD as long as the units in such a project are subject to the regulatory agreement for the entire 40-year period, and therefore regulations should make this explicit.

HUD Response: HUD financing comes with statutory restrictions and hence regulatory ones designed to ensure the appropriate use of the funds according to statute and conflict of interest. The mixed-finance program allows the use of mixed funding sources; however, the federal funds still have to be treated in accordance with Federal requirements.

Comment: One commenter states that there have been historic problems with combining other funding sources with Section 202 projects because of the long history of the Section 202 program being a stand-alone program and the small staff at HUD field offices. This commenter states that the underwriting for this program should be delegated to the state agency that is underwriting the project for the tax credit program. This is similar to the HOME program. If this is done, there should be agreement that the LIHTC regulations should prevail in the case of conflict with the Section 202 regulations.

HUD Response: HUD intends to retain the underwriting responsibilities for the program at this time. HUD will be competitively selecting proposals for this program in accordance with the Department of Housing and Urban Development Reform Act of 1989 (Pub.L. 101–235, approved December 15, 1989) (HUD Reform Act). Each year a notice of funding availability (NOFA) is published in the **Federal Register** specifying in detail all of the requirements that must be met by applicants for funding, in order to be selected for funding. These requirements include statutory and regulatory and program requirements that must be satisfied by all applicants, if selected for funding. Failure on HUD's part to require compliance with all of these requirements would be a violation of the HUD Reform Act. Since requiring such compliance is HUD's responsibility and within HUD's expertise, HUD will retain the underwriting functions.

In any case of conflict between LIHTC regulations and Section 202 regulations, the Section 202 regulations would prevail. Applicants desiring to develop Section 202 or 811 mixed finance projects must describe in their applications in general terms that they plan to develop a mixed finance project. It is the sole responsibility of the applicants to develop mixed finance projects that will be consistent both with their obligations under the 202 or 811 NOFAs and the LIHTC regulations and requirements. Prior to developing their mixed finance proposals, applicants will have been competitively selected for 202 or 811 funding and will have accepted a letter obligating these funds and specifying conditions that must be satisfied. Under a prior year's NOFAs, applicants unable to develop a mixed finance project were able to proceed with the 202 or 811 project, since no rating points were affected. In the FY 2004 and 2005 NOFAs, since points are awarded for the number of additional units to be provided through mixed finance, failure to proceed with the mixed finance proposal will result in loss of the 202 or 811 funds reservation. Any deviation from the Section 202 or 811 NOFA requirements in order to meet the LIHTC requirements would result in a violation of the HUD Reform Act.

Comment: One commenter states that designation of the capital advance as a Federal grant is "likely," which will cause it to be excluded from the eligible basis for LIHTC purposes. This commenter states that the capital advance should be specifically excluded from the definition of "Federal grant" under Section 42. Another commenter states that the ability of a capital grant to be forgiven by compliance with the use restrictions may result in it being treated as a grant for tax credit purposes.

HUD Response: Both Sections 202 and 811, as amended by the AHEO Act, contain a clause stating that amounts provided under these sections may be treated as amounts not derived from a Federal grant.

Comment: The Section 202 program currently requires the sponsor to receive a property tax exemption from the local jurisdiction where the property is located. For mixed finance projects, the owners are for-profit entities in a legal sense, and therefore, in most cases, will not qualify for an exemption. In addition, contributions to local taxes may help combat negative perceptions of affordable housing. HUD should eliminate this requirement.

HUD Response: If available, the sponsor should seek such an exemption; however, HUD will not refuse to enter into a firm commitment if the exemption cannot be obtained.

Comment: Two-bedroom units should be allowed in elderly projects to expand the marketability and community feeling of elderly projects.

HUD Response: Two-bedroom units will be permitted in mixed finance projects that propose additional units as long as the number of two-bedroom units comprise no more than 10 percent of the total units in the project and are limited to the additional units. Under 24 CFR 891.210, the Section 202 units for the residents are required to be no larger than one-bedroom units.

Comment: Section 202 units and tax credit units should target different income groups. This commenter states that the rule should limit Section 202 units to those with incomes under 30 percent of the area median income, and tax credit units to those earning 30 to 60 percent of the area median income. However, this commenter stated that

this distinction is not necessary for the Section 811 program because the market is different.

HUD Response: All statutorily eligible applicants are legally entitled to apply and participate equally in the program.

Comment: One commenter stated that the interim rule allows LIHTCs to be used only for additional units and not to provide gap financing. "This ruling clearly does not aid in the development of more housing for the elderly, the sole purpose of the ruling when 202 program funds are not adequate to bring a development to completion. Why would a developer choose to build more units when the fund reservation for the initial units is not adequate?" This commenter stated that due to shortfalls in the existing programs, it is necessary to use LIHTCs for gap financing to complete projects.

Another commenter read the interim rule as allowing LIHTCs to be used for gap financing and wrote in support of that approach.

HUD Response: As long as the number of assisted units is consistent with the capital advance, equity from tax credits in a mixed-finance project may be used to provide additional units, gap financing, or a mix of additional units and financing.

IV. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the interim rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding of No Significant Impact remains applicable to this rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The program will provide capital advances to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly and to nonprofit organizations to expand the supply of supportive housing for persons with disabilities. Private for-profit entities may also participate in the mixed-finance aspect of producing such housing. Although small and private entities may participate in the program, the rule does not impose any legal requirement or mandate upon them and, accordingly, will not have a significant impact on them.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

List of Subjects in 24 CFR Part 891

Aged, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

The catalogue of Federal domestic assistance numbers for the programs in this rule are: 14.157 and 14.181.

■ For the reasons discussed in this preamble, HUD amends 24 CFR part 891 as follows:

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 1. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

Subpart A—General Program Requirements

■ 2. Amend 24 CFR 891.105 by revising the definition of "Replacement reserve account" to read as follows:

§ 891.105 Definitions.

* * * * *

Replacement reserve account means a project account into which funds are deposited, which may be used only with the approval of the Secretary for repairs, replacement, capital improvements to the section 202 or section 811 units, and retrofitting to reduce the number of units as provided by 24 CFR 891.405(d).

* * * * *

■ 3. Amend 24 CFR 891.130 to add a new paragraph (c) to read as follows:

§ 891.130 Prohibited relationships.

* * * * *

(c) *Mixed-finance projects.* Section 891.832 of this part applies to mixed-finance projects for the elderly and for persons with disabilities.

■ 4. Amend 24 CFR 891.170 by revising paragraph (b) to read as follows:

§ 891.170 Repayment of capital advance.

* * * * *

(b) The transfer of physical and financial assets of any project under this part is prohibited, unless HUD gives prior written approval. Approval for transfer will not be granted unless HUD determines that the transfer to a private nonprofit corporation, consumer

cooperative (under the Section 202 Program), a nonprofit organization (under the Section 811 Program), or an organization meeting the definition of "mixed-finance owner" in § 891.805 of this part, is part of a transaction that will ensure the continued operation of the project for not less than 40 years (from the date of original closing) in a manner that will provide rental housing for very low-income elderly persons or persons with disabilities, as applicable, on terms at least as advantageous to existing and future tenants as the terms required by the original capital advance.

Subpart B—202 Supportive Housing for the Elderly

■ 5. Amend 24 CFR 891.205 by revising the definition of "acquisition" to read as follows:

§ 891.205 Definitions.

* * * * *

Acquisition means the purchase of (or otherwise obtaining title to) existing housing and related facilities to be used as supportive housing for the elderly.

Subpart C—Section 811 Supportive Housing for Persons with Disabilities

■ 6. Amend 24 CFR 891.305 by revising the definition of "acquisition" to read as follows:

§ 891.305 Definitions.

* * * * *

Acquisition means the purchase of (or otherwise obtaining title to) existing housing and related facilities to be used as supportive housing for persons with disabilities.

* * * * *

■ 7. Revise subpart F to read as follows:

Subpart F—For-Profit Limited Partnerships and Mixed-Finance Development for Supportive Housing for the Elderly or Persons with Disabilities

Sec.

Subpart F—For-Profit Limited Partnerships and Mixed-Finance Development for Supportive Housing for the Elderly or Persons with Disabilities

§ 891.800 Purpose.

The purpose of this subpart is to establish rules allowing for, and regulating the participation of, for-profit limited partnerships, of which the sole general partner is a Nonprofit Organization meeting the requirements of 12 U.S.C. 1701q(k)(4) or 42 U.S.C. 8032(k)(6), in the development of housing for the elderly and persons with disabilities using mixed-finance development methods. These rules are intended to develop more supportive housing for the elderly and persons with disabilities by allowing the use of federal assistance, private capital and expertise, and low-income housing tax credits.

§ 891.802 Applicability of other provisions.

The provisions of 24 CFR part 891, subparts A through D, apply to this subpart F unless otherwise stated.

§ 891.805 Definitions.

In addition to the definitions at § 891.105, the following definitions apply to this subpart:

Mixed-finance owner, for the purpose of the mixed-finance development of housing under this subpart, means a single-purpose, for-profit limited partnership of which a Private Nonprofit Organization with a 501(c)(3) or 501(c)(4) tax exemption (in the case of supportive housing for the elderly), or a Nonprofit Organization with a 501(c)(3) tax exemption (in the case of supportive housing for the disabled) is the sole general partner. The purpose of the mixed-finance owner must include the promotion of the welfare of the elderly or persons with disabilities, as appropriate.

Private Nonprofit Organization (in the case of supportive housing for the elderly) or *Nonprofit Organization* (in the case of supportive housing for persons with disabilities) (for the purposes of this subpart, both types of organizations are referred to as "Nonprofit Organization"), for the purpose of this subpart, means any institution or foundation (and includes a corporation wholly owned and controlled by an organization meeting the requirements of this section):

(1) In the case of supportive housing for the elderly, that meets the requirements of the definition of "private nonprofit organization" found in § 891.205 of this title; or

(2) In the case of supportive housing for persons with disabilities, that meets the requirements of the definition of "nonprofit organization" in § 891.305 of this title; and that

(3) Is the general partner of a for-profit limited partnership, if the Nonprofit Organization meets the requirements of this definition and owns at least one-hundredth of one percent of the partnership assets. If the project will include units financed with the use of federal Low-Income Housing Tax Credits and the organization is a limited partnership, the limited partnership must meet the requirements of section 42 of the IRS code, including the requirements of section 42(h)(5). The general partner may also be the sponsor so long as it meets the requirements of this rule for sponsors and general partners.

§ 891.808 Capital advance funds.

(a) HUD is authorized to provide capital advance funds to expand the supply of supportive housing for the elderly and persons with disabilities in accordance with the rules and regulations of the Section 202 and Section 811 supportive housing programs. For mixed-finance projects, HUD provides a capital advance funds reservation to the sponsor, which transfers the fund reservation to the mixed-finance owner meeting the requirements of this subpart. The sponsor may transfer the fund reservation directly to the owner or to the general partner of the owner, or the sponsor may be the general partner of the mixed-finance owner if the sponsor meets the applicable statutory and regulatory requirements.

(b) Developments built with mixed-finance funds may combine Section 202 or Section 811 units with other units, which may or may not benefit from federal assistance. The number of Section 202 or Section 811 supportive housing units must not be less than the number specified in the agreement letter for a capital advance. In the case of a Section 811 mixed-finance project, the additional units cannot cause the project to exceed the applicable Section 811 project size limit if they will also house persons with disabilities.

§ 891.809 Limitations on capital advance funds.

Capital advances are not available in connection with:

(a) Acquisition of facilities currently owned and operated by the sponsor as housing for the elderly, except with rehabilitation as defined in 24 CFR 891.105;

(b) The financing or refinancing of federally assisted or insured projects;

(c) Facilities currently owned and operated by the sponsor as housing for persons with disabilities, except with rehabilitation as defined in 24 CFR 891.105; or

(d) Units in Section 202 direct loan projects previously refinanced under the provisions of section 811 of the American Homeownership and Economic Opportunity Act of 2000, 12 U.S.C. 1701q note.

§ 891.810 Project rental assistance.

Project Rental Assistance is defined in § 891.105. Project Rental Assistance is provided for operating costs, not covered by tenant contributions, attributable to the number of units funded by capital advances under the Section 202 and Section 811 supportive housing programs, subject to the provisions of 24 CFR 891.445. The sponsor of a mixed-finance development must obtain the necessary funds from a source other than project rental assistance funds for operating costs related to non-202 or -811 units.

§ 891.813 Eligible uses for assistance provided under this subpart.

(a) Assistance under this subpart may be used to finance the construction, reconstruction, or rehabilitation of a structure or a portion of a structure; or the acquisition of a structure to be used as supportive housing for the elderly; or the acquisition of housing to be used as supportive housing for persons with disabilities. Such assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for the elderly and persons with disabilities.

(b) Assistance under this subpart may not be used for excess amenities, as stated in 24 CFR 891.120(c). Such amenities may be included in a mixed-finance development only if:

(1) The amenities are not financed with funds provided under the Section 202 or Section 811 program;

(2) The amenities are not maintained and operated with Section 202 or 811 funds;

(3) The amenities are designed with appropriate safeguards for the residents' health and safety; and

(4) The assisted residents are not required to use, participate in, or pay a fee for the use or maintenance of the amenities, although they are permitted to do so voluntarily. Any fee charged for the use, maintenance, or access to amenities by residents must be reasonable and affordable for all residents of the development.

(c) Notwithstanding any other provision of this section, §§ 891.220 and 891.315 on "prohibited facilities" apply to mixed-finance projects containing units assisted under section 202 or 811.

§ 891.815 Mixed-finance developer's fee.

(a) *Mixed-finance developer's fee.* A mixed-finance developer may include, on an up-front or deferral basis, or a combination of both, a fee to cover reasonable profit and overhead costs.

(b) *Mixed-finance developer's fee cap.* No mixed-finance developer's fee may be a greater percentage of the total project replacement costs than the percentage allowed by the state housing finance agency or other tax credit allocating agency in the state in which the mixed-finance development is sited. In no event may the mixed-finance developer's fee exceed 15 percent of the total project replacement cost.

(c) *Sources of mixed-finance developer's fee.* The mixed-finance developer's fee may be paid from project income or project sources of funding other than Section 202 or 811 capital advances, project rental assistance, or tenant rents.

§ 891.818 Firm commitment application.

The sponsor will submit the firm commitment application including the mixed-finance proposal in a form described by HUD.

§ 891.820 Civil rights requirements.

The mixed-finance development must comply with the following: all fair housing and accessibility requirements, including the design and construction requirements of the Fair Housing Act; the requirements of section 504 of the Rehabilitation Act of 1973; accessibility requirements, project standards, and site and neighborhood standards under 24 CFR 891.120, 891.125, 891.210, 891.310, and 891.320, as applicable; and 24 CFR 8.4(b)(5), which prohibits the selection of a site or location which has the purpose or effect of excluding persons with disabilities from federally assisted programs or activities.

§ 891.823 HUD review and approval.

HUD will review and may approve or disapprove the firm commitment application and mixed finance proposal.

§ 891.825 Mixed-finance closing documents.

The mixed-finance owner must submit the mixed-finance closing documents in the form prescribed by HUD. The materials shall be submitted after the firm commitment has been issued and prior to capital advance closing.

§ 891.830 Drawdown.

(a) Upon its approval of the executed mixed-finance closing documents and other documents submitted and upon determining that such documents are satisfactory, and after the capital advance closing, HUD may approve the drawdown of capital advance funds in accordance with the HUD-approved drawdown schedule.

(b) The capital advance funds may be drawn down only in an approved ratio to other funds, in accordance with a drawdown schedule approved by HUD. The mixed-finance owner shall certify, in a form prescribed by HUD, prior to the initial drawdown of capital advance funds, that they will not draw down more capital advance funds than necessary to meet the pro rata share of the development costs for the 202 or 811 supportive housing units. The mixed-finance owner shall draw down capital advance funds only when payment is due and after inspection and acceptance of work covered by the drawdown.

(c) Each drawdown of funds constitutes a certification by the mixed-finance owner that:

(1) All the representations and warranties submitted in accordance with this subpart continue to be valid, true, and in full force and effect;

(2) All parties are in compliance with their obligations pursuant to this subpart, which, by their terms, are applicable at the time of the drawdown of funds;

(3) All conditions precedent to the drawdown of the funds by the mixed-finance owner have been satisfied;

(4) The capital advance funds drawn down will be used only for eligible costs actually incurred in accordance with the provisions of this subpart and the approved mixed-finance project, which include the types of costs stated in 12 U.S.C. 1701q(h), and 42 U.S.C. 8013(h), and do not include paying off bridge or construction financing, or repaying or collateralizing bonds; and

(5) The amount of the drawdown is consistent with the ratio of 202 or 811 supportive housing units to other units.

§ 891.832 Prohibited relationships.

Section 891.130 applies, except that in the mixed-finance program only, in FHA-insured or risk-sharing projects under this rule, the conflict-of-interest and identity-of-interest rules applicable to the FHA program apply. In the case of FHA insured or risk-sharing projects, the nonprofit general partner must continue to adhere to the provisions of § 891.130.

§ 891.833 Monitoring and review.

HUD shall monitor and review the development during the construction and operational phases in accordance with the requirements that HUD prescribes. In order for units assisted under the 202 and 811 programs to continue to receive project rental assistance, they must be operated in accordance with all contractual agreements among the parties and other HUD regulations and requirements. It is the responsibility of the mixed-finance owner and Nonprofit Organization to ensure compliance with the preceding sentence.

§ 891.835 Eligible uses of project rental assistance.

(a) Section 202 or 811 project rental assistance may be used to pay the necessary and reasonable operating costs, as defined in 24 CFR 891.105 and approved by HUD, not met from project income and attributed to Section 202 or 811 supportive housing units. Operating cost standards under 24 CFR 891.150 apply to developments under this part.

(b) Section 202 or 811 project rental assistance may not be used to pay for:

(1) Debt service on construction or permanent financing, or any refinancing thereof, for any units in the development, including the 202 or 811 supportive housing units;

(2) Cash flow distributions to owners; or

(3) Creation of reserves for non-202 or -811 units.

(c) HUD-approved operating costs attributable to common areas or to the development as a whole, such as groundskeeping costs and general administrative costs, may be paid from project rental assistance on a pro-rata basis according to the percentage of 202 or 811 supportive housing units as compared to the total number of units.

§ 891.840 Site and neighborhood standards.

For section 202 or 811 mixed-finance developments, the site and neighborhood standards described at § 891.125 and § 891.320 apply to the entire mixed-finance development.

§ 891.848 Project design and cost standards.

The project design and cost standards at § 891.120 apply to mixed-finance developments under this subpart. Sections 891.220 and 891.315 on prohibited facilities shall apply to mixed-finance developments under this subpart.

§ 891.853 Development cost limits.

The Development Cost Limits for development activities, as established at § 891.140, apply to Section 202 or 811 supportive housing units in mixed-finance developments under this subpart.

§ 891.855 Replacement reserves.

(a) The mixed-finance owner shall establish and maintain a replacement reserve account for Section 202 or 811 supportive housing units. This account must meet all the requirements of 24 CFR 891.405.

(b) The mixed-finance owner may obtain a disbursement from the reserve only if the funds will be used to pay for capital replacement costs for the Section 202 or 811 supportive housing units in the mixed-finance development and in accordance with the terms of the regulatory and operating agreement. In the case of repairs to common elements, the Section 202/811 replacement reserve can be used on a pro rata basis based on the percentage of Section 202 or 811 units in the building whose common elements are being repaired. In the event of a disposition of the mixed-finance development, or the dissolution of the owner, any Section 202 or 811 funds remaining in the replacement reserve account must remain dedicated to the Section 202 or 811 supportive housing units to ensure their long-term viability, or as otherwise agreed by HUD.

(c) Subject to HUD's approval, reserves may be used to reduce the number of Section 202 or 811 dwelling units in the development for the purpose of retrofitting units that are obsolete or unmarketable.

§ 891.860 Operating reserves.

(a) The mixed-finance owner shall maintain an operating reserve account in an amount sufficient to cover the operating expenses of the development for at least a three-month period.

(b) Project income, project rental assistance, tenant rents, and tax credit equity may be used to fund the operating reserve account.

(c) Amounts derived from Section 202 or 811 (*e.g.*, project income, project rental assistance, and tenant rents) in operating reserve accounts may only be used for the operating expenses of the 202 or 811 units.

§ 891.863 Maintenance as supportive housing units for elderly persons and persons with disabilities.

(a) The mixed-finance owner must develop and continue to operate the same number of supportive housing units for elderly persons or persons with disabilities, as stated in the use agreement or other document establishing the number of assisted units, for a 40-year period.

(b) If a mixed-finance development proposal provides that the Section 202 or 811 supportive housing units will be floating units, the mixed-finance owner must operate the HUD-approved percentage of Section 202 or 811 supportive housing units, and maintain the percentage distribution of bedroom sizes of Section 202 or 811 supportive housing units for the entire term of the very low-income use restrictions on the development. Any foreclosure, sale, or other transfer of the development must be subject to a covenant running with the land requiring the continued adherence to the very low-income use restrictions for the Section 202 or 811 supportive housing units.

(c) The owner must ensure that Section 202 or 811 supportive housing units in the development are and continue to be comparable to unassisted units in terms of location, size, appearance, and amenities. If due to a change in the partnership structure it becomes necessary to establish a new owner partnership or to transfer the supportive housing project, the new or revised owner must be a single-purpose entity and the use restrictions must remain in effect as provided above.

§ 891.865 Sanctions.

In the event that Section 202 or 811 supportive housing units are not developed and operated in accordance with all applicable federal requirements, HUD may impose sanctions on the participating parties and seek legal or equitable relief in enforcing all requirements under Section 202, the Housing Act of 1959, or Section 811 of the National Affordable Housing Act, all implementing regulations and requirements and contractual obligations under the mixed-finance documents.

Dated: August 22, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 05–18036 Filed 9–12–05; 8:45 am]

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Part V

Department of the Interior

Bureau of Reclamation

43 CFR Parts 423 and 429
Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies; and Procedure To Process and Recover the Value of Rights-of-Use and Administrative Costs Incurred in Permitting Such Use; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Parts 423 and 429

RIN 1006–AA45

Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies; and Procedure to Process and Recover the Value of Rights-of-Use and Administrative Costs Incurred in Permitting Such Use

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Reclamation is issuing this proposed rulemaking to establish regulations regarding public access to and conduct on all Reclamation projects, waters, and real property subject to the jurisdiction or administration of Reclamation or in its custody. Reclamation is required by law to issue this rule in order to maintain law and order and protect persons and property on its projects. This proposed rule would supersede the existing Public Conduct rule, and amend provisions located elsewhere to ensure consistency.

DATES: Reclamation must receive any comments on this proposed rulemaking no later than November 14, 2005.

ADDRESSES: You may submit comments, identified by the number 1006–AA45, by any of the following methods:

—Federal rulemaking portal: *http://www.regulations.gov* Follow the instructions for submitting comments.
—E-mail: *PublicConductRuleComments@do.usbr.gov* Include the number 1006–AA45 in the subject line of the message.
—Fax: (720) 544–4208.
—Mail: Director, Security, Safety, and Law Enforcement, Bureau of Reclamation, 6th and Kipling, Building 67, Denver, CO 80225.
—Hand Delivery: Bureau of Reclamation, Denver Federal Center, 6th and Kipling, Building 67, Room 124, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Larry Todd, Director, Security, Safety, and Law Enforcement, Bureau of Reclamation, 6th and Kipling, Building 67, Denver, CO 80225, telephone 303–445–3736.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 2001, Congress enacted Pub. L. 107–69, which provides for law enforcement authority within Reclamation projects and on Reclamation lands. Section 1(a) of this law requires the Secretary of the Interior to "issue regulations necessary to maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands." The Secretary's authority in this regard has been delegated to the Commissioner of Reclamation, and this proposed rulemaking would replace the existing statutorily required regulations.

Reclamation is best known to the public by its large dams such as Hoover and Grand Coulee. In fact, Reclamation has constructed and operated major water projects in all of the 17 contiguous western states, including more than 500 dams, 348 reservoirs, and 58 hydroelectric powerplants. These plants produce an average of 42 billion kilowatt-hours annually, making Reclamation the nation's ninth largest utility. Reclamation projects deliver 10 trillion gallons of water to more than 31 million people annually, and provide irrigation water to 10 million acres of farmland producing vegetables, fruits, grains, fiber, and other crops critical to the nation's economy. In addition, Reclamation reservoirs draw 90 million recreational user visits annually, and Reclamation is responsible for the administration of over 8 million acres of public lands. Because of Reclamation's vital role in providing water, power, agricultural products, and recreational opportunities to the entire nation, the safety and security of Reclamation facilities and the people visiting them is of critical importance.

In addressing security issues on Reclamation projects, this proposed rule inevitably touches on a wide range of public safety, recreation, and resource management topics such as firearms, hunting, boating, diving, archeological resources, and many others. Therefore, while this proposed rule is primarily focused on the security of the hundreds of Reclamation dams, reservoirs, hydroelectric power plants, and other project facilities, it also addresses a number of related issues concerning public conduct on Reclamation projects. This proposed rule is designed to provide consistent and adequate tools for addressing public conduct while at the same time providing the necessary flexibility to be successfully applied to the wide variety of Reclamation projects and facilities.

In this rulemaking, Reclamation is also proposing minor amendments to the existing 43 CFR part 429, Procedure to Process and Recover the Value of Rights-of-Use and Administrative Costs Incurred in Permitting Such Use, to make it consistent with the proposed 43 CFR part 423. These minor amendments would clarify 43 CFR part 429 which addresses uses of Reclamation lands involving possession and occupation, in contrast to the proposed 43 CFR part 423 which would apply to occasional public uses that do not involve possession or occupation.

These proposed rules would not significantly affect either the administration or the existing public uses of Reclamation facilities, lands, and waterbodies. Rather, these proposed rules are intended to provide a tool for administrators and law enforcement personnel to utilize in enhancing the security of Reclamation facilities, lands, and waterbodies for the benefit of the public.

II. Existing Rule Superseded

On April 17, 2002, Reclamation published 43 CFR part 423, Public Conduct on Bureau of Reclamation Lands and Projects (67 FR 19092, April 17, 2002) as an interim rule. In the preamble to that rule, Reclamation stated its intent to replace the interim rule with a more comprehensive public conduct rule and set April 17, 2003 as the interim rule's expiration date. In order to provide more time to develop the comprehensive public conduct rule, Reclamation later extended the expiration of the interim rule to April 17, 2005 (68 FR 16214, Apr. 3, 2003), and again to April 17, 2006 (70 FR 15778, March 29, 2005). This proposed rule would satisfy Reclamation's commitment to develop a comprehensive public conduct rule and would supersede the existing 43 CFR part 423.

III. Procedural Matters

National Environmental Policy Act (NEPA)

Reclamation has analyzed this proposed rule in accordance with the criteria of the NEPA and Department Manual 516 DM. This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required. The proposed rule is categorically excluded from NEPA review under 40 CFR 1508.4 and Departmental Manual 516 DM 2, Appendix 1, paragraph 1.10.

Executive Order 12866, Regulatory Planning and Review

Under Executive Order (E.O.) 12866, (58 FR 51735, Oct. 4, 1993), an agency must determine whether a regulatory action is significant and therefore subject to Office of Management and

Budget (OMB) review and the requirements of the E.O. E.O. 12866 defines a "significant regulatory action" as a regulatory action meeting any one of four criteria specified in the E.O. This rulemaking is considered a significant regulatory action under criterion number four, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. Reclamation has therefore submitted this proposed regulation to OMB for review.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Fairness Act. The proposed rule:

(1) Will not have an annual effect on the economy of $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

(3) 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.

Unfunded Mandates Reform Act of 1995

This proposed rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. Moreover, the proposed rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Executive Order 12630, Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. Thus, a takings implication assessment is not required. This proposed rule only addresses public access to and the possible consequences of public conduct on Reclamation lands and Reclamation projects.

Paperwork Reduction Act

This proposed rule does not require any information collection under the Paperwork Reduction Act. Therefore, an OMB Form 83–I is not required.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, this proposed rule does not have Federalism implications. A Federalism assessment is not required. The proposed rule will not affect the roles, rights, and responsibilities of states in any way. Moreover, the proposed rule will not result in the Federal Government taking control of traditional state responsibilities, nor will it interfere with the ability of states to formulate their own policies. In addition, the proposed rule will not affect the distribution of power, the responsibilities among the various levels of government, nor preempt state law.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Department's Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Executive Order.

Executive Order 13211, Energy Impacts

In accordance with Executive Order 13211, this proposed rule will not have a significant adverse effect on the supply, distribution, and use of energy. Therefore, a Statement of Energy Effects is not required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. Reclamation invites your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, § 423.18.) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could Reclamation do to make the rule easier to understand?

Send a copy of any comments that concern how Reclamation could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *exsec@ios.doi.gov*.

IV. Comments on the Existing 43 CFR Part 423, Public Conduct on Bureau of Reclamation Lands and Projects

Reclamation received only one response concerning the existing 43 CFR part 423 which was published on, and has been in effect since, April 17, 2002. The commenter was a state agency which stated that it had no major comment, but asked that any additional or follow-up information be forwarded to that office.

V. Comments on This Proposed Rulemaking

If you wish to comment on the substance of this proposed rule, there are four ways you may do so:

1. You may mail comments to: Director, Security, Safety, and Law Enforcement, Bureau of Reclamation, Denver Federal Center, 6th and Kipling, Building 67, Denver, CO 80225, Attention: Gary Anderson, D–1410.

2. You may hand-deliver comments to the Bureau of Reclamation, Denver Federal Center, 6th and Kipling, Building 67, Room 124, Lakewood, Colorado.

3. You may e-mail comments to this address: *PublicConductRuleComments@do.usbr.gov*.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: RIN number 1006–AA45" and your name and return address in your Internet message. If you do not receive a confirmation from the system that Reclamation has received your Internet message, contact us directly at (303) 445–3736.

4. You may send comments by facsimile machine to telephone number (720) 544–4208.

It is Reclamation's practice to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that Reclamation withhold their home address from the rulemaking record. Reclamation will honor such a request to the extent allowable by law. There also may be circumstances in which Reclamation would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish Reclamation to withhold your name and/or address,

you must indicate your request prominently at the beginning of your comment. However, Reclamation will not consider anonymous comments. Reclamation 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.

List of Subjects

43 CFR Part 423

Law enforcement, Public conduct, Reclamation lands, and Reclamation projects.

43 CFR Part 429

Public lands—rights-of-way; Reporting and recordkeeping requirements.

R. Thomas Weimer,

Acting Assistant Secretary—Water and Science.

For the reasons set forth in the preamble, the Bureau of Reclamation proposes to amend 43 CFR part 423 and 43 CFR part 429 as follows:

1. Revise part 423 to read as follows:

PART 423—PUBLIC CONDUCT ON BUREAU OF RECLAMATION FACILITIES, LANDS, AND WATERBODIES

Subpart A—Purpose, Definitions, and Applicability

Sec.

Subpart B—Areas Open and Closed to Public Use

Subpart C—Rules of Conduct

Subpart D—Authorization of Otherwise Prohibited Activities

Subpart E—Special Use Areas

Subpart F—Violations and Sanctions

Authority: Public Law 107–69 (November 12, 2001) (Law Enforcement Authority) (43 U.S.C. 373b and 373c); Public Law 102–575, Title XXVIII (October 30, 1992) (16 U.S.C. 460l–31 through 34); Public Law 89–72 (July 9, 1965) (16 U.S.C. 460l–12); Public Law 106–206 (May 26, 2000) (16 U.S.C. 460l–6d); Public Law 59–209 (June 8, 1906) (16 U.S.C. 431–433); Public Law 96–95 (October 31, 1979) (16 U.S.C. 470aa–mm).

Subpart A—Purpose, Definitions, and Applicability

§ 423.1 Purpose.

The purpose of this part is to maintain law and order and protect persons and property within Reclamation projects and on Reclamation facilities, lands, and waterbodies.

§ 423.2 Definitions of terms used in this part.

Aircraft means a device that is used or intended to be used for human flight in the air, including powerless flight, unless a particular section indicates otherwise.

Archeological resource means any material remains of past human life or activities which are of archeological interest, as determined under 43 CFR part 7, including but not limited to pottery, basketry, bottles, weapons, projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human remains, or any portion of any of the foregoing items. Archeological resources are a component of cultural resources.

Authorized official means the Commissioner of the Bureau of Reclamation and those officials to whom the Commissioner has delegated the authority to enforce and implement this part 423.

Camping means erecting a tent or shelter; preparing a sleeping bag or other bedding material for use; parking a motor vehicle, motor home, or trailer; or mooring a vessel for the intended or apparent purpose of overnight occupancy.

Cultural resource means any man-made or associated prehistoric, historic, architectural, sacred, or traditional cultural property and associated objects and documents that are of interest to archeology, anthropology, history, or other associated disciplines. Cultural resources includes archeological resources, historic properties, traditional cultural properties, sacred sites, and cultural landscapes that can be delimited and associated with human activity or occupation.

Disorderly conduct means any of the following acts:

(1) Fighting, or threatening or violent behavior;

(2) Language, utterance, gesture, or display or act that is obscene, physically threatening or menacing, or that is likely to inflict injury or incite an immediate breach of the peace;

(3) Unreasonable noise, considering the nature and purpose of the person's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances;

(4) Creating or maintaining a hazardous or physically offensive condition; or

(5) Any other act or activity that may cause or create public alarm, nuisance, or bodily harm.

Explosives means explosive materials, including explosive fireworks, pyrotechnics, and any other explosive devices, but not ammunition.

Fishing means taking or attempting to take, by any means, any fish, mollusk, or crustacean found in fresh or salt water.

Geophysical discovery device means any mechanism, tool, or equipment including, but not limited to, metal detectors and radar devices, that can be used to detect or probe for objects beneath land or water surfaces.

Historic property means any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register of Historic Places, including artifacts, records, and material

remains related to such a property or resource.

Hunting means taking or attempting to take wildlife by any means, except by trapping or fishing.

Museum property means personal property acquired according to some rational scheme and preserved, studied, or interpreted for public benefit, including, but not limited to, objects selected to represent archeology, art, ethnography, history, documents, botany, paleontology, geology, and environmental samples.

Natural resources means assets or values related to the natural world, such as plants, animals, water, air, soils, minerals, geologic features and formations, fossils and other paleontological resources, scenic values, etc. Natural resources are those elements of the environment not created by humans.

Off-road-vehicle means any motorized vehicle (including the standard automobile) designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or natural terrain. The term excludes all of the following:

(1) Nonamphibious registered motorboats;

(2) Military, fire, emergency, or law enforcement vehicles when used for emergency purpose;

(3) Self-propelled lawnmowers, snowblowers, garden or lawn tractors, and golf carts while being used for their designed purpose;

(4) Agricultural, timbering, construction, exploratory, and development equipment and vehicles while being used exclusively as authorized by permit, lease, license, agreement, or contract with Reclamation;

(5) Any combat or combat support vehicle when used in times of national defense emergencies;

(6) "Official use" vehicles; and

(7) Wheel chairs and other vehicles designed and used for transporting persons with disabilities.

Operator means a person who operates, drives, controls, has charge of, or is in actual physical control of any mode of transportation or other equipment.

Permit means any written document issued by an authorized official pursuant to subpart D of this part 423 authorizing a particular activity with specified time limits, locations, and/or other conditions.

Person means an individual, entity, or organization.

Pet means a domesticated animal other than livestock. ("Livestock" is any hoofed animal used for agricultural, riding, pulling, or packing purposes.)

Public use limit means any limitation on public uses or activities established by law or regulation.

Real property means any legal interest in land and the water, oil, gas, and minerals in, on, and beneath the land surface, together with the improvements, structures, and fixtures located thereon.

Reclamation means the Bureau of Reclamation, United States Department of the Interior.

Reclamation facilities, lands, and waterbodies means Reclamation facilities, Reclamation lands, and Reclamation waterbodies.

Reclamation facility means any facility constructed or acquired under Federal reclamation law that is used and occupied by Reclamation under a lease, easement, right-of-way, license, contract, or other arrangement. The term includes, but is not limited to, any of the following that are under the jurisdiction of or administered by Reclamation: dams, powerplants, switchyards, transmission lines, recreation facilities, fish and wildlife facilities, canals, drains, pumping plants, buildings, warehouses, tunnels, siphons, water diversion structures, bridges, and roads.

Reclamation lands means any real property under the jurisdiction of or administered by Reclamation, and includes, but is not limited to, all acquired and withdrawn lands and lands in which Reclamation has a lease interest, easement, or right-of-way.

Reclamation project means any water supply, water delivery, flood control, or hydropower project, together with any associated facilities for fish, wildlife, recreation, or water treatment constructed or administered by Reclamation under the Federal reclamation laws [the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. 371 *et. seq.*), and Acts supplementary thereto and amendatory thereof].

Reclamation waterbody means any body of water situated on Reclamation lands or under Reclamation jurisdiction.

Refuse means any human or pet waste, litter, trash, garbage, rubbish, debris, contaminant, pollutant, waste liquid or other discarded materials.

Sacred site means any specific, discrete, or narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the land managing agency of the existence of such a site.

Special use area means an area at or within a Reclamation facility, or an area of Reclamation lands or waterbodies, which has been designated by an authorized official pursuant to subpart E of this part 423 as an area in which special rules for public conduct which may differ from those established in subpart C of this part 423 will apply.

State and local laws means the laws, statutes, regulations, ordinances, codes, and court decisions of a state and of the counties, municipalities, or other governmental entities which are enabled by statute and vested with legislative authority.

Traditional cultural property means a discretely defined property that is eligible for inclusion on the National Register of Historic Places because of its association with cultural practices or beliefs of a living community that:

(1) Are rooted in that community's history; and

(2) Are important in maintaining the continuing cultural identity of the community.

Trapping means taking, or attempting to take, wildlife with a snare, trap, mesh, wire, or other implement, object, or mechanical device designed to entrap, ensnare, or kill animals, including fish.

Trespass means:

(1) Unauthorized possession or occupancy of Reclamation facilities, lands, or waterbodies;

(2) Personal entry, presence, or occupancy on or in any portion or area of Reclamation facilities, lands, or waterbodies that have been closed to public use pursuant to subpart B of this part 423;

(3) Unauthorized extraction or disturbance of natural or cultural resources located on Reclamation facilities, lands, or waterbodies;

(4) Unauthorized conduct of commercial activities on Reclamation facilities, lands, or waterbodies;

(5) Holding unauthorized public gatherings on Reclamation facilities, lands, or waterbodies; or

(6) Unauthorized dumping or abandonment of personal property on Reclamation facilities, lands, or waterbodies.

Vehicle means every device in, upon, or by which a person or property is or may be transported or drawn on land, whether moved by mechanical, animal, or human power, including but not limited to automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies, all-terrain vehicles,

trailers, campers, bicycles, and those used exclusively upon stationary rails or tracks; except wheelchairs used by persons with disabilities.

Vessel means any craft that is used or capable of being used as a means of transportation on or under water or ice, including but not limited to powerboats, cruisers, houseboats, sailboats, airboats, hovercraft, rowboats, canoes, kayaks, ice yachts, or personal watercraft. A seaplane on Reclamation waters is considered a vessel for the purposes of § 423.38 of this part. Inner tubes, air mattresses, and other personal flotation devices are not considered vessels.

Weapon means any instrument or substance designed, used, or intended to be used to cause or threaten to cause pain, injury, or death.

Wildlife means any non-domestic member of the animal kingdom and includes a part, product, egg, offspring, or dead body or part thereof, including but not limited to mammals, birds, reptiles, amphibians, fish, mollusks, crustaceans, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity.

You means a person or entity on Reclamation facilities, lands, or waterbodies.

§ 423.3 When does this part apply?

(a) This part and all applicable state and local laws apply to all persons on Reclamation facilities, lands, and waterbodies, with the following exceptions:

(1) Certain exceptions apply to Federal, state, local, and contract employees, as further addressed in paragraph (b) of this section.

(2) Certain exceptions apply to non-Federal entities, as further addressed in paragraph (c) of this section;

(3) Certain exceptions apply on Reclamation facilities, lands, and waterbodies administered by other Federal agencies, as further addressed in paragraph (d) of this section;

(4) Certain exceptions apply on Reclamation facilities, lands, and waterbodies subject to treaties and Federal laws concerning tribes and Indians, as further addressed in paragraph (e) of this section; and

(5) This part does not apply on Hoover Dam; on any structure, building, or property appurtenant thereto; or on the surrounding Reclamation facilities and lands. Public conduct at Hoover Dam is governed by 43 CFR part 421.

(b) This part does not apply to:

(1) Federal, state, and local law enforcement, fire, and rescue personnel in the performance of their official duties on Reclamation facilities, lands, and waterbodies;

(2) An employee or agent of the Federal government when the employee or agent is carrying out official duties; or

(3) An employee or agent of an entity that has entered into a contract or agreement with Reclamation to administer, operate, maintain, patrol, or provide security for Reclamation facilities, lands, and waterbodies, when the employee or agent is working within the scope of the defined activities described in the contract or agreement.

(c) If a non-Federal entity has assumed responsibility for operating, maintaining, or managing Reclamation facilities, lands, or waterbodies through a contract or other written agreement:

(1) Public conduct in and on those Reclamation facilities, lands, and waterbodies will be regulated by this part 423 as well as any regulations established by the entity, and the terms of the entity's contract with Reclamation.

(2) In cases of conflict between the regulations of the entity and this part 423 or other Federal laws, this part and other Federal laws will govern.

(d) Public conduct on Reclamation facilities, lands, and waterbodies administered by other Federal agencies under statute or other authority will be governed by the regulations of those agencies rather than this part 423. However, Reclamation retains the right to take necessary actions to safeguard the security and safety of the public and such Reclamation facilities, lands and waterbodies.

(e) This part applies on all Reclamation facilities, lands, and waterbodies that are subject to Treaties with, and Federal laws concerning the rights of, Federally recognized Tribes, and individual Indians who are members thereof, to the extent that this part is consistent with those Treaties and Federal laws.

Subpart B—Areas Open and Closed to Public Use

§ 423.10 What areas are open to public use?

All Reclamation facilities, lands, and waterbodies are open to lawful use by the public unless they are closed to public use under this subpart B of this part 423.

§ 423.11 What areas are closed to public use?

The following Reclamation facilities, lands, and waterbodies, or portions thereof, are closed to public use:

(a) Those that were closed to public use as of [effective date of this regulation], as evidenced by fencing, gates, barriers, locked doors, road closures, signage, posting of notices, or other reasonably obvious means; and

(b) Those that are closed after [effective date of this regulation] under § 423.12.

(c) Those that are closed periodically and regularly under § 423.13.

§ 423.12 How will Reclamation close additional areas?

(a) *Non-emergency situations.* In non-emergency situations, an authorized official must provide 30 days advance public notice before closing all or portions of Reclamation facilities, lands, or waterbodies. The notice must include publication in a newspaper of general circulation in the locale of the Reclamation facilities, lands, or waterbodies to be closed. Non-emergency situations covered by this section include:

(1) Protection and security of Reclamation facilities and of Reclamation's employees and agents;

(2) Protection of public health and safety, cultural resources, natural resources, scenic values, or scientific research activities;

(3) Safe and efficient operation and maintenance of Reclamation projects;

(4) Reduction or avoidance of conflicts among visitor use activities;

(5) National security; or

(6) Other reasons in the public interest.

(b) *Emergency situations.* In emergency situations where delay would result in significant risks, or for reasons of national security, an authorized official may close all or portions of Reclamation facilities, lands, or waterbodies without advance public notice.

§ 423.13 How will Reclamation establish periodic and regular closures?

Reclamation facilities, lands, or waterbodies that are closed periodically and regularly, regardless of the date of the initial closure, must be noticed as provided in § 423.12(a) only once, and at any time the schedule of closure is changed.

§ 423.14 How will Reclamation post and delineate closed areas?

Before or at the time of closing all or portions of Reclamation facilities, lands, or waterbodies to public use, the responsible authorized official must indicate the closure by:

(a) Locked doors, fencing, gates, and other barriers;

(b) Posted signs and notices at conspicuous locations, such as at normal points of entry and at reasonable intervals along the boundary of the closed area;

(c) Notations on maps available at the local Reclamation office, office of the operating entity, or other places convenient to the public; or

(d) Other reasonably obvious means.

§ 423.15 How will Reclamation document closures or reopenings?

(a) The authorized official must document the reason(s) for establishing any closure or reopening that occurs after [insert the effective date of the regulation]. The official must do this before the closure or reopening, except in the situations described in § 423.12(b). In such situations, the authorized official must complete the documentation as soon as practicable.

(b) Documentation of a closure must cite one or more of the conditions for closure described in § 423.12 of this part.

(c) Documentation of closures or reopenings will be available to the public upon request, except when the release of this documentation would result in a breach of national security or the security of Reclamation facilities.

§ 423.16 Who can be exempted from closures?

(a) You may be exempted from a closure, subject to any terms and conditions established under paragraph (c) of this section, by the authorized official who effected or who is responsible for the closure, if you are:

(1) A person with a license or concession agreement that requires you to have access to the closed Reclamation facilities, lands, or waterbodies;

(2) An owner or lessee of real property, resident, or business in the vicinity of closed Reclamation facilities, lands, or waterbodies who cannot reasonably gain access to your property, residence, or place of business without entering and crossing such closed Reclamation facilities, lands, or waterbodies; or

(3) A holder of a permit granting you an exemption from the closure issued under subpart D of this part 423 by the authorized official who effected or who is responsible for the closure.

(b) You may request exemption from a closure by writing to the authorized official who effected or who is responsible for the closure. You need not do so if you have such an exemption in effect on [effective date of this regulation].

(c) An authorized official may establish terms and conditions on any exemption from a closure, or terminate such exemption, for any of the reasons listed in § 423.12.

§ 423.17 How will Reclamation reopen closed areas?

An authorized official may reopen to public use any Reclamation facilities, lands, and waterbodies, or portions thereof. The authorized official may do this at any time with advance or subsequent public notice, except as required by other statute or regulation, and must document the reopening as provided in § 423.15.

Subpart C—Rules of Conduct

§ 423.20 General rules.

(a) You must obey all applicable Federal, State, and local laws whenever you are at or on any Reclamation facilities, lands, or waterbodies.

(b) You must comply with all provisions of this subpart C whenever you are at or on any Reclamation facilities, lands, or waterbodies, except as specifically provided by:

(1) A permit issued by an authorized official under subpart D of this part 423;

(2) A contract with Reclamation or agency managing Reclamation lands, facilities and waterbodies;

(3) The rules established by an authorized official in a special use area under subpart E of this part 423; or

(4) A right-of-use issued under 43 CFR part 429.

§ 423.21 Responsibilities.

(a) You are responsible for finding, being aware of, and obeying notices and postings of closed and special use areas established by an authorized official under subpart B and subpart E of this part 423.

(b) You are responsible for the use of any device, vehicle, vessel, or aircraft you own, lease, or operate on Reclamation facilities, lands, or waterbodies. You may be issued a citation for a violation of regulations applicable to the use of any device, vehicle, vessel, or aircraft as provided in this part as the owner, lessee, or operator.

(c) You are responsible for the use and treatment of Reclamation facilities, lands, and waterbodies, and the cultural resources, wildlife, and other natural resources located thereon, by you and those for whom you are legally responsible. This presumption is sufficient to issue a citation to you for violation of provisions of these regulations by you or by those for whom you are legally responsible.

(d) The regulations governing permits, other use authorizations, and fees on Reclamation lands that are found in subpart D of this part 423 apply to your use of Reclamation facilities, lands, and waterbodies.

(e) You must furnish identification information upon request by a law enforcement officer.

§ 423.22 Interference with agency functions and disorderly conduct.

(a) You must not assault, threaten, disturb, resist, intimidate, impede, or interfere with any employee or agent of the United States, state, or local government engaged in an official duty.

(b) You must comply with any lawful order of an authorized government employee or agent for the purpose of maintaining order and controlling public access and movement during law enforcement actions and emergency or safety-related operations.

(c) You must not knowingly give a false report or other false information to an authorized government employee or agent.

(d) You must not interfere with, impede, or disrupt the authorized use of Reclamation facilities, lands, or waterbodies or impair the safety of any person.

(e) Disorderly conduct is prohibited.

§ 423.23 Abandonment and impoundment of personal property.

(a) You must not abandon personal property of any kind in or on Reclamation lands, facilities, or waterbodies.

(b) You must not store or leave unattended personal property of any kind.

(1) Unattended personal property is presumed to be abandoned:

(i) After a period of 24 hours;

(ii) At any time after a posted closure takes effect under subpart B of this part 423; or

(iii) At any time for reasons of security, public safety, or resource protection.

(2) If personal property is presumed abandoned, an authorized official may impound it and store it and assess a reasonable impoundment fee.

(3) The impoundment fee must be paid before the authorized official will return the impounded property to you.

(c) An authorized official may impound or destroy unattended personal property at any time if it:

(1) Interferes with safety, operation, or management of Reclamation facilities, lands, or waterbodies; or

(2) Presents a threat to persons or Reclamation project resources.

(d) An authorized official may dispose of abandoned personal property in accordance with the procedures contained in title 41 CFR and applicable Reclamation and Department of the Interior policy.

§ 423.24 Trespassing.

You must not trespass on Reclamation facilities, lands, and waterbodies.

§ 423.25 Vandalism, tampering, and theft.

(a) You must not tamper or attempt to tamper with, move, manipulate, operate, adjust, or set in motion property not under your lawful control or possession including, but not limited to, vehicles, equipment, controls, recreational facilities, and devices.

(b) You must not destroy, injure, deface, damage, or unlawfully remove property not under your lawful control or possession.

(c) You must not drop, place, throw, or roll rocks or other items inside, into, down, or from, dams, spillways, dikes, or other structures and facilities.

§ 423.26 Public events and gatherings.

You must not conduct public assemblies, meetings, gatherings, demonstrations, parades, and other events without a permit issued pursuant to subpart D of this part 423. Public gatherings that involve the possession or occupancy of Reclamation facilities, lands, and waterbodies are governed by 43 CFR part 429.

§ 423.27 Advertising and public solicitation.

You must not engage in advertising or solicitation on Reclamation facilities, lands, or waterbodies except as allowed under a valid contract with Reclamation, or as allowed by a permit issued pursuant to subpart D of this part 423.

§ 423.28 Memorials.

You must not bury, deposit, or scatter human or animal remains, or place memorials, markers, vases, or plaques on Reclamation facilities, lands, or waterbodies, except with a permit issued pursuant to subpart D of this part 423, and in accordance with applicable Federal, state, and local law. In addition to the foregoing requirements, human or animal burial is allowed only in established cemeteries that are open to interments. This section does not apply to the burial of parts of fish or wildlife taken in legal hunting, fishing, or trapping.

§ 423.29 Natural and cultural resources.

(a) You must not destroy, injure, deface, remove, search for, disturb, or alter natural resources or cultural resources, including abandoned buildings or structures, on or in Reclamation facilities, lands, or waterbodies except in accordance with applicable Federal, state, and local laws.

(b) You must not introduce wildlife, fish, or plants, including their reproductive bodies, into Reclamation lands and waterbodies without a permit issued pursuant to subpart D of this part 423.

(c) You must not drop, place, throw, or roll rocks or other items inside, into, at, or down, caves, caverns, valleys, canyons, mountainsides, thermal features, or other natural formations.

(d) You must not damage, cut, gather, harvest, remove, use, or possess wood, trees, or parts of trees on Reclamation lands except as specifically allowed in special use areas designated by an authorized official under subpart E of this part 423.

(e) You must not walk on, climb, enter, ascend, descend, or traverse cultural resources on Reclamation lands, including monuments or statues, except as specifically allowed in special use areas designated by an authorized official under subpart E of this part 423.

(f) You must not possess a metal detector or other geophysical discovery device, or use a metal detector or other geophysical discovery techniques to locate or recover subsurface objects or features, except:

(1) When transporting, but not using, a metal detector or other geophysical discovery device in a vehicle on a public road as allowed under applicable Federal, state, and local law; or

(2) As allowed by a permit issued pursuant to subpart D of this part 423.

§ 423.30 Weapons, explosives, and fireworks.

(a) You must not have a weapon in your possession when at or in a Reclamation facility.

(b) Except where prohibited or otherwise regulated by an authorized official in a special use area, you may possess a weapon at or on Reclamation lands and waterbodies, provided the weapon is stowed, transported, and/or carried in compliance with applicable Federal, state, and local law.

(c) You must not discharge a weapon unless you are:

(1) Using the weapon lawfully for hunting or fishing as allowed under § 423.32, or at an authorized shooting range; and

(2) In compliance with applicable Federal, state, and local law.

(d) You must not use or possess explosives, or fireworks or pyrotechnics of any type, except as allowed by a permit issued pursuant to subpart D of this part 423, or in special use areas so designated by an authorized official under subpart E of this part 423.

§ 423.31 Fires.

(a) You must not leave a fire unattended, and it must be completely extinguished before your departure.

(b) You must not improperly dispose of lighted smoking materials, including cigarettes, cigars, pipes, matches, or other burning material.

(c) You must not burn materials that produce toxic fumes, including, but not limited to, tires, plastic, flotation materials, or treated wood products.

(d) You must not transport gasoline and other fuels in containers not designed for that purpose.

(e) You must comply with all applicable Federal, state, and local fire orders, restrictions, or permit requirements.

§ 423.32 Hunting, fishing, and trapping.

(a) You may hunt, fish, and trap in accordance with applicable Federal, state, and local laws in areas where both of the following conditions are met:

(1) The area is not closed to public use under subpart B of this part 423; and

(2) The area has not been otherwise designated by an authorized official as a special use area under subpart E of this part 423.

(b) You must comply with any additional restrictions pertaining to hunting, fishing, and trapping established by an authorized official in a special use area under subpart E of this part 423.

§ 423.33 Camping.

(a) You may camp on Reclamation lands, except that you must comply with any restrictions, conditions, limitations, or prohibitions on camping established by an authorized official in a special use area.

(b) You must not camp on Reclamation lands for more than 14 days during any period of 30 consecutive days;

(c) You must not attempt to reserve a campsite for future use by placing equipment or other items on the campsite, or by personal appearance, without camping on and paying the required fees for that campsite daily;

(d) You must not camp on or place any equipment at a campsite that is posted or otherwise marked as "reserved" or "closed" by an authorized official without a valid reservation for that campsite, except as allowed by a permit issued under subpart D of this part 423; and

(e) You must not dig in or level any ground, or build any structure, in a designated campground.

§ 423.34 Sanitation.

(a) You must not bring or improperly dispose of refuse on Reclamation facilities, lands, and Reclamation waterbodies. Both the owner and the

person bringing or disposing refuse may be issued a citation for violating this provision.

(b) Campers, picnickers, and all other persons using Reclamation lands must keep their sites free of trash and litter during the period of occupancy and must remove all personal equipment and clean their sites before departure.

(c) You must not construct or use a latrine within 200 yards of any Reclamation waterbody, or within 200 yards of the high water mark of any reservoir.

§ 423.35 Animals.

(a) You must not bring pets or other animals into public buildings, public transportation vehicles, or sanitary facilities. This provision does not apply to properly trained animals assisting persons with disabilities, such as seeing-eye dogs.

(b) You must not abandon any animal on Reclamation facilities, lands, or waterbodies, or harass, endanger, or attempt to collect any animal except game you are attempting to take in the course of authorized hunting, fishing, or trapping.

(c) Any unauthorized, unclaimed, or unattended animal on Reclamation lands may be:

(1) Removed in accordance with Federal law, and applicable state and local laws; and

(2) Confined at a location designated by an authorized official, who may assess a reasonable impoundment fee that must be paid before the impounded animal is released to its owner.

(d) The following animals are prohibited and are subject to removal in accordance with Federal law, and applicable state and local laws:

(1) Captive wild or exotic animals (including, but not limited to, cougars, lions, bears, bobcats, wolves, and snakes), except as allowed by a permit issued under Subpart D of this part 423; and

(2) Any pets or animals displaying vicious or aggressive behavior or posing a threat to public safety or deemed a public nuisance.

§ 423.36 Swimming.

(a) You may swim, wade, snorkel, scuba dive, kayak, raft, or tube at your own risk in Reclamation waters, except:

(1) Within 300 yards of dams, power plants, pumping plants, spillways, stilling basins, gates, intake structures, and outlet works;

(2) Within 100 yards of buoys or barriers marking public access limits;

(3) In canals, laterals, siphons, tunnels, and drainage works; or

(4) At public docks, launching sites, and designated mooring areas.

(b) You must display an international diver down, or inland diving flag in accordance with state and U.S. Coast Guard guidelines when engaging in any underwater activities.

(c) You must not dive, jump, or swing from dams, spillways, bridges, cables, towers, or other structures.

§ 423.37 Winter activities.

(a) You must not tow persons on skis, sleds, or other sliding devices with a motor vehicle or snowmobile, except that you may tow sleds designed to be towed behind snowmobiles if joined to the towing snowmobile with a rigid hitching mechanism, and you may tow disabled snowmobiles by any appropriate means.

(b) You must not ice skate, ice fish, or ice sail within 300 yards of dams, power plants, pumping plants, spillways, stilling basins, gates, intake structures, or outlet works.

§ 423.38 Operating vessels on Reclamation waters.

(a) You must comply with Federal, State, and local laws applicable to the operation of a vessel or other watercraft on Reclamation waters, and with any restrictions established by an authorized official.

(b) You must not operate a vessel in an area closed to the public.

(c) You must observe restrictions established by signs, buoys, and other regulatory markers.

(d) You must not operate a vessel, or knowingly allow another person to operate a vessel, in a reckless or negligent manner, or in a manner that endangers or is likely to endanger a person, property, natural resource, or cultural resource.

(e) You must not operate a vessel when impaired or intoxicated under the standards established by applicable state and local law.

(f) You must not occupy a vessel overnight, except where otherwise designated under applicable Federal, state, or local law, or where otherwise designated by an authorized official in a special use area.

(g) You must not use a vessel as a place of habitation or residence.

(h) You must not place or operate a vessel on a Reclamation waterbody for a fee or profit, except as allowed by contract or permit issued pursuant to subpart D of this part 423.

(i) You must remove your vessels from Reclamation lands and waters when not in actual use for a period of more than 24 hours, unless they are securely moored or stored at special use areas so designated by an authorized official.

(j) You must not attach or anchor a vessel to structures such as locks, dams, regulatory or navigational buoys, or other structures not designed for such purpose.

(k) You must display an international diver down, or inland diving flag in accordance with state and U.S. Coast Guard guidelines when operating a vessel involved in any underwater activities.

(l) You may engage in towing activities, including but not limited to waterskiing and tubing, only during daylight hours and subject to any applicable Federal, state, and local law.

§ 423.39 Standards for vessels.

(a) All vessels on Reclamation waters must:

(1) Be constructed and maintained in compliance with the standards and requirements established by, or promulgated under, Title 46 United States Code, and any applicable state and local laws and regulations;

(2) Have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast Guard boating safety requirements and in compliance with applicable state and local boating safety laws and regulations; and

(3) If motorized, have and utilize a proper and effective exhaust muffler as defined by applicable state and local laws. Actions or devices which render exhaust mufflers ineffective are prohibited.

(b) Owners or operators of vessels not in compliance with this § 423.39 may be required to remove the vessel immediately from Reclamation waterbodies until items of non-compliance are corrected.

§ 423.40 Vehicles.

(a) When operating a vehicle on Reclamation lands and Reclamation projects, you must comply with applicable Federal, State, and local laws, and with posted restrictions and regulations. Operating any vehicle through, around, or beyond a restrictive sign, recognizable barricade, fence, or traffic control barricade, is prohibited.

(b) You must not park a vehicle in violation of posted restrictions and regulations, or in a manner that would obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property, or natural feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

(c) You must not operate any vehicle, or allow another person to operate a vehicle in your control, in a careless,

negligent or reckless manner that would endanger any person, property, natural resource, or cultural resource.

(d) In addition to the regulations in this part, the regulations governing off-road-vehicle use in 43 CFR part 420 apply.

§ 423.41 Aircraft.

(a) You must not takeoff or land an aircraft on Reclamation lands or waterbodies except in special use areas so designated by an authorized official. This paragraph does not apply to pilots engaged in emergency rescue or in the official business of Federal, state, or local governments or law enforcement agencies, or who are forced to land due to circumstances beyond the pilot's control.

(b) You must not operate any aircraft while on or above Reclamation facilities, lands, and waterbodies in a careless, negligent, or reckless manner so as to endanger any person, property, or natural feature.

(c) This section does not provide authority to deviate from State or Federal regulations, or prescribed standards, including, but not limited to, regulations and standards concerning pilot certifications or ratings and airspace requirements.

(d) Except in extreme emergencies threatening human life or serious property loss, you must not use non-standard boarding and loading procedures to deliver or retrieve people, material, or equipment by parachute, balloon, helicopter, or other aircraft.

(e) Operation of aircraft on or over Reclamation lands and waterbodies is at the risk of the aircraft owner, pilot, and passenger(s).

(f) You must comply with all applicable U.S. Coast Guard rules and § 423.38 when operating a seaplane on Reclamation waterbodies.

(g) You must securely moor any seaplane remaining on Reclamation waterbodies in excess of 24 hours at mooring facilities and locations designated by an authorized official. Seaplanes may be moored for periods of less than 24 hours on Reclamation waterbodies, except in special use areas otherwise designated by an authorized official, provided:

(1) The mooring is safe, secure, and accomplished so as not to damage the rights of the Government or the safety of persons; and

(2) The operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(h) Commercial operation of seaplanes from Reclamation waterbodies is prohibited.

(i) You must not operate a seaplane on Reclamation lands and waterbodies between sunset and sunrise.

(j) You must comply with any further restrictions on the operation of aircraft in the proximity of specific Reclamation facilities established by an authorized official.

(k) You must not operate model aircraft except in special use areas so designated and posted by an authorized official.

§ 423.42 Gambling.

Commercial gambling in any form, or the operation of gambling devices, is prohibited on Reclamation facilities, lands, and waterbodies unless authorized by applicable treaties or Federal, state, and local laws or regulations.

§ 423.43 Alcoholic beverages.

You must not possess or consume alcoholic beverages in violation of Federal, state, or local law, or in special use areas so designated and posted by an authorized official under subpart E of this part 423.

§ 423.44 Controlled substances.

You must not possess, consume, deliver, or be under the influence of, controlled substances included in schedules I, II, III, IV, or V of part B of the Controlled Substance Act (21 U.S.C. 812) on Reclamation facilities, lands, or waterbodies, unless the controlled substance was legally obtained through a valid prescription or order.

Subpart D—Authorization of Otherwise Prohibited Activities

§ 423.50 How can I obtain permission for prohibited or restricted uses and activities?

(a) Authorized officials may issue permits to authorize activities on Reclamation facilities, lands, or waterbodies otherwise prohibited or restricted by §§ 423.26, 423.27, 423.28, 423.29(a), 423.29(b), 423.29(f), 423.30(d), 423.33(d), 423.35(d)(1), and 423.38(h) and may terminate or revoke such permits for non-use, non-compliance with the terms of the permit, violation of any applicable law, or to protect public health or safety or natural or cultural resources.

(b) You may apply for permission to engage in activities otherwise prohibited or restricted by the sections listed in paragraph (a) of this section. You may apply to the authorized official responsible for the area in which your activity is to take place, and this authorized official may grant, deny, or establish conditions or limitations on this permission.

(c) You must pay all required fees and properly display applicable permits, passes, or receipts.

(d) You must not violate the terms and conditions of a permit issued by an authorized official. Any such violation is prohibited and may result in suspension or revocation of the permit, or other penalties as provided in subpart F of this part 423, or both.

(e) You must, upon request by a law enforcement officer, display any permit authorizing your presence or activity on Reclamation facilities, lands, and waterbodies.

Subpart E—Special Use Areas

§ 423.60 How special use areas are designated.

(a) After making a determination under paragraph (b) of this section, an authorized official may:

(1) Designate special use areas within Reclamation facilities, lands, or waterbodies for application of reasonable schedules of visiting hours; public use limits; and other conditions, restrictions, allowances, or prohibitions on particular uses or activities that vary from the provisions of subpart C of this part 423; and

(2) From time to time revise the boundaries of a previously designated special use area and revise or terminate previously imposed schedules of visiting hours; public use limits; and other conditions, restrictions, allowances, or prohibitions on a use or activity.

(b) Before taking action under paragraph (a) of this section, an authorized official must make a determination that action is necessary for:

(1) The protection of public health and safety;

(2) The protection and preservation of cultural and natural resources;

(3) The protection of environmental and scenic values, scientific research, the security of Reclamation facilities, the avoidance of conflict among visitor use activities; or

(4) For other reasons in the public interest.

§ 423.61 Notifying the public of special use areas.

When designating, revising, or terminating a special use area, Reclamation must notify the public as required by this section.

(a) *What notices must contain.* The notice must specify:

(1) The location of the special use area; and

(2) The public use limits, conditions, restrictions, allowances, or prohibitions

on uses and activities that are to be applied to the area or that are to be revised or terminated.

(b) *How notice must be made.* Reclamation must publish the notice required by paragraph (a) of this section in the **Federal Register** at least 15 days before the action takes place. Reclamation must also notify the public by one or more of the following methods:

(1) Signs posted at conspicuous locations, such as normal points of entry and reasonable intervals along the boundary of the special use area;

(2) Maps available in the local Reclamation office and other places convenient to the public;

(3) Publication in a newspaper of general circulation in the affected area; or

(4) Other appropriate methods, such as the use of electronic media, brochures, and handouts.

(c) *When notice may be delayed.* (1) Notice under this section may be delayed in an emergency where delaying designation, revision, or termination of a special use area would result in significant risk to:

(i) National security; or

(ii) The security of a Reclamation facility, Reclamation employees, or the public.

(2) If the exception in paragraph (c)(1) of this section applies, Reclamation must comply with paragraph (b) of this section within 30 days after the effective date of the designation.

(3) Failure to meet the **Federal Register** notice deadlines in paragraphs (b) or (c)(2) of this section will not invalidate an action, so long as Reclamation meets the remaining notification requirements of this section.

(d) *When notice is not required.* Notice under this section is not required if all the following conditions are met:

(1) The action will not result in a significant change in the public use of the area;

(2) The action will not adversely affect the area's natural, esthetic, scenic or cultural values;

(3) The action will not require a long-term or significant modification in the resource management objectives of the area; and

(4) The action is not highly controversial.

§ 423.62 Documentation of special use area designation or termination.

(a) The authorized official must document the reasons for designating a special use area and the restrictions, conditions, public use limits, or prohibitions that apply to that area. In the case of the termination of a previously established restriction, condition, public use limit, or prohibition, the authorized official must make a written determination as to why the restriction is no longer necessary.

(b) Documentation of the designation or termination of a special use area must occur before the action, except in the emergency situations described in § 423.61(c). In the latter case, the documentation is required within 30 days after the date of the designation.

(c) Reclamation will make documents produced under this section available to the public upon request except in matters concerning national or facility security, or human safety.

§ 423.63 Reservations for public use limits.

To implement a public use limit, the authorized official may establish a registration or reservation system.

§ 423.64 Existing special use areas.

Areas designated and formally documented for special uses, public use limits, or other restrictions, on [effective date of this regulation] will remain so designated without the need for compliance with §§ 423.60 through 423.63, except with respect to termination or modification of the special uses, public use limits, or other restrictions.

Subpart F—Violations and Sanctions

§ 423.70 Violations.

(a) When at, in, or on Reclamation facilities, lands, or waterbodies, you must obey and comply with:

(1) Any closure orders established under subpart B of this part 423;

(2) The regulations in subpart C of this part 423;

(3) The conditions established by any permit issued under subpart D of this part 423; and

(4) The regulations established by an authorized official in special use areas under subpart E of this part 423.

(b) Violating any use or activity prohibition, restriction, condition, schedule of visiting hours, or public use limit established by or under this part 423 is prohibited.

(c) Any continuous or ongoing violation of these regulations constitutes a separate violation for each calendar day in which it occurs.

§ 423.71 Sanctions.

Under section (1)(a) of Pub. L. 107–69, you are subject to a fine under chapter 227, subchapter C of title 18 United States Code (18 U.S.C. 3571), or can be imprisoned for not more than 6 months, or both, if you violate:

(a) The provisions of this part 423; or

(b) Any condition, limitation, or prohibition on uses or activities, or of public use limits, imposed under this part 423.

PART 429—PROCEDURE TO PROCESS AND RECOVER THE VALUE OF RIGHTS-OF-USE AND ADMINISTRATIVE COSTS INCURRED IN THE PERMITTING OF SUCH USE

2. Revise the authority citation for part 429 to read as follows:

Authority: 43 U.S.C. 373 (32 Stat. 390); 43 U.S.C. 387 (53 Stat. 1196), as amended by 64 Stat. 463, c. 752 (1950); Department of the Interior Manual Part 346, Chapters 1, 2, 3, and 4; 43 U.S.C. 501; Independent Offices Appropriation Act (31 U.S.C. 483a); and Budget Circular A–25, as amended by transmittal memorandums 1 and 2 of Oct. 22, 1963, and April 16, 1974.

3. Revise § 429.1 to read as follows:

§ 429.1 Purpose.

The purpose of this part is to notify the public that any possession or occupancy of any portion of and the extraction or disturbance of any natural resources from Reclamation lands, facilities, or waterbodies are prohibited without written authorization from Reclamation. Written authorizations must meet the requirements of the Independent Offices Appropriation Act (31 U.S.C. 483a) and Office of Management and Budget Circular A–25, as amended; both of which require that Reclamation recover both the fair market value of rights-of-use granted to applicants and the administrative costs associated with the issuing of rights-of-use on lands, facilities, and waterbodies administered by Reclamation. This part also refers to costs incurred by Reclamation when, at the request of other agencies and parties, Reclamation gives aid and assistance in rights-of-use matters.

4. In § 429.2, paragraphs (c) and (d) are revised and new paragraphs (m) and (n) are added to read as follows:

§ 429.2 Definitions.

* * * * *

(c) *Regional Director* means any one of the Reclamation Regional Directors designated by the Commissioner to act in specified rights-of-use of actions. The Regional Directors may re-delegate portions of their authorities for granting rights-of-use to officers and employees of Reclamation.

(d) *Rights-of-use* means rights-of-way, easements, permits, licenses, contracts, or agreements issued or granted non-competitively by Reclamation that authorize the possession or occupation of and the extraction or disturbance of

natural resources on Reclamation facilities, lands, and waterbodies.

* * * * *

(m) *Possession or occupancy* and *possess or occupy* both mean to have in one's actual control or to use, hold, or reside in or on Reclamation facilities, lands, or waterbodies, including to use or hold such facilities, lands, or waterbodies in a manner or for a purpose that only temporarily restricts or precludes other public uses.

(n) *Reclamation land or lands* means facilities, lands, and waterbodies under Reclamation's administrative control or jurisdiction.

§ 429.3 [Amended]

5. In § 429.3(c), remove the word "apprised" and add in its place "appraised."

§ 429.6 [Amended]

6. In § 429.6, remove the second sentence of the introductory text.

§ 429.11 [Removed and reserved]

7. Remove and reserve § 429.11.

8. Add §§ 429.12 and 429.13, to read as follows:

§ 429.12 Applicability.

(a) This part 429 applies to any possession or occupancy of Reclamation facilities, lands, or waterbodies.

(b) This part 429 does not apply to the use of Reclamation lands for transitory activities such as hiking, camping, sightseeing, picnicking, hunting, swimming, boating, fishing, and other personal recreational pursuits. These activities are governed by 43 CFR part 423, Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies.

(c) This part does not apply to leasing Reclamation lands for grazing, agriculture, or any other purposes where a greater return will be realized by the United States through a competitive bidding process.

(d) This part does not apply to interests issued or granted for the replacement or relocation of facilities belonging to others under section 14 of the Reclamation Project Act of August 4, 1939, 43 U.S.C. 389.

(e) This part does not apply to archaeological resources or archaeological resources management activities that are governed by the Archaeological Resources Protection Act (Public Law 96–95), 43 CFR part 7, and 43 CFR part 423.

§ 429.13 General restrictions.

You must not possess or occupy, or extract or remove natural resources from Reclamation facilities, lands, or waterbodies unless you obtain a right-of-use in accordance with this part 429 or under other written agreement with Reclamation.

[FR Doc. 05–17918 Filed 9–12–05; 8:45 am]

BILLING CODE 4310–MN–P

Federal Register

Tuesday,
September 13, 2005

Part VI

The President

Federal Register
Vol. 70, No. 176
Tuesday, September 13, 2005

Presidential Documents

Title 3—

The President

Proclamation 7924 of September 8, 2005

To Suspend Subchapter IV of Chapter 31 of Title 40, United States Code, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricane Katrina

By the President of the United States of America

A Proclamation

1. Section 3142(a) of title 40, United States Code, provides that "every contract in excess of $2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes or laborers and mechanics."

2. Section 3142(b) of title 40, United States Code, provides that such "minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed . . ."

3. Under various other related acts, the payment of wages is made dependent upon determinations by the Secretary of Labor under section 3142 of title 40, United States Code.

4. Section 3147 of title 40, United States Code, provides that "[t]he President may suspend the provisions of this subchapter during a national emergency."

5. Several areas of the Nation have been recently devastated by Hurricane Katrina. The devastation from the hurricane has resulted in the largest amount of property damage from a natural disaster in the history of the Nation. An enormous but undetermined number of lives have been lost, and hundreds of thousands of homes and business establishments either destroyed or severely damaged. Hundreds of thousands of individuals have lost their jobs and their livelihood. An unprecedented amount of Federal assistance will be needed to restore the communities that have been ravaged by the hurricane. Accordingly, I find that the conditions caused by Hurricane Katrina constitute a "national emergency" within the meaning of section 3147 of title 40, United States Code.

(a) Hurricane Katrina has resulted in unprecedented property damage.

(b) The wage rates imposed by section 3142 of title 40, United States Code, increase the cost to the Federal Government of providing Federal assistance to these areas.

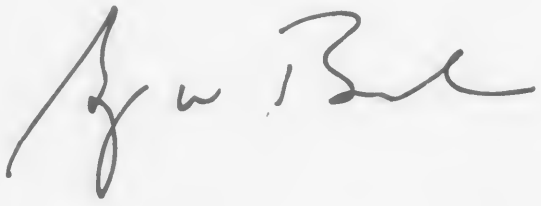
(c) Suspension of the subchapter IV of chapter 31 of title 40, United States Code, 40 U.S.C. 3141–3148, and the operation of related acts to the extent they depend upon the Secretary of Labor's determinations under section 3142 of title 40, United States Code, will result in greater assistance to these devastated communities and will permit the employment of thousands of additional individuals.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do by this proclamation suspend, as to all contracts entered into on or after the date of this proclamation and until otherwise provided,

the provisions of subchapter IV of chapter 31 of title 40, United States Code, 40 U.S.C. 3141–3148, and the provisions of all other acts providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under section 3142 of title 40, United States Code, as they apply to contracts to be performed in the following jurisdictions: the counties of Baldwin, Choctaw, Clarke, Mobile, Sumter, and Washington in the State of Alabama; the counties of Broward, Miami-Dade, and Monroe in the State of Florida; the parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Jefferson Davis, La Salle, Lafayette, Lafourche, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, and Winn in the State of Louisiana; and the counties of Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, DeSoto, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo in the State of Mississippi.

And, as to such contracts to be performed in such jurisdictions, I do hereby suspend, until otherwise provided, the provisions of any Executive Order, proclamation, rule, regulation, or other directive providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under section 3142 of title 40, United States Code;

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–18238
Filed 8–12–05; 8:45 am]
Billing code 3195–01–P

Presidential Documents

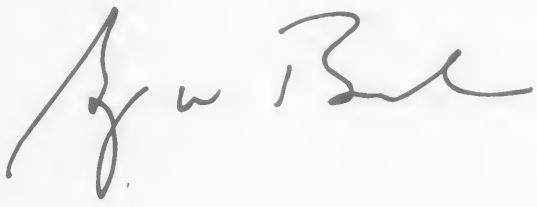
Notice of September 8, 2005

Notice Continuation of the National Emergency With Respect to Certain Terrorist Attacks

Consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency I declared on September 14, 2001, in Proclamation 7463, with respect to the terrorist attacks at the World Trade Center, New York, New York, and the Pentagon, and the continuing and immediate threat of further attacks on the United States.

By Executive Order 13223 of September 14, 2001 and Executive Order 13253 of January 16, 2002, I delegated authority to the Secretary of Defense and the Secretary of Transportation to order members of the Reserve Components to active duty and to waive certain statutory military personnel requirements. By Executive Order 13235 of November 16, 2001, I delegated authority to the Secretary of Defense to exercise certain emergency construction authority. By Executive Order 13286 of February 28, 2003, I transferred the authority delegated to the Secretary of Transportation in Executive Order 13223 to the Secretary of Homeland Security.

Because the terrorist threat continues, the national emergency declared on September 14, 2001, and the measures taken on September 14, 2001, November 16, 2001, and January 16, 2002, to deal with that emergency, must continue in effect beyond September 14, 2005. Therefore, I am continuing in effect for an additional year the national emergency I declared on September 14, 2001, with respect to the terrorist threat. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
September 8, 2005.

[FR Doc. 05–18239
Filed 9–12–05; 8:45 am]
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Federal Register

Tuesday,
September 13, 2005

Part VII

The President

Proclamation 7925—National Day of Prayer and Remembrance for the Victims of Hurricane Katrina

Federal Register
Vol. 70, No. 176
Tuesday, September 13, 2005

Presidential Documents

Title 3—

The President

Proclamation 7925 of September 8, 2005

National Day of Prayer and Remembrance for the Victims of Hurricane Katrina

By the President of the United States of America

A Proclamation

Hurricane Katrina was one of the worst natural disasters in our Nation's history and has caused unimaginable devastation and heartbreak throughout the Gulf Coast Region. A vast coastline of towns and communities has been decimated. Many lives have been lost, and hundreds of thousands of our fellow Americans are suffering great hardship. To honor the memory of those who lost their lives, to provide comfort and strength to the families of the victims, and to help ease the burden of the survivors, I call upon all Americans to pray to Almighty God and to perform acts of service.

As we observe a National Day of Prayer and Remembrance for the Victims of Hurricane Katrina, we pledge our support for those who have been injured and for the communities that are struggling to rebuild. We offer thanks to God for the goodness and generosity of so many Americans who have come together to provide relief and bring hope to fellow citizens in need. Our Nation is united in compassion for the victims and in resolve to overcome the tremendous loss that has come to America. We will strive together in this effort, and we will prevail through perseverance and prayer.

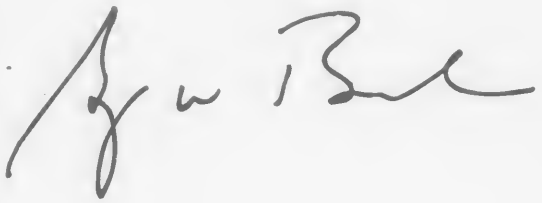
Americans are reaching out to those who suffer by opening their hearts, homes, and communities. Their actions demonstrate the greatest compassion one person may show to another: to love your neighbor as yourself. Across our Nation, so many selfless deeds reflect the promise of the Scripture: "For I was hungry and you gave Me food; I was thirsty and you gave Me drink; I was a stranger and you took Me in." I encourage all Americans to respond with acts of kindness in the days ahead. By contributing time, money, or needed goods to a relief organization and by praying for the survivors and those in recovery efforts, we can make a tremendous difference in the lives of those in need.

Hurricane Katrina and its aftermath resulted in a considerable loss of life. We pray that God will bless the souls of the lost, and that He will comfort their families and friends and all lives touched by this disaster. As the American people unite to help those who are hurting, we share a determination to stand by those affected by Hurricane Katrina in the months and years ahead as they rebuild their lives and reclaim their future. We are determined that the Gulf Coast region will rise again. The tasks before us are enormous, and so is the heart of America. We will continue to comfort and care for the survivors. We will once again show the world that the worst adversities bring out the best in the American people.

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 Friday, September 16, 2005, as a National Day of Prayer and Remembrance for the Victims of Hurricane Katrina. I ask that the people of the United States and places of worship mark this National Day of Prayer and Remembrance with memorial services and other appropriate observances. I also encourage all Americans to remember those who have suffered in the disaster by offering prayers

and giving their hearts and homes for those who now, more than ever, need our compassion and our support.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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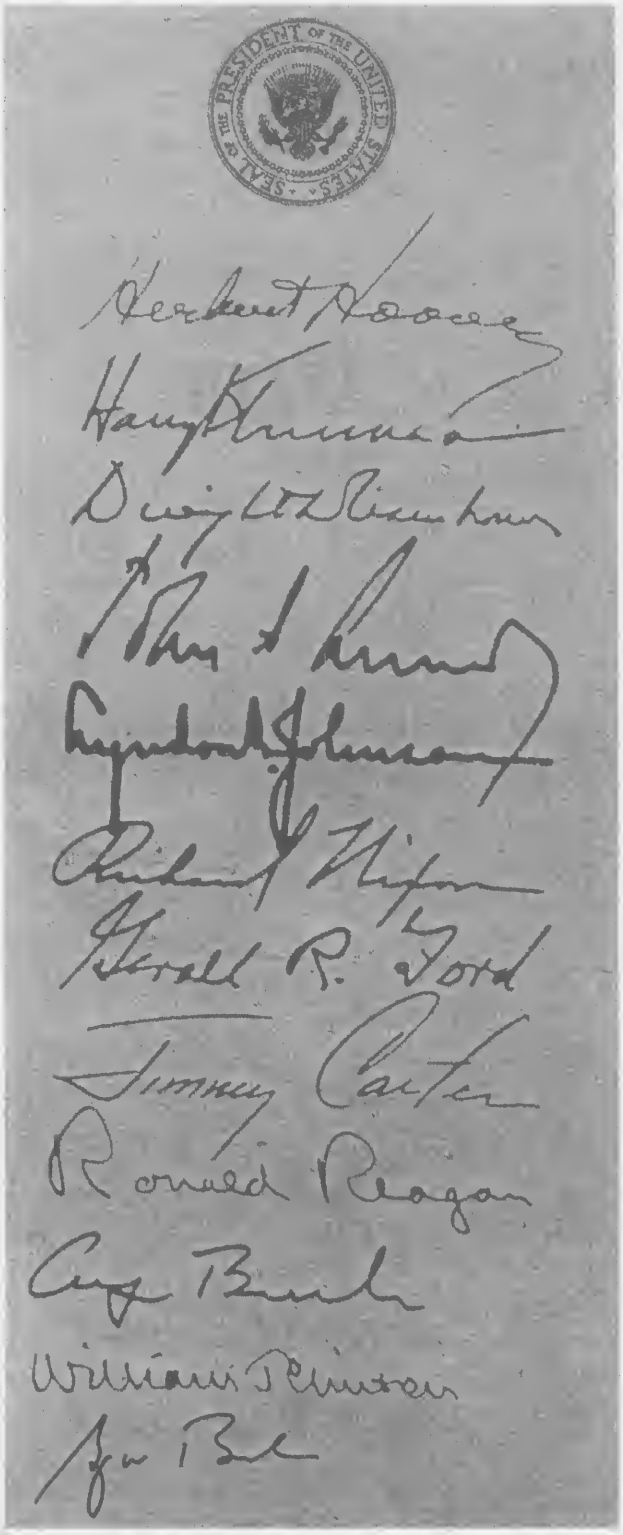

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