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WHEN: Tuesday, June 12, 2007
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC03

Common Crop Insurance Regulations, Mint Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation which was published Thursday, May 3, 2007 (72 FR 24523–24530). The regulation pertains to the insurance of mint.

DATES: *Effective Date:* June 4, 2007.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction was intended to convert the mint pilot crop insurance program to a permanent crop insurance regulation to be used in conjunction with the Common Crop Insurance Policy Basic Provisions for ease of use and consistency of terms.

Need for Correction

As published, the final regulation contained an error which may prove to be misleading and needs to be clarified. Section 13(e)(3) mistakenly includes a reference to section 8(d). However, there is no section 8(d). The correct reference should be to the provisions contained in section 8(b), which provides the requirements for when a crop inspection must be made before insurance coverage begins.

List of Subjects in 7 CFR Part 457

Crop Insurance, Mint, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, the 7 CFR part 457 is corrected as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

■ 2. Amend § 457.169 by revising section 13(e)(3) to read as follows:

§ 457.169 Mint crop insurance provisions.

* * * * *

13. Winter Coverage Option

* * * * *

(e) * * *

(3) That have an adequate stand on the date coverage begins (newly planted mint types must be reported in accordance with section 8(b) but they must be reported as uninsured unless they have an adequate stand by the date coverage begins); and

* * * * *

Signed in Washington, DC, on May 17, 2007.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E7–9885 Filed 5–23–07; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. AMS–FV–06–0169; FV06–981–1C]

Almonds Grown in California; Outgoing Quality Control Requirements; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendment.

SUMMARY: The Agricultural Marketing Service published a final rule in the **Federal Register** on March 30, 2007 (72 FR 15021). The document added outgoing quality control requirements under the administrative rules and regulations of the California almond marketing order. A reference in the new regulatory language was incorrectly cited. This document corrects that reference.

DATES: Effective on May 24, 2007.

FOR FURTHER INFORMATION CONTACT: Maureen Pello or Kurt Kimmel, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Maureen.Pello@usda.gov* or *Kurt.Kimmel@usda.gov*.

SUPPLEMENTARY INFORMATION: This document provides a correcting amendment to Marketing Order 981, found at 7 CFR part 981.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR part 981 is corrected by making the following correcting amendment:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 981.442 [Corrected]

■ 2. In § 981.442, amend the first sentence of paragraph (b)(6)(i)(A) by removing the word "(b)(6)" and adding in its place the word "(b)(3)."

Dated: May 21, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–10056 Filed 5–23–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27262; Airspace Docket No. 07–ASO–1]

Amendment of Class E Airspace; Middlesboro, KY; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final rule (FAA–2007–27262; 07–ASO–1), which was published in the **Federal Register** of May 8, 2007, (72 FR 25963), amending Class E airspace at Middlesboro, KY. This action corrects an error in the legal description for the Class E5 airspace at Middlesboro, KY.

DATES: *Effective Date:* Effective 0901 UTC, July 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Background

Federal Register Document 07–2248, Docket No. FAA–2007–27262; 07–ASO–1, published on May 8, 2007, (72 FR 25963), amended Class E5 airspace at Middlesboro, KY. An error was discovered in the legal description describing the Class E5 airspace area. The word Airport was omitted from the legal description. This action corrects that error. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Need for Correction

As published, the final rule contains an error in the legal description of the Class E5 airspace area. Accordingly, pursuant to the authority delegated to me, the legal description for the Class E5 airspace area at Middlesboro, KY, incorporated by reference at § 71.1, 14 CFR 71.1, and published in the **Federal Register** on May 8, 2007, at (72 FR 27262), is corrected by making the following correcting amendment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

■ In consideration of the foregoing, the Federal Aviation Administration corrects the adopted amendment, 14 CFR part 71, by making the following correcting amendment:

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 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Corrected]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

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

* * * * *

ASO KY E5 Middlesboro, KY [Corrected]

Middlesboro—Bell County Airport, KY
(Lat. 36°36′38″ N., long. 83°44′15″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Middlesboro–Bell County Airport.

* * * * *

Issued in College Park, Georgia, on February 13, 2007.

Mark D. Ward,

Group Manager, System Support Group, Eastern Service Center.

Editorial Note: This document was received at the Office of the Federal Register on Friday, May 18, 2007.

[FR Doc. 07–2569 Filed 5–23–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 292

[Docket No. RM07–11–000]

Applicability of Federal Power Act Section 215 to Qualifying Small Power Production and Cogeneration Facilities

Issued May 18, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations governing qualifying small power production and cogeneration facilities (QFs), to eliminate the exemption of QFs from the requirements of section 215 of the Federal Power Act. From a reliability perspective, there is not a meaningful distinction between QF and non-QF generators that warrants a generic exemption of QFs from reliability standards.

DATES: Effective Date: The rule will become effective June 25, 2007.

FOR FURTHER INFORMATION CONTACT:

Paul Singh (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–8576; *paul.singh@ferc.gov.*

Samuel Higginbottom (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE.,Washington, DC 20426; (202) 502–8561; *samuel.higginbottom@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Order No. 696

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) revises its regulations governing qualifying small power production and cogeneration facilities, to eliminate the exemption of QFs from the requirements of section 215 of the Federal Power Act.[1] From a reliability perspective, there is not a meaningful distinction between QF and non-QF generators that warrants a

[1] 16 U.S.C. 824o.

generic exemption of QFs from reliability standards.

2. A number of commenters in this proceeding also submitted comments in the rulemaking in Docket No. RM06–16–000 concerning mandatory reliability standards for the bulk-power system; they submitted comments in both proceedings concerning the appropriate compliance registry criteria for QFs to be subject to reliability standards.[2] In this proceeding we find that QFs should not, as a general matter, be exempt from reliability standards; we are changing our regulations accordingly. Issues concerning the treatment of individual QFs are best addressed in the North American Electric Reliability Corporation (NERC) registry process where the unique circumstances of individual QFs can be individually considered.

II. Background

3. On August 8, 2005, the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAct 2005), was enacted into law.[3] EPAct 2005 added a new section 215 to the Federal Power Act (FPA),[4] which requires a Commission-certified Electric Reliability Organization (ERO) to develop reliability standards, which are subject to Commission review and approval. Once approved, the reliability standards become mandatory and may be enforced by the ERO, subject to Commission oversight.

4. On February 3, 2006, the Commission issued Order No. 672, which implements newly-added section 215 and provides specific processes for the certification of an entity as the ERO, the development and approval of mandatory reliability standards, and the compliance with and enforcement of approved reliability standards.[5] On April 4, 2006, NERC made two filings: (1) An application for certification of NERC as the ERO; and (2) a petition for Commission approval of mandatory reliability standards, with eight regional differences and a glossary of terms. On July 20, 2006, the Commission issued an order certifying NERC as the ERO.[6] On October 20, 2006, the Commission issued a Notice of Proposed Rulemaking proposing to approve 83 of 107 proposed reliability standards.[7]

5. In response to the Reliability NOPR, Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC) filed comments pointing out that QFs are exempt from section 215 by virtue of § 292.601(c) of the Commission's regulations.[8] CAC/EPUC suggested that the Commission intentionally exempted QFs from section 215. CAC/EPUC explained that, in Order No. 671, issued on February 2, 2006,[9] the Commission stated that it saw no reason to exempt QFs from the newly added FPA sections 220, 221 and 222,[10] and explicitly excluded those sections of the FPA from the QF exemptions contained in § 292.601 of its regulations, while making no similar mention of section 215.

6. In response to those comments, the Commission issued a notice of proposed rulemaking (NOPR) seeking comments on whether QFs should be exempt from section 215 of the FPA.[11] In the NOPR, the Commission pointed out that section 215(b) grants the Commission jurisdiction over "all users, owners, and operators of the bulk-power system" for "purposes of approving reliability standards * * * and enforcing compliance with [section 215]", and further provides that "[a]ll users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section."[12] The Commission reasoned that, given the statutory directive that all users, owners and operators of the bulk-power system must comply with mandatory reliability standards under section 215, it may not be appropriate to allow QFs a continued exemption from compliance with the newly-adopted mandatory and enforceable reliability standards that apply to generator owners and operators. The Commission also stated that, from a reliability perspective, there would seem to be no meaningful distinction between QF and non-QF generators that would warrant exemption of QFs from mandatory reliability standards. The Commission continued that QF generators would seem to affect the reliability of the bulk-power system as much as non-QF generators, and so QF generators should be subject to the newly-adopted mandatory reliability standards. The Commission noted that while many QFs are small facilities, others are quite large. The Commission suggested that it saw no justification for large QFs to be exempt from mandatory reliability standards. The Commission therefore proposed to amend § 292.601(c)(3) to add section 215 to the list of FPA sections from which QFs are not exempt. The Commission also pointed out that the NERC registry criteria for inclusion of generators in the compliance registry of entities that would be subject to mandatory reliability standards are written to exclude most smaller entities, and that there are procedures to challenge a generator's inclusion in the compliance registry before NERC, and if not satisfied with NERC's decision, procedures to lodge an appeal with the Commission.

III. Comments

7. On March 16, 2007, the NOPR was published in the **Federal Register** with comments due on or before April 16, 2007.

8. Comments supporting the proposed rule were filed by: NERC, the National Association of Regulatory Utility Commissioners (NARUC), the Edison Electric Institute (EEI), Entergy Services, Inc. (Entergy Services), Xcel Energy Services Inc, on behalf of the Xcel Energy Operating Companies (collectively, Xcel Energy),[13] American

[2] The Commission has since issued Order No. 693, discussed below, adopting mandatory reliability standards.

[3] Energy Policy Act of 2005, Pub. L. No. 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005).

[4] 16 U.S.C. 824o.

[5] *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Estoblishment, Approvol ond Enforcement of Electric Reliability Standords*, Order No. 672, 71 FR 8662 (Feb. 17, 2006), FERC Stats. & Regs. ¶ 31,204 (2006), *order on reh'g*, Order No. 672–A, 71 FR 19814 (Apr. 18, 2006), FERC Stats. & Regs. ¶ 31,212 (2006).

[6] *North American Electric Reliability Corporation*, 116 FERC ¶ 61,062 (2006).

[7] *Mandatory Reliability Standards for the Bulk-Power Market*, 72 FR 64770 (Oct. 20, 2006), FERC Stats. & Regs. ¶ 32,608 (2006) (Reliability NOPR). The Commission subsequently approved 83 of 107 proposed reliability standards, six of the eight proposed regional differences, and the glossary of terms. The Commission found that those reliability standards met the requirements of section 215 of the FPA (and Part 39 of the Commission's regulations, 18 CFR part 39), but that many of those reliability standards require significant improvement to address, among other things, the recommendations of the Blackout Report and therefore required NERC to submit improvements to 56 of those 83 Reliability Standards. *Mandatory Reliability Standards for the Bulk Power System*, Order No. 693, 72 FR 16416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2006). (Reliability Final Rule).

[8] 18 CFR 292.601(c).

[9] *Revised Regulations Governing Smoll Power Production ond Cogeneration Focilities*, Order No. 671, 71 FR 7852 (Feb. 2, 2006), FERC Stats. & Regs. ¶ 31,203 (2006), *order on rehearing*, Order No. 671–A, 71 FR 30583 (May 22, 2006), FERC Stats. & Regs. ¶ 31.219 (2006).

[10] 16 U.S.C. 824t–v.

[11] *Applicobility of Federol Power Act Section 215 to Qualifying Small Power Production ond Cogeneration Focilities*, 72 FR 14254 (March 16, 2007), FERC Stats. & Regs. ¶ 32,613 (2007).

[12] 16 U.S.C. 824o(b). Section 215(b) also states that entities described in section 201(f), 16 U.S.C. 824(f), entities that are otherwise exempt from Part II of the FPA unless a provision is otherwise specifically applicable to those entities, are subject to section 215. 16 U.S.C. 824o(b).

[13] The four Xcel Energy Operating Companies are: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconisn corporation, Southwestern Public

Continued

Transmission Company LLC, FirstEnergy Companies (FirstEnergy), Southern California Edison Company (SoCal Edison), Allegheny Power and Allegheny Energy Supply Company (collectively, Allegheny Energy Companies), and Imperial Irrigation District (IID).

9. Those who support the proposed rule generally argue that including section 215 of the FPA among the FPA provisions that QFs are not exempted from is appropriate both from a statutory perspective and in terms of the impact on reliability of the bulk-power system. NERC states that, with the exemption removed, in determining whether QFs are subject to mandatory reliability standards NERC will treat QFs as it does all other owners, operators and users of the bulk-power system, i.e., the decision as to whether to place an entity on the NERC compliance registry will be based on the specific circumstances of each QF. NARUC points out that there is no meaningful distinction from a reliability perspective between QF and non-QF generators that could warrant continuing to exempt QFs. EEI states that section 215 is clear on its face that all users, owners and operators of the electric production and delivery network should be subject to section 215. EEI believes that many QFs recognize their section 215 responsibilities; EEI states that it understands that many QFs have already registered with Regional Entities, which EEI states suggests that QFs understand the need to register notwithstanding the current exemption provided under section 292.601(c) of the Commission's regulations.

10. Entergy states that it fully supports the Commission's determination that QFs should not be exempt from mandatory reliability standards but states that it is concerned that NERC's registration criteria, which apply to an individual generating units that are larger than 20 MVA and that are directly connected to the bulk-power system might exempt generation facilities that are arguably not directly connected to the bulk-power system but are nevertheless material to the reliability of the bulk-power system. Similarly, Xcel Energy agrees with the Commission's reasoning that from a reliability perspective there is no meaningful distinction between QFs and other generating facilities that warrants continuation of a QF exemption from section 215. Xcel Energy is concerned, however, that NERC's registration criteria, particularly the reference to being "directly connected to the bulk-power system" can be read to not apply to generating facilities that are interconnected at distribution voltage level. American Transmission Company supports the proposed rule and states that "the appropriate place to consider whether a generating facility should be exempted from compliance with the mandatory reliability standards is at NERC." IID supports the proposed rule but argues that the Commission should recognize that the ERO or the Regional Entity should be permitted to include an otherwise exempt facility on a facility-by-facility basis if it determines that the facility is needed for bulk-power system reliability. IID asks the Commission to determine that all QFs in its particular footprint are collectively material to reliability in its particular control area.

11. Comments opposing the proposed rule were filed by: CAC/EPUC, the Florida Renewable Energy Producing QFs (Florida Renewable QFs), Deere & Company (Deere), Indeck Energy Services, Inc. (Indeck), Sunray Energy Inc. (Sunray), ARIPPA,[14] Hillsborough County, Florida,[15] and Pasco County, Florida.[16]

12. CAC/EPUC suggests that the Commission has an ongoing obligation to encourage cogeneration and that this must be balanced with its obligation to protect the grid. CAC/EPUC urges the Commission not to act on the proposed rule until it has acted on rehearing of Order No. 693 in order to make sure that the registry standards applicable to QFs are not overly broad. Florida Renewable QFs ask the Commission to modify the proposed rule in four respects: First, to allow QFs to qualify for a size exemption based on their output capability rather than on their nameplate capacity; second, the Commission should clarify that QFs may appeal registry designations directly to the Regional Entity in lieu of the ERO; third, the Commission should provide that QFs that by contract sell only energy and not capacity be allowed to seek a case-by-case waiver of the reliability standards even if they do not otherwise qualify for a size exemption; and fourth, the Commission should require the ERO to consider whether full compliance with mandatory reliability standards would raise QFs' costs above the avoided costs set in the QFs' contracts with purchasing utilities. Deere suggests that the Commission provide an exemption for small power production QFs 80 MW and smaller.

13. Indeck argues that the proposed rule is fundamentally flawed. Indeck states that the proposed rule fails to recognize that QFs are often not connected to the grid, operate to support important commercial or industrial operations, are subject to fuel use limitations and operating and efficiency requirements, and in most cases have little or no impact on the reliability of the bulk-power system. To remedy these supposed flaws, Indeck suggests that the Commission should continue to exempt all QFs smaller than 100 MW from section 215 of the FPA, should ignore "behind the meter" capacity of QFs, and should exempt all QFs that utilize a renewable energy source from section 215 of the FPA. Sunray states that it owns and operates two Solar Electric Generating Systems (SEGS) located in California. One of Sunray's SEGs is 14 MW and the other 30 MW. Sunray argues that requiring it to comply with mandatory reliability standards will be economically burdensome and will provide little or no increase in the reliability of the bulk-power system. Both Indeck and Sunray also question the Commission's regulatory flexibility analysis.

14. ARIPPA argues that all of its members have been required by contract with purchasing utilities to meet reliability requirements to obtain access to the grid. ARIPPA argues that additional requirements are not necessary for its QFs. Hillsborough County and Pasco County each state that the investor-owned utilities that their respective QFs are interconnected with have control over system reliability and that the QFs have no responsibility for bulk-power system reliability. Hillsborough County and Pasco County also suggest that the Commission provide that all qualifying small power production facilities continue to be exempt from section 215 of the FPA.

15. The Commission received comments from the following entities that do not oppose the proposed rule, but ask the Commission to clarify how NERC's registration criteria will apply to QFs: The Electricity Consumers Resource Council (ELCON) and the American Iron and Steel Institute (AISI), the Council of Industrial Boiler Owners (CIBO), Kimberly Clark Corporation, PPG Industries, Inc. and Valero Energy Corporation (collectively, Joint Cogeneration Owners), American Forest

Service Company, and Public Service Company of Colorado.

[14] ARIPPA is a regional non-profit trade association consisting of thirteen QFs and associated manufacturers, engineers, chemists and tradesmen who repair and service the units. The units are in historical coal mining regions, combust waste coal and generate under fixed price power agreements with the local utility.

[15] Hillsborough County owns a 30 MW solid waste QF and has plans to add an additional 17 MW of electrical generation capacity.

[16] Pasco County owns a 30 MW solid waste QF.

& Paper Association (American Forest & Paper), Lee County, Florida, Dow Chemical Company (Dow), California Cogeneration Council (CCC), and Midland Cogeneration Venture Limited Partnership (Midland Cogen).[17]

16. ELCON and AISI state that they do not oppose the registration of QFs if particular facilities are found to materially affect the reliability of the bulk-power system. ELCON and AISI state that in fact they have cooperated with NERC staff to draft registration criteria that would address the unique operational characteristics of cogenerators. ELCON and AISI state that, unfortunately, the NOPR proposes an automatic per se rule that would force the registration of all QFs above 20 MVA/MW regardless of whether a QF's operations have any effect on reliability. ELCON and AISI also ask the Commission to recognize that NERC has applied a "netting" concept that recognizes that often QF generation never reaches the grid, or does so on a limited basis. Finally ELCON and AISI recommend that the Commission encourage the establishment of an ad hoc NERC task force that would review the criteria for determining if and when a QF has a material impact on the reliability of the bulk power system.

17. CIBO states that it supports the comments filed by ELCON. Additionally, CIBO argues that the Commission does not encourage QFs when it fails to recognize any meaningful distinction between QF and non-QF generators on matters of reliability. CIBO states that NERC's registration criteria for generators do, and should continue to, recognize that QFs are different from other generators. CIBO asks the Commission to encourage NERC in this recognition. Joint Cogeneration Owners also state that they do not oppose the registration of QFs whose operators do in fact materially affect the reliability of the bulk power system. Joint Cogeneration Owners, however, oppose what they characterize as a per se rule that would require the registration of all QFs above 20 MVA regardless of whether the QFs' operations have any effect on reliability and would fail to consider a QF's net impact on the grid.

18. American Forest & Paper states that it does not object to making those portions of reliability standards under section 215 which are appropriately applicable to QFs mandatory, but requests that the Commission clarify that the application of any reliability standards to QFs must nonetheless recognize and appropriately accommodate the distinctions betweens QFs and merchant or utility-owned generation. American Forest & Paper notes that almost all QFs greater that 20 MW interconnected to and operating synchronously with the grid are already subject to specific reliability and operating requirements. American Forest & Paper states that those requirements range from limitations on power factor and the maintenance of facilities, to emergency operating procedures. American Forest & Paper states that it does not object to the conversion of such requirements into mandatory standards. American Forest & Paper, however, states that it is concerned that the rush to codify reliability standards will be used as a pretext for renewed discrimination and utility interference with integrated manufacturing operations. American Forest & Paper concludes by asking the Commission to clarify that mandatory reliability standards applicable to QFs must reflect the operational and other distinctions between QFs and merchant or utility-owned generation.

19. Lee County argues that the Commission should require NERC to design a cost-benefit analysis to be applied by NERC and Regional Entities when registering smaller qualifying small power production facilities. Lee County is concerned that small power production facilities smaller than 20 MVA will be required to register on the grounds that they "materially" impact the reliability of the bulk-power system. Lee County suggests that the Commission require NERC to establish a rebuttable presumption that a small power production facility smaller than the existing NERC size thresholds does not "materially" impact the reliability of the bulk-power system. Lee County also asks the Commission to require NERC to justify registering such small power production facilities using a meaningful case-by-case analysis based on a cost benefit analysis.

20. Dow Chemical does not oppose making section 215 of the FPA applicable to QFs, but wants the Commission to clarify that NERC must retain its existing provision that measures whether a facility meets the 20/75 MVA size threshold based on the portion of a cogeneration unit's /plant's capacity made available to serve the bulk-power system. Dow would also like the Commission to state that directives from Reliability Coordinators, Transmission Operators, Balancing Authorities, and/or Transmission Providers need not be complied with if doing so would impair a cogeneration facility's service obligations to its thermal host. CCC asks that the Commission require that NERC reliability criteria be applicable to QFs based upon a demonstration that the facilities are needed for reliability as defined in Order No. 693, and not based on the size of the facility. CCC also asks that the Commission clarify that NERC reliability rules must take into account regulatory requirements, operating characteristics and contractual commitments of cogeneration facilities. Midland Cogen asks the Commission to clarify that NERC reliability criteria must accommodate the unique operating characteristics, regulatory requirements and contractual commitments of QFs. Midland Cogen also asks the Commission to provide assurances that QFs will be permitted to recover the cost of compliance with mandatory reliability standards through a grid charge to be assessed to the control area that benefits from the reliability that the facilities provide.

21. Georgia Pacific, LLC (Georgia Pacific) filed reply comments. Georgia Pacific states that it has mill and plant facilities throughout the United States and owns and operates eleven facilities that are certified as QFs, and that range in size from 7.5 MW to 140 MW. Georgia Pacific states that the majority of its QFs are cogeneration facilities that provide electric power and steam to host processes. Georgia Pacific states that because its QFs primarily produce steam and electric energy for its own use, its QFs have little or no impact on the bulk-power system. Georgia Pacific asks that the Commission in this proceeding recognize the existing 20/75 MVA NERC exclusion for smaller facilities and that such exclusion for a cogeneration facility serving behind the meter load be based on that portion of the generating unit's/plant's capacity actually made available to the bulk power system. In addition, Georgia Power would like the Commission to create an exemption from any reliability standards to the extent that complying with such standards would impair service to a QF's industrial host.

22. Xcel Energy filed reply comments arguing that this rulemaking is not the appropriate forum for evaluating technical justification for any specific QF exemption level. Xcel Energy argues that generators seeking an exemption should do so on a case-by-case basis.

23. On May 14, 2007, Florida Renewable QFs filed supplemental comments. Florida Renewable QFs states that it seeks clarification of two issues left unresolved in the NOPR.

[17] Edison Mission Energy and Pacific Gas and Electric Company each also filed comments stating that they will be affected by the proposed rule and expressing an interest in the rulemaking; neither, however, takes a position on the substance of the proposed rule.

First, Florida Renewable QFs ask the Commission to state that the Final Rule will not take effect for one year from issuance. The one-year period, Florida Renewable QFs argues, will give QFs that do not have experience with reliability standards time to develop programs for compliance with the reliability standards and will prevent undue hardship. Second, Florida Renewable asks the Commission to state that an appeal to the Commission from a NERC determination that a small generator (smaller than the usual registry criteria of 20 MVA) should be on the compliance registry would stay the effectiveness of the NERC ruling during the pendency of the appeal to the Commission.

IV. Discussion

24. As proposed in the NOPR, the Commission will amend § 292.601(c)(3) of its regulations to add section 215 to the list of FPA sections from which QFs are not exempt. Making QFs subject to reliability standards is consistent with the intent of section 215. When Congress enacted section 215, it used broad language to ensure that all those entities that could affect the reliability of the bulk power system would be subject to mandatory reliability standards. Specifically, section 215(b)(1) states that, "The Commission shall have jurisdiction, within the United States, over * * * all users, owners and operators of the bulk-power system (including the entities described in section 201(f)), for purposes of approving reliability standards established under this section and enforcing compliance with this section." [18] Further, section 215(b)(2) provides that "All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section." [19] In using such broad language, Congress gave no indication that it intended to exempt any entity that could affect the reliability of the bulk-power system from the reach of mandatory reliability standards.

25. Indeed, Congress included within the scope of section 215 "the United States, a State or political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year." [20] Thus Congress included within the scope of section 215 entities that are normally excluded from the Commission's jurisdiction under Part II of the FPA. The provision providing that these otherwise jurisdictionally exempt utilities will be subject to section 215 supports our determination that Congress intended that all utilities, regardless of whether those utilities are otherwise exempt from the FPA, be subject to section to section 215.

26. While it is true that section 210(e) of PURPA grants the Commission broad authority to exempt most QFs from various provisions of the FPA, we cannot find that Congress intended that all entities that affect the reliability of the bulk-power system not be subject to mandatory and enforceable reliability standards. Comments submitted in response to the NOPR do not convince us otherwise. Indeed, the majority of the comments filed either fully support the Commission's proposal to make QFs subject to section 215, or recognize that QFs should be subject to section 215 while expressing concerns as to the specifics of NERC's registry criteria for QFs.

27. We accordingly conclude that the addition of section 215 of the FPA to the list, contained in § 292.601(c)(3), of FPA sections from which QFs are not exempt is consistent with the Congressional directive contained in section 215 of the FPA that all users, owners, and operators of the bulk-power system be subject section 215 and thus subject to the mandatory and enforceable reliability standards.

28. In addition, we find that for reliability purposes there is no meaningful distinction between QF and non-QF generators that would warrant generic exemption of QFs from mandatory reliability standards.

29. Comments submitted in this rulemaking argue that the Commission should consider in this rulemaking a number of factors in determining whether individual QFs or classes of QFs do not materially affect the reliability of the bulk-power system and thus should be exempted from section 215 of the FPA; these factors include the small size of some QFs and the fact that, while a QF may individually be large, it may deliver most of its output behind the meter load and thus would have little effect on the bulk-power system. We do not believe that any of the factors mentioned by commenters, including small size or primarily serving behind the meter load, justifies a generic exemption from section 215 of the FPA for all facilities below a certain size, or for all facilities serving behind the meter load. While these factors may be appropriate in determining whether an individual QF should be placed on the NERC reliability registry, they are not factors that justify exempting QFs, as a class, from section 215 of the FPA and from reliability standards. Nor are they factors that justify exempting any particular subset of QFs.

30. Whether a generation facility should be subject to reliability standards should depend on whether a generation facility is needed to maintain the reliability of the bulk-power system. The reliability criteria adopted by NERC and approved by the Commission, as well as the compliance registry process adopted by NERC and approved by the Commission, are designed to ensure that only those facilities needed to maintain the reliability of the bulk-power system are subject to the reliability standards. The ultimate decision with respect to individual generation units and/or plants is, and must be, made on a case-by-case basis. Thus, whether a particular QF or type of QF should be exempt from reliability standards is an issue that is more appropriately made in the context of NERC's establishment of registry criteria for owners and operators of generators, and in the context of NERC's compliance registry process. The reliability of the bulk-power system will be better protected by utilizing the NERC compliance registry process, which will ensure that no generator that is needed to maintain the reliability of the bulk-power system will be exempt from reliability standards, while excusing those generators that are not needed to maintain reliability.

31. NERC's compliance registry criteria for generator owner/operators encompasses:

a. Individual generating unit > 20 MVA (gross nameplate rating) and is directly connected to the bulk power system, or

b. Generating plant/facility > 75 MVA (gross aggregate nameplate rating) or when the entity has responsibility for any facility consisting of one or more units that are connected to the bulk power system at a common bus with total generation above 75 MVA (gross nameplate rating), or

c. Any generator, regardless of size, that is a blackstart unit material to and designated as part of a transmission operator entity's restoration plan, or;

d. Any generator, regardless of size, that is material to the reliability of the bulk power system.[21]

32. In addition, NERC's compliance registry criteria for generation facilities contain the following exclusions:

a. A generator owner/operator will not be registered based on these criteria if responsibilities for compliance with approved NERC reliability standards or associated requirements including reporting have been transferred by written agreement

[18] 16 U.S.C. 824o(b) (emphasis added).

[19] *Id.* (emphasis added).

[20] 16 U.S.C. 824(f).

[21] NERC Statement of Compliance Registry Criteria (Revision 3), February 6, 2007.

to another entity that has registered for the appropriate function for the transferred responsibilities, such as a load-serving entity, G&T cooperative or joint action agency, or

b. As a general matter, a customer-owned or -operated generator/generation that serves all or part of retail load with electric energy on the customer's side of the retail meter may be excluded as a candidate for registration based on these criteria if (i) the net capacity provided to the bulk power system does not exceed the criteria above or the Regional Entity otherwise determines the generator is not material to the bulk power system and (ii) standby, back-up and maintenance power services are provided to the generator or to the retail load pursuant to a binding obligation with another generator owner/operator or under terms approved by the local regulatory authority or the Federal Energy Regulatory Commission, as applicable.[22]

33. Finally, the registration criteria contains a provision that an organization that otherwise meets the criteria for registration need not be registered if it can be demonstrated to NERC that the bulk power system, owner, operator, or user does not have a material impact on the bulk power system.

34. In the Reliability Final Rule, moreover, the Commission found that NERC had set reasonable criteria for registration, and approved the compliance registry process.[23]

35. Many of the comments filed in this proceeding appear to be based on a misunderstanding of what the Commission was proposing to do in this proceeding. Many of the comments submitted in response to the NOPR suggest that commenters thought that the Commission was proposing to mandate that NERC adopt registry criteria that would require all QFs over a certain size to register with the ERO or Regional Entity. All the Commission proposed to do in the NOPR, and all the Commission is doing here in the Final Rule, is to eliminate the generic exemption of QFs from section 215 of the FPA and thus from mandatory reliability standards, thus treating them like other, non-QF generators for reliability purposes. The Commission was not proposing to, and does not, require that all QFs be subject to reliability standards no matter their circumstances. Rather QFs and non-QFs alike would have an equal opportunity to not be subject to reliability standards. But that would be a case-by-case determination based on the circumstances of each case.

36. In this regard, in the Reliability Final Rule the Commission found that NERC had set reasonable criteria for registration and approved the compliance registry process;[24] the compliance registry process provides procedures for individual generators to contest determinations by Regional Entities and the ERO. Additionally, an entity that disagrees with NERC's determination to place it in the compliance registry may submit a challenge in writing to NERC and, if still not satisfied, may lodge an appeal with the Commission.[25] Thus, an individual QF may appeal to the Commission if it believes it should not be required to comply with reliability standards. Florida Renewable QFs asks the Commission to rule that the filing of such an appeal by a QF smaller than 20 MVA will stay the effect of the NERC determination to place an entity on the compliance registry during the pendency of the appeal to the Commission. Whether a stay should be granted depends on a number of factors that are fact specific; such a decision is more appropriately made on a case-by-case basis. It is thus premature to decide now whether an appeal to the Commission should stay a NERC decision that a particular QF be placed on the compliance registry. We will deny Florida Renewable QF's request that we state that the filing of an appeal by a small generator will stay the effect of the NERC determination; however, this is without prejudice to any entity seeking a stay at the time it files an appeal of a NERC determination with which it disagrees.

37. The Commission notes that because of the operation of the size sections of the NERC registry criteria applicable to generators (i.e., greater than 20 MVA), only 23 percent of all QFs would meet this generally applicable threshold of 20 MVA (although some other QFs may be specified as either blackstart units material to and designated as part of a transmission entity's restoration plan or as generators material to the reliability of the bulk power system) and so would be subject to reliability standards.[26] While some QFs may be classified as blackstart or as "material" to the reliability of the bulk-power system, and so made subject to reliability standards, other QFs may qualify for exemptions because, despite their size, either as a QF that is a cogeneration facility that primarily serves behind the meter load such that the net capacity supplied to the bulk power system is less than the size threshold for compliance, or as a QF that has contractual arrangements to transfer responsibility for compliance with reliability standards or associated requirements including reporting to another entity that has registered with NERC. The net effect is that the universe of QFs that will be affected by this Final Rule, by virtue of operation of the NERC registry criteria, is likely to be relatively small.

V. Information Collection Statement

38. The Paperwork Reduction Act (PRA)[27] requires each Federal agency to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons, or continuing a collection for which the Office of Management and Budget (OMB) approval and validity of the control number are about to expire.[28] The PRA defines the phrase "collection of information" to be the "obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

(i) Answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States; or (ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes."[29] OMB regulations require approval of certain information collection requirements imposed by agency rules.[30]

39. As noted above, the Commission is amending its regulations to eliminate the exemption available to QFs from the requirements of section 215 of the FPA. Because the Commission is not adopting information collections in this Final Rule, it is not subject to OMB review under the PRA. However, the Commission will submit for informational purposes only a copy of this Final Rule to OMB.

VI. Environmental Analysis

40. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human

[22] *Id.*

[23] Reliability Final Rule, FERC Stats. & Regs. ¶ 31,242, at P 92–101.

[24] *Id.*

[25] *Id.* at P 101.

[26] *See* NOPR at P 6. Energy Information Administration (EIA) data identify 3,625 QFs, of which 2,423 QFs are below 20 MW (which roughly corresponds to 20 MVA), leaving only 842 QFs that could be affected by this Final Rule. And, of these 842, only 745—23 percent—are interconnected to the grid.

[27] 44 U.S.C. 3501–3520.

[28] 44 U.S.C. 3502(3)(A)(i); 44 U.S.C. 3507(a)(3).

[29] 44 U.S.C. 3502(3)(A).

[30] 5 CFR 1320.11.

environment.[31] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. As explained above, this proposed rule carries out the intent of legislation, specifically section 215 of the FPA. It lifts an exemption and thus makes section 215 of the FPA applicable to QFs; it does not substantially change the effect of the legislation. Accordingly, no environmental consideration is necessary.[32]

VII. Regulatory Flexibility Act Analysis

41. The Regulatory Flexibility Act of 1980 (RFA)[33] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. The total universe of qualifying facilities is 3,265 entities.[34] Of these, 2,423 entities are below 20 MW (the threshold for applicability of the Reliability Standards is 20 MVA for an individual generating unit, or 75 MVA in aggregate for a generating plant),[35] which leaves 842 entities that could potentially be impacted by reliability standards. Of these 842 entities, only 745 are listed as being interconnected to the grid. Accordingly, out of a total of 3265 QFs, only 745, or 23 percent would likely be affected by the change in regulations proposed here. Most, if not all, of the QFs that would be affected by this Final Rule do not fall within the definition of small entities,[36] nor do they meet the threshold criteria for applicability of the RFA to electric utilities established by the Small Business Administration, which is based on a size standard of 4 million MWh.[37]

42. Comments filed by Indeck and Sunray argue that the Commission's analysis is deficient. They argue that, contrary to the Commission's findings, most QFs are independently owned and operated and thus do meet the definition of "small entity." They also argue that there are many QFs whose total electric output for the preceding fiscal years does not exceed 4 million MWh. They state that is particularly true because many QFs operate only on an intermittent basis and thus "it is entirely possible that many wind, solar, run of the river hydroelectric, and cogeneration facilities with nameplate capacities well in excess of 20 MW are still protected by the RFA and that many of the 745 QFs identified as being subject to the rule are, indeed, small entities."[38]

43. We continue to believe that, given the NERC size threshold for registering generators, few if any of the QFs that will be required to comply with reliability standards as a result of this Final Rule will be small entities. Sunray and Indeck recognize that a 20 MVA or 20 MW facility would not normally be considered small for purposes of the RFA. They argue, however, that some QFs generate so intermittently that they would be considered small. Given that the Small Business Administration's standard (4 million MWh annually) is the equivalent of a 4 MW facility, we would not expect that many 20 MW facilities would generate so intermittently that they fall within the SBA definition of a small facility. Moreover, the NERC registry criteria provide for exclusion of an entity that otherwise would meet the registry criteria, if the entity can reasonably demonstrate that it does not have a material impact on the reliability of the bulk-power system. Generators that meet the nameplate size threshold for registration, but generate so intermittently that they would be considered small entities under SBA criteria, are likely to be able to show that they do not have a material impact on the reliability of the bulk-power system and thus need not be registered. Further, we note, in the Reliability Final Rule, the Commission took steps to lessen the effect of the reliability standards on small entities in general.[39] While few generators affected by the reliability standards will fall within the definition of small entities, the Commission has thus taken steps to further minimize the effects on small entities while at the same time assuring the reliability of the bulk-power system.

44. Even if a very small number of QFs that fall within the definition of small are affected by this Final Rule, we believe that assuring the reliability of the bulk-power system justifies our action here.

VIII. Document Availability

45. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

46. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

47. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or (202) 502–8222 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659 (e-mail at *public.referenceroom@ferc.gov*).

IX. Effective Date

48. We will deny Florida Renewable QFs' request that QFs be given a grace period of one year to comply with this rule. Florida Renewable QFs argues that it will be more burdensome on QFs than for other generators to comply with mandatory reliability standards because QFs were not previously subject to non-mandatory NERC reliability guidelines. We do not agree; we see no reason to delay the effectiveness of reliability standards for an entity that is needed to maintain the reliability of the bulk-power system. Moreover, all users of the bulk-power system that meet compliance registry criteria are becoming subject to mandatory reliability requirements for the first time. It is not just QFs that face compliance with mandatory reliability standards for the first time. In this regard, as several commenters point out, many QFs have been subject to some type of reliability standards, by contract or otherwise, for a long time. We therefore do not believe that QFs are in a markedly different position than other generators in terms of being prepared to comply with the reliability standards. Moreover, as we have discussed

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[31] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[32] 18 CFR 380.4(a)(2)(ii).

[33] 5 U.S.C. 601–12.

[34] NOPR at P 10.

[35] The 20 MVA threshold corresponds to 20 MW, if a unit is operating at a unity power factor.

[36] The RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632.

[37] The Small Business Size Standard component of the North American Industry Classification System (NAICS) defines a small utility as one that, including its affiliates, is primarily engaged in generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceeding fiscal years did not exceed 4 million MWh. See 13 CFR 121.201.

[38] Sunray at 11; Indeck at 9.

[39] *See* Reliability Final Rule, FERC Stats. & Regs. ¶ 31,242 at P 1926.

earlier,[40] the reliability standards, because of the operation of the registry criteria, will generally affect larger generation facilities, so that concern that an earlier effective date will constitute a particular burden for small facilities is misplaced. These regulations are effective June 25, 2007.

The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in Section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 292

Electric power, Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

■ In consideration of the foregoing, the Commission amends part 292, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

■ 1. The authority citation for part 292 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In § 292.601, paragraph (c)(3) is revised to read:

§ 292.601 Exemption to qualifying facilities from the Federal Power Act.

* * * * *

(c) * * *

(3) Sections 202(c), 210, 211, 212, 213, 214, 215, 220, 221 and 222;

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[FR Doc. E7–10007 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

[40] P 37, 41–43.

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 635

RIN 0702–AA56

Law Enforcement Reporting

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is publishing our rule concerning law enforcement reporting. The regulation prescribes policies and procedures on preparing, reporting, using, retaining, and disposing of Military Police Reports. The regulation prescribes policies and procedures for offense reporting and the release of law enforcement information.

DATES: *Effective Date:* June 25, 2007.

ADDRESSES: Headquarters, Department of the Army, Office of the Provost Marshal General, ATTN: DAPM–MPD–LE, 2800 Army Pentagon, Washington, DC 20310–2800.

FOR FURTHER INFORMATION CONTACT: James Crumley, (703) 692–6721.

SUPPLEMENTARY INFORMATION:

A. Background

In the December 9, 2005 issue of the **Federal Register** (70 FR 73181) the Department of the Army published a proposed rule, amending 32 CFR part 635. The Department of the Army published a proposed rule in the May 15, 2006 issue of the **Federal Register** (71 FR 27961) amending 32 CFR Part 635 to add the sexual assault reporting procedures. The Department of the Army published a proposed rule in the March 15, 2007 issue of the **Federal Register** (72 FR 12140) amending 32 CFR part 635 to add revisions that address sexual assault reporting and evidence handling procedures; and incorporate restricted reporting procedures for certain domestic violence incidents. The Department of the Army received no comments on the proposed rule.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the rule does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the rule does not have an adverse impact on the environment.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the rule does not involve collection of information from the public.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this rule is not a significant regulatory action. As such, the rule is not subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 this rule does not apply.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this rule does not apply because it will not have a substantial 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.

Frederick W. Bucher,

Chief, Law Enforcement Policy and Oversight Branch.

List of Subjects in 32 CFR Part 635

Crime, Law, Law enforcement, Law enforcement officers, Military law.

■ For reasons stated in the preamble the Department of the Army revises 32 CFR part 635 to read as follows:

PART 635—LAW ENFORCEMENT REPORTING

Subpart A—Records Administration

Sec.

635.1 General.
635.2 Safeguarding official information.
635.3 Special requirements of the Privacy Act of 1974.
635.4 Administration of expelled or barred persons file.
635.5 Police Intelligence/Criminal Information.

635.6 Name checks.
635.7 Registration of sex offenders.

Subpart B—Release of Information

635.8 General.
635.9 Guidelines for disclosure within DOD.
635.10 Release of information.
635.11 Release of information under the Freedom of Information Act (FOIA).
635.12 Release of information under the Privacy Act of 1974.
635.13 Amendment of records.
635.14 Accounting for military police record disclosure.
635.15 Release of law enforcement information furnished by foreign governments or international organizations.

Subpart C—Offense Reporting

635.16 General.
635.17 Military Police Report.
635.18 Identifying criminal incidents and subjects of investigation.
635.19 Offense codes.
635.20 Military Police Codes (MPC).
635.21 USACRC control numbers.
635.22 Reserve component, U.S. Army Reserve, and Army National Guard Personnel.
635.23 DA Form 4833 (Commander's Report of Disciplinary or Administrative Action).
635.24 Updating the COPS MPRS.
635.25 Submission of criminal history data to the CJIS.
635.26 Procedures for reporting Absence without Leave (AWOL) and desertion offenses.
635.27 Vehicle Registration System.
635.28 Procedures for restricted/unrestricted reporting in sexual assault cases.
635.29 Domestic violence and protection orders.
635.30 Establishing domestic violence Memoranda of Understanding.
635.31 Lost, abandoned, or unclaimed property.

Subpart D—Army Quarterly Trends and Analysis Report

635.32 General.
635.33 Crime rate reporting.

Subpart E—Victim and Witness Assistance Procedures

635.34 General.
635.35 Procedures.
635.36 Notification.
635.37 Statistical reporting requirements.

Authority: 28 U.S.C. 534 note, 42 U.S.C. 10601, 18 U.S.C. 922, 42 U.S.C. 14071, 10 U.S.C. 1562, 10 U.S.C. Chap. 47.

Subpart A—Records Administration

§ 635.1 General.

(a) Military police records and files created under provisions of this part will be maintained and disposed of in accordance with instructions and standards prescribed by Army Regulation (AR) 25–400–2, AR 25–55, AR 340–21, and other applicable HQDA directives.

(b) Each Provost Marshal/Director of Emergency Services will appoint in writing two staff members, one primary and one alternate, to account for and safeguard all records containing personal information protected by law. Action will be taken to ensure that protected personal information is used and stored only where facilities and conditions will preclude unauthorized or unintentional disclosure.

(c) Personally identifying information includes, for example, information that is intimate or private to an individual, as distinguished from that which concerns a person's official function or public life. Specific examples include the social security number (SSN), medical history, home address, and home telephone number.

(d) Access to areas in which military police records are prepared, processed and stored will be restricted to those personnel whose duties require their presence or to other personnel on official business. Military police records containing personal information will be stored in a locked room or locked filing cabinet when not under the personal control of authorized personnel. Alternate storage systems providing equal or greater protection may be used in accordance with AR 25–55.

(e) Only personnel on official business can have access to areas in which computers are used to store, process or retrieve military police records. When processing military police information, computer video display monitors will be positioned so that protected information cannot be viewed by unauthorized persons. Computer output from automated military police systems will be controlled as specified in paragraph (d) of this section.

(f) Output from any locally prepared data or automated systems containing personal information subject to the Privacy Act will be controlled per AR 340–21. All locally created, Army Commands (ACOM), Army Service Component Commands (ASCC) or Direct Reporting Units (DRU) unique automated systems of records containing law enforcement information must be reported to and approved by HQDA, Office of the Provost Marshal General prior to use. The request must clearly document why the COPS MPRS system cannot meet the requirements or objectives of the organization. After review and approval by HQDA, the installation, ACOM, ASCC and DRU will complete and process the systems notice for publication in the **Federal Register** per AR 340–21 and the Privacy Act.

(g) Provost Marshals/Directors of Emergency Services using automated systems will appoint, in writing, an Information Assurance Security Officer (IASO) who will ensure implementation of automation security requirements within the organization. Passwords used to control systems access will be generated, issued, and controlled by the IASO.

(h) Supervisors at all levels will ensure that personnel whose duties involve preparation, processing, filing, and release of military police records are knowledgeable of and comply with policies and procedures contained in this part, AR 25–55, AR 340–21, and other applicable HQDA directives. Particular attention will be directed to provisions on the release of information and protection of privacy.

(i) Military police records identifying juveniles as offenders will be clearly marked as juvenile records and will be kept secure from unauthorized access by individuals. Juvenile records may be stored with adult records but clearly designated as juvenile records even after the individual becomes of legal age. In distributing information on juveniles, Provost Marshals/Directors of Emergency Services will ensure that only individuals with a clear reason to know the identity of a juvenile are provided the identifying information on the juvenile. For example, a community commander is authorized to receive pertinent information on juveniles. When a MPR identifying juvenile offenders must be provided to multiple commanders or supervisors, the Provost Marshal/Director of Emergency Services must sanitize each report to withhold juvenile information not pertaining to that commander's area of responsibility.

(j) Military police records in the custody of USACRC will be processed, stored and maintained in accordance with policy established by the Director, USACRC.

§ 635.2 Safeguarding official information.

(a) Military police records are unclassified except when they contain national security information as defined in AR 380–5.

(b) When military police records containing personal information transmitted outside the installation law enforcement community to other departments and agencies within DOD, such records will be marked "For Official Use Only." Records marked "For Official Use Only" will be transmitted as prescribed by AR 25–55. Use of an expanded marking is required

for certain records transmitted outside DOD per AR 25–55.

(c) Military police records may also be released to Federal, state, local or foreign law enforcement agencies as prescribed by AR 340–21. Expanded markings will be applied to these records.

§ 635.3 Special requirements of the Privacy Act of 1974.

(a) Certain personal information is protected under the Privacy Act and AR 340–21.

(b) Individuals requested to furnish personal information must be advised of the purpose for which the information is collected and the disclosures by which it is routinely used.

(c) Army law enforcement personnel performing official duties often require an individual's SSN for identification purposes. Personal information may be obtained from identification documents without violating an individual's privacy and without providing a Privacy Act Statement. This personal information can be used to complete military police reports and records. The following procedures may be used to obtain SSNs:

(1) Active Army, U.S. Army Reserve (USAR), Army National Guard (ARNG) and retired military personnel are required to produce their Common Access Card, DD Form 2 (Act), DD Form 2 (Res), or DD Form 2 (Ret) (U.S. Armed Forces of the United States General Convention Identification Card), or other government issued identification, as appropriate.

(2) Family members of sponsors may be requested to produce their DD Form 1173 (Uniformed Services Identification and Privilege Card). Information contained thereon (for example, the sponsor's SSN) may be used to verify and complete applicable sections of MPRs and related forms.

(3) DOD civilian personnel may be requested to produce their appropriate service identification. DA Form 1602 (Civilian Identification) may be requested from DA civilian employees. If unable to produce such identification, DOD civilians may be requested to provide other verifying documentation.

(4) Non-DOD civilians, including family members and those whose status is unknown, will be advised of the provisions of the Privacy Act Statement when requested to disclose their SSN.

(d) Requests for new systems of military police records, changes to existing systems, and continuation systems, not addressed in existing public notices will be processed as prescribed in AR 340–21, after approval is granted by HQDA, OPMG (DAPM–MPD–LE).

§ 635.4 Administration of expelled or barred persons file.

(a) When action is completed by an installation commander to bar an individual from the installation under 18 U.S.C. 1382 the installation Provost Marshal/Director of Emergency Services will be provided—

(1) A copy of the letter or order barring the individual.

(2) Reasons for the bar.

(3) Effective date of the bar and period covered.

(b) The Provost Marshal/Director of Emergency Services will maintain a list of barred or expelled persons. When the bar or expulsion action is predicated on information contained in military police investigative records, the bar or expulsion document will reference the appropriate military police record or MPR. When a MPR results in the issuance of a bar letter the Provost Marshal/Director of Emergency Services will forward a copy of the bar letter to Director, USACRC to be filed with the original MPR. The record of the bar will also be entered into COPS, in the Military Police Reporting System module, under Barrings.

§ 635.5 Police Intelligence/Criminal Information.

(a) The purpose of gathering police intelligence is to identify individuals or groups of individuals in an effort to anticipate, prevent, or monitor possible criminal activity. If police intelligence is developed to the point where it factually establishes a criminal offense, an investigation by the military police, U.S. Army Criminal Investigation Command (USACIDC) or other investigative agency will be initiated. The crimes in §§ 635.5b(2) and (3) will be reported to the nearest Army counterintelligence office as required by AR 381–12.

(b) Information on persons and organizations not affiliated with DOD may not normally be acquired, reported, processed or stored. Situations justifying acquisition of this information include, but are not limited to—

(1) Theft, destruction, or sabotage of weapons, ammunition, equipment facilities, or records belonging to DOD units or installations.

(2) Possible compromise of classified defense information by unauthorized disclosure or espionage.

(3) Subversion of loyalty, discipline, or morale of DA military or civilian personnel by actively encouraging violation of laws, disobedience of lawful orders and regulations, or disruption of military activities.

(4) Protection of Army installations and activities from potential threat.

(5) Information received from the FBI, state, local, or international law enforcement agencies which directly pertain to the law enforcement mission and activity of the installation Provost Marshal Office/Directorate of Emergency Services, ACOM, ASCC or DRU Provost Marshal Office Directorate of Emergency Services, or that has a clearly identifiable military purpose and connection. A determination that specific information may not be collected, retained or disseminated by intelligence activities does not indicate that the information is automatically eligible for collection, retention, or dissemination under the provisions of this part. The policies in this section are not intended and will not be used to circumvent any federal law that restricts gathering, retaining or dissemination of information on private individuals or organizations.

(c) Retention and disposition of information on non-DOD affiliated individuals and organizations are subject to the provisions of AR 380–13 and AR 25–400–2.

(d) Police intelligence such as TALON events will be captured by utilizing the TALON report format. These reports will be identified as "Pre-TALON" reports. The Provost Marshal Office/ Directorate of Emergency Services will forward these reports to the counterintelligence activity which supports their installation/area. The counterintelligence activity will determine if the suspicious incident/ activity should be entered into the DoD TALON reporting system. The counterintelligence activity will inform the submitting Army law enforcement agency as to whether or not the "Pre-Talon" report was submitted into the DoD TALON reporting system.

(e) In addition to Pre-TALON reporting, Installation Law Enforcement Agencies/Activities will also comply with their Combatant Command's policies regarding the reporting of suspicious activities or events which meet established criteria.

(f) If a written extract from local police intelligence files is provided to an authorized investigative agency, the following will be included on the transmittal documents: "THIS DOCUMENT IS PROVIDED FOR INFORMATION AND USE. COPIES OF THIS DOCUMENT, ENCLOSURES THERETO, AND INFORMATION THEREFROM, WILL NOT BE FURTHER RELEASED WITHOUT THE PRIOR APPROVAL OF THE INSTALLATION PROVOST MARSHAL/DIRECTOR OF EMERGENCY SERVICES."

(g) Local police intelligence files may be exempt from certain disclosure requirements by AR 25–55 and the Freedom of Information Act (FOIA).

§ 635.6 Name checks.

(a) Information contained in military police records may be released under the provisions of AR 340–21 to authorized personnel for valid background check purposes. Examples include child care/youth program providers, access control, unique or special duty assignments, and security clearance procedures. Any information released must be restricted to that necessary and relevant to the requester's official purpose. Provost Marshals/Directors of Emergency Services will establish written procedures to ensure that release is accomplished in accordance with AR 340–21.

(b) Checks will be accomplished by a review of the COPS MPRS. Information will be disseminated according to Subpart B of this part.

(c) In response to a request for local files or name checks, Provost Marshals/Directors of Emergency Services will release only founded offenses with final disposition. Offenses determined to be unfounded will not be released. These limitations do not apply to requests submitted by law enforcement agencies for law enforcement purposes, and counterintelligence investigative agencies for counterintelligence purposes.

(d) COPS MPRS is a database, which will contain all military police reports filed worldwide. Authorized users of COPS MPRS can conduct name checks for criminal justice purposes. To conduct a name check, users must have either the social security number/foreign national number, or the first and last name of the individual. If a search is done by name only, COPS MPRS will return a list of all matches to the data entered. Select the appropriate name from the list.

(e) A successful query of COPS MPRS would return the following information:

(1) Military Police Report Number;

(2) Report Date;

(3) Social Security Number;

(4) Last Name;

(5) First Name;

(6) Protected Identity (Y/N);

(7) A link to view the military police report; and

(8) Whether the individual is a subject, victim, or a person related to the report disposition.

(f) Name checks will include the criteria established in COPS MPRS and the USACRC. All of the policies and procedures for such checks will conform to the provisions of this part. Any exceptions to this policy must be coordinated with HQDA, Office of the Provost Marshal General before any name checks are conducted. The following are examples of appropriate uses of the name check feature of COPS MPRS:

(1) Individuals named as the subjects of serious incident reports.

(2) Individuals named as subjects of investigations who must be reported to the USACRC.

(3) Employment as child care/youth program providers.

(4) Local checks of the COPS MPRS as part of placing an individual in the COPS MPRS system.

(5) Name checks for individuals employed in law enforcement positions.

(g) Provost Marshals/Directors of Emergency Services will ensure that an audit trail is established and maintained for all information released from military police records.

(h) Procedures for conduct of name checks with the USACRC are addressed in AR 195–2. The following information is required for USACRC name checks (when only the name is available, USACRC should be contacted telephonically for assistance):

(1) Full name, date of birth, SSN, and former service number of the individual concerned.

(2) The specific statute, directive, or regulation on which the request is based, when requested for other than criminal investigative purposes.

(i) Third party checks (first party asks second party to obtain information from third party on behalf of first party) will not be conducted.

§ 635.7 Registration of sex offenders.

Soldiers who are convicted by court-martial for certain sexual offenses must comply with all applicable state registration requirements in effect in the state in which they reside. See AR 190–47, Chapter 14 and AR 27–10, Chapter 24. This is a statutory requirement based on the Jacob Wetterling Act, and implemented by DOD Instruction 1325.7, and AR 27–10. Provost Marshals/Directors of Emergency Services should coordinate with their local Staff Judge Advocate to determine if an individual must register. The registration process will be completed utilizing the state registration form, which is available through state and local law enforcement agencies. A copy of the completed registration form will be maintained in the installation Provost Marshal Office/Directorate of Emergency Services. Additionally, a Military Police Report (DA Form 3975) will be completed as an information entry into COPS. Installation Provost Marshals/Directors of Emergency Services will provide written notice to state and local law enforcement agencies of the arrival of an offender to the local area so the registration process can be completed.

Subpart B—Release of Information

§ 635.8 General.

(a) The policy of HQDA is to conduct activities in an open manner and provide the public accurate and timely information. Accordingly, law enforcement information will be released to the degree permitted by law and Army regulations.

(b) Any release of military police records or information compiled for law enforcement purposes, whether to persons within or outside the Army, must be in accordance with the FOIA and Privacy Act.

(c) Requests by individuals for access to military police records about themselves will be processed in compliance with AR 25–55 and AR 340–21.

(d) Military police records in the temporary possession of another organization remain the property of the originating law enforcement agency. The following procedures apply to any organization authorized temporary use of military police records:

(1) Any request from an individual seeking access to military police records will be immediately referred to the originating law enforcement agency for processing.

(2) When the temporary purpose of the using organization has been satisfied, the military police records will be destroyed or returned to the originating law enforcement agency.

(3) A using organization may maintain information from military police records in their system of records, if approval is obtained from the originating law enforcement agency. This information may include reference to a military police record (for example, MPR number or date of offense), a summary of information contained in the record, or the entire military police record. When a user includes a military police record in its system of records, the originating law enforcement agency may delete portions from that record to protect special investigative techniques, maintain confidentiality, preclude compromise of an investigation, and protect other law enforcement interests.

§ 635.9 Guidelines for disclosure within DOD.

(a) Criminal record information contained in military police documents will not be disseminated unless there is

a clearly demonstrated official need to know. A demonstrated official need to know exists when the record is necessary to accomplish a function that is within the responsibility of the requesting activity or individual, is prescribed by statute, DOD directive, regulation, or instruction, or by Army regulation.

(1) Criminal record information may be disclosed to commanders or staff agencies to assist in executing criminal justice functions. Only that information reasonably required will be released. Such disclosure must clearly relate to a law enforcement function.

(2) Criminal record information related to subjects of criminal justice disposition will be released when required for security clearance procedures.

(3) Criminal record information may be released to an activity when matters of national security are involved.

(4) When an individual informs an activity of criminal record information pertaining to them, the receiving activity may seek verification of this information through the responsible law enforcement agency or may forward the request to that organization. The individual must be advised by the receiving agency of the action being pursued. Law enforcement agencies will respond to such requests in the same manner as FOIA and Privacy Act cases.

(b) Nothing in this part will be construed to limit the dissemination of information between military police, the USACIDC, and other law enforcement agencies within the Army and DOD.

§ 635.10 Release of information.

(a) Release of information from Army records to agencies outside DOD will be governed by AR 25–55, AR 340–21, AR 600–37, and this part. Procedures for release of certain other records and information are contained in AR 20–1, AR 27–20, AR 27–40, AR 40–66, AR 195–2, AR 360–1, and AR 600–85. Installation drug and alcohol offices may be provided an extract of DA Form 3997 (Military Police Desk Blotter) for offenses involving the use of alcohol or drugs (for example, drunk driving, drunk and disorderly conduct, or positive urinalysis) or illegal use of drugs.

(b) Installation Provost Marshals/Directors of Emergency Services are the release authorities for military police records under their control. They may release criminal record information to other activities as prescribed in AR 25–55 and AR 340–21, and this part.

(c) Authority to deny access to criminal records information rests with the initial denial authority (IDA) for the FOIA and the access and amendment refusal authority (AARA) for Privacy Acts cases, as addressed in AR 25–55 and AR 340–21.

§ 635.11 Release of information under the Freedom of Information Act (FOIA).

(a) The release and denial authorities for all FOIA cases concerning military police records include Provost Marshals/Directors of Emergency Services and the Commander, USACIDC. Authority to act on behalf of the Commander, USACIDC is delegated to the Director, USACRC.

(b) FOIA requests from members of the press will be coordinated with the installation public affairs officer prior to release of records under the control of the installation Provost Marshal/Director of Emergency Services. When the record is on file at the USACRC the request must be forwarded to the Director, USACRC.

(c) Requests will be processed as prescribed in AR 25–55 and as follows:

(1) The Provost Marshal/Director of Emergency Services will review requested reports to determine if any portion is exempt from release. Any discretionary decision to disclose information under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.

(2) Statutory and policy questions will be coordinated with the local staff judge advocate.

(3) Coordination will be completed with the local USACIDC activity to ensure that the release will not interfere with a criminal investigation in progress or affect final disposition of an investigation.

(4) If it is determined that a portion of the report, or the report in its entirety will not be released, the request to include a copy of the MPR or other military police records will be forwarded to the Director, USACRC, ATTN: CICR–FP, 6010 6th Street, Fort Belvoir, VA 22060–5585. The requester will be informed that their request has been sent to the Director, USACRC, and provided the mailing address for the USACRC. When forwarding FOIA requests, the outside of the envelope will be clearly marked "FOIA REQUEST."

(5) A partial release of information by a Provost Marshal/Director of Emergency Services is permissible when partial information is acceptable to the requester. (An example would be the deletion of a third party's social security number, home address, and telephone number, as permitted by law). If the requester agrees to the omission of exempt information, such cases do not constitute a denial. If the requester insists on the entire report, a copy of the report and the request for release will be forwarded to the Director, USACRC. There is no requirement to coordinate such referrals at the installation level. The request will simply be forwarded to the Director, USACRC for action.

(6) Requests for military police records that have been forwarded to USACRC and are no longer on file at the installation Provost Marshal Office/Directorate of Emergency Services will be forwarded to the Director, USACRC for processing.

(7) Requests concerning USACIDC reports of investigation or USACIDC files will be referred to the Director, USACRC. In each instance, the requester will be informed of the referral and provided the Director, USACRC address.

(8) Requests concerning records that are under the supervision of an Army activity, or other DOD agency, will be referred to the appropriate agency for response.

§ 635.12 Release of information under the Privacy Act of 1974.

(a) Military police records may be released according to provisions of the Privacy Act of 1974, as implemented by AR 340–21 and this part.

(b) The release and denial authorities for all Privacy Act cases concerning military police records are provided in § 635.10 of this part.

(c) Privacy Act requests for access to a record, when the requester is the subject of that record, will be processed as prescribed in AR 340–21.

§ 635.13 Amendment of records.

(a) *Policy.* An amendment of records is appropriate when such records are established as being inaccurate, irrelevant, untimely, or incomplete. Amendment procedures are not intended to permit challenging an event that actually occurred. For example, a request to remove an individual's name as the subject of an MPR would be proper providing credible evidence was presented to substantiate that a criminal offense was not committed or did not occur as reported. Expungement of a subject's name from a record because the commander took no action or the prosecutor elected not to prosecute normally will not be approved. In compliance with DOD policy, an individual will still remain entered in the Defense Clearance Investigations Index (DCII) to track all reports of investigation.

(b) *Procedures.* (1) Installation Provost Marshals/Directors of Emergency

Services will review amendment requests. Upon receipt of a request for an amendment of a military police record that is five or less years old, the installation Provost Marshal/Director of Emergency Services will gather all relevant available records at their location. The installation Provost Marshal/Director of Emergency Services will review the request and either approve the request or forward it to the Director, USACRC with recommendation and rationale for denial. In accordance with AR 340–21, paragraph 1–7l, the Commanding General, USACIDC is the sole access and amendment authority for criminal investigation reports and military police reports. Access and amendment refusal authority is not delegable. If the decision is made to amend an MPR, a supplemental DA Form 3975 will be prepared. The supplemental DA Form 3975 will change information on the original DA Form 3975 and will be mailed to the Director, USACRC with the amendment request from the requestor as an enclosure. The Director, USACRC will file the supplemental DA Form 3975 with the original MPR and notify the requestor of the amendment of the MPR.

(2) Requests to amend military police documents that are older than five years will be coordinated through the Director, USACRC. The installation Provost Marshal/Director of Emergency Services will provide the Director, USACRC a copy of an individual's request to amend a military police record on file at the USACRC. If the Director, USACRC receives an amendment request, the correspondence with any documentation on file at the USACRC will be sent to the originating Provost Marshal Office/Directorate of Emergency Services. The installation Provost Marshal/Director of Emergency Services will review the request and either approve the request or forward it to the Director, USACRC for denial. A copy of the Provost Marshal/Director of Emergency Services' decision must be sent to the Director, USACRC to be filed in the USACRC record. If an amendment request is granted, copies of the supplemental DA Form 3975 will be provided to each organization, activity, or individual who received a copy of the original DA Form 3975.

(3) If the Provost Marshal Office/Directorate of Emergency Services no longer exists, the request will be staffed with the ACOM, ASCC or DRU Provost Marshal/Director of Emergency Services office that had oversight responsibility for the Provost Marshal Office/Directorate of Emergency Services at the time the DA Form 3975 was originated.

§ 635.14 Accounting for military police record disclosure.

(a) AR 340–21 prescribes accounting policies and procedures concerning the disclosure of military police records.

(b) Provost Marshals/Directors of Emergency Services will develop local procedures to ensure that disclosure data requirements by AR 340–21 are available on request.

§ 635.15 Release of law enforcement information furnished by foreign governments or international organizations.

(a) Information furnished by foreign governments or international organizations is subject to disclosure, unless exempted by AR 25–55, AR 340–21, federal statutes or executive orders.

(b) Information may be received from a foreign source under an express pledge of confidentiality as described in AR 25–55 and AR 340–21 (or under an implied pledge of confidentiality given prior to September 27, 1975).

(1) Foreign sources will be advised of the provisions of the Privacy Act of 1974, the FOIA, and the general and specific law enforcement exemptions available, as outlined in AR 340–21 and AR 25–55.

(2) Information received under an express promise of confidentiality will be annotated in the MPR or other applicable record.

(3) Information obtained under terms of confidentiality must clearly aid in furthering a criminal investigation.

(c) Denial recommendations concerning information obtained under a pledge of confidentiality, like other denial recommendations, will be forwarded by the records custodian to the appropriate IDA or AARA per AR 25–55 or AR 340–21.

(d) Release of U.S. information (classified military information or controlled unclassified information) to foreign governments is accomplished per AR 380–10.

Subpart C—Offense Reporting

§ 635.16 General.

(a) This subpart establishes policy for reporting founded criminal offenses by Installation Management Command (IMCOM), Army Materiel Command (AMC) and Medical Command (MEDCOM) installation and ACOM, ASCC and DRU Provost Marshal Offices/Directorates of Emergency Services.

(b) This subpart prescribes reporting procedures, which require the use of the COPS MPRS and a systems administrator to ensure that the system is properly functioning. Reporting requirements include—

(1) Reporting individual offenders to the USACRC, NCIC, CJIS, and the DOD.

(2) *Crime reports to the DOD.* DOD collects data from all the Services utilizing the Defense Incident-Based Reporting System (DIBRS). The Army inputs its data into DIBRS utilizing COPS. Any data reported to DIBRS is only as good as the data reported into COPS, so the need for accuracy in reporting incidents and utilizing proper offense codes is great. DIBRS data from DOD is eventually sent to the Department of Justice's National Incident-Based Reporting System (NIBRS). The data is eventually incorporated into the Uniform Crime Report.

(c) A Provost Marshal Office/Directorate of Emergency Services initiating a DA Form 3975 or other military police investigation has reporting responsibility explained throughout this subpart and this part in general.

(d) In the event the Provost Marshal Office/Directorate of Emergency Services determines that their office does not have investigative responsibility or authority, the MPR will be terminated and the case cleared by exceptional clearance. A case cleared by exceptional clearance is closed by the Provost Marshal/Director of Emergency Services when no additional investigative activity will be performed or the case is referred to another agency. If a case is transferred to the Provost Marshal/Director of Emergency Services from another law enforcement investigation agency the Provost Marshal Office/Directorate of Emergency Services will have all reporting responsibility using the COPS MPRS system.

§ 635.17 Military Police Report.

(a) *General Use.* DA form 3975 is a multipurpose form used to—

(1) Record all information or complaints received or observed by military police.

(2) Serve as a record of all military police and military police investigator activity.

(3) Document entries made into the COPS MPRS system and other automated systems.

(4) Report information concerning investigations conducted by civilian law enforcement agencies related to matters of concern to the U.S. Army.

(5) Advise commanders and supervisors of offenses and incidents involving personnel or property associated with their command or functional responsibility.

(6) Report information developed by commanders investigating incidents or

conducting inspections that result in the disclosure of evidence that a criminal offense has been committed.

(b) *Special use.* The DA Form 3975 will be used to—

(1) Transmit completed DA Form 3946 (Military Police Traffic Accident Report). This will include statements, sketches, or photographs that are sent to a commander or other authorized official.

(2) Transmit the DD Form 1805 (U.S District Court Violation Notice) when required by local installation or U.S. Magistrate Court policy. The DA Form 3975 is used to advise commanders or supervisors that military, civilian, or contract personnel have been cited on a DD Form 1805.

(3) Match individual subjects with individual victims or witnesses, and founded criminal offenses. This is a federal statutory requirement. This is done using the relationships tab within COPS MPRS.

(4) Document victim/witness liaison activity.

(c) *Distribution.* The DA Form 3975 will be prepared in three copies, signed by the Provost Marshal/Director of Emergency Services or a designated representative, and distributed as follows—

(1) Original to USACRC. Further information, arising or developed at a later time, will be forwarded to USACRC using a supplemental DA Form 3975. Reports submitted to USACRC will include a good, legible copy of all statements, photographs, sketches, laboratory reports, and other information that substantiates the offense or facilitates the understanding of the report. The USACRC control number must be recorded on every DA Form 3975 sent to the USACRC. A report will not be delayed for adjudication or commander's action beyond 45 days.

(2) One copy retained in the Provost Marshal/Director of Emergency Services' files.

(3) One copy forwarded through the field grade commander to the immediate commander of each subject or organization involved in an offense.

(d) *Changing reports for unfounded offenses.* If an offense is determined to be unfounded, after the case has been forwarded to USACRC, the following actions will be completed:

(1) A supplemental DA Form 3975, using the same MPR number and USACRC control number will be submitted stating the facts of the subsequent investigation and that the case is unfounded.

(2) A copy of the supplemental DA Form 3975 will be provided to those agencies or activities that received a copy of the completed DA Form 3975 at the time of submission to USACRC and to the commander for action.

§ 635.18 Identifying criminal incidents and subjects of investigation.

(a) An incident will not be reported as a founded offense unless adequately substantiated by police investigation. A person or entity will be reported as the subject of an offense on DA Form 3975 when credible information exists that the person or entity may have committed a criminal offense. The decision to title a person is an operational rather than a legal determination. The act of titling and indexing does not, in and of itself, connote any degree of guilt or innocence; but rather, ensures that information in a report of investigation can be retrieved at some future time for law enforcement and security purposes. Judicial or adverse administrative actions will not be based solely on the listing of an individual or legal entity as a subject on DA Form 3975.

(b) A known subject will be reported to the USACRC when the suspected offense is punishable by confinement of six months or more. The COPS MPRS will be used to track all other known subjects. A subject can be a person, corporation, or other legal entity, or organization about which credible information exists that would cause a trained law enforcement officer to presume that the person, corporation, other legal entity or organization may have committed a criminal offense.

(c) When investigative activity identifies a subject, all facts of the case must be considered. When a person, corporation, or other legal entity is entered in the subject block of the DA Form 3975, their identity is recorded in DA automated systems and the DCII. Once entered into the DCII, the record can only be removed in cases of mistaken identity or if an error was made in applying the credible information standard at the time of listing the entity as a subject of the report. It is emphasized that the credible information error must occur at the time of listing the entity as the subject of the MPR rather than subsequent investigation determining that the MPR is unfounded. This policy is consistent with DOD reporting requirements. The Director, USACRC enters individuals from DA Form 3975 into the DCII.

§ 635.19 Offense codes.

(a) The offense code describes, as nearly as possible, the complaint or offense by using an alphanumeric code. Appendix C of AR 190–45 lists the offense codes that are authorized for use within the Army. This list will be amended from time to time based on new reporting requirements mandated by legislation or administrative procedures. ACOM, ASCC, DRU commanders and installation Provost Marshals/Directors of Emergency Services will be notified by special letters of instruction issued in numerical order from HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) when additions or deletions are made to the list. The COPS MPRS module will be used for all reporting requirements.

(b) ACOM, ASCC, DRU and installations may establish local offense codes in category 2 (ACOM, ASCC, DRU and installation codes) for any offense not otherwise reportable. Locally established offense codes will not duplicate, or be used as a substitute for any offense for which a code is contained for other reportable incidents. Category 2 incidents are not reported to the Director, USACRC or the DOJ. If an offense occurs meeting the reporting description contained in Appendix C of AR 190–45, that offense code takes precedence over the local offense code. Local offense codes may be included, but explained, in the narrative of the report filed with the USACRC. Use the most descriptive offense code to report offenses.

(c) Whenever local policy requires the Provost Marshal/Director of Emergency Services to list the subject's previous offenses on DA Form 3975, entries will reflect a summary of disposition for each offense, if known.

§ 635.20 Military Police Codes (MPC).

(a) MPCs identify individual Provost Marshal Offices/Directorates of Emergency Services. The Director, USACRC will assign MPCs to Provost Marshal Offices/Directorates of Emergency Services.

(b) Requests for assignment of a MPC will be included in the planning phase of military operations, exercises, or missions when law enforcement operations are anticipated. The request for a MPC will be submitted as soon as circumstances permit, without jeopardizing the military operation to HQDA, Office of the Provost Marshal General (DAPM–MPD–LE). Consistent with security precautions, ACOM, ASCC and DRU will immediately inform HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) when assigned or attached military police units are notified for mobilization, relocation, activation, or inactivation.

(c) When a military police unit is alerted for deployment to a location not in an existing Provost Marshal/Director of Emergency Services' operational area, the receiving ACOM, ASCC, DRU or combatant commander will request assignment of an MPC number from HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) providing the area of operations does not have an existing MPC number. The receiving ACOM, ASCC, DRU or Unified Combatant Commander is further responsible for establishing an operational COPS system for the deployment.

§ 635.21 USACRC control numbers.

(a) Case numbers to support reporting requirements will be assigned directly to each installation via COPS. To ensure accuracy in reporting criminal incidents, USACRC control numbers will be used only one time and in sequence. Every MPR sent to the USACRC will have a USACRC control number reported. Violation of this policy could result in significant difficulties in tracing reports that require corrective action.

(b) If during the calendar year ACOM, ASCC or DRU reassigns control numbers from one installation to another, HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) will be notified. The Director USACRC will receive an information copy of such notification from ACOM, ASCC or DRU's law enforcement operations office.

(c) USACRC control numbers will be issued along with each newly assigned MPC.

(d) When the deploying unit will be located in an area where there is an existing Provost Marshal/Director of Emergency Services activity, the deploying unit will use the MPC number and USACRC control numbers of the host Provost Marshal/Director of Emergency Services.

§ 635.22 Reserve Component, U.S. Army Reserve, and Army National Guard Personnel.

(a) When in a military duty status pursuant to official orders (Federal status for National Guard) Reserve and National Guard personnel will be reported as active duty. Otherwise they will be reported as civilians.

(b) The DA Form 3975 and DA Form 4833 will be forwarded directly to the appropriate Regional Readiness Command or the Soldier's division commander. A copy of the DA Form 3975 will also be forwarded to Chief, Army Reserve/Commander, United States Army Reserve Command, AFRC–JAM, 1404 Deshler Street, Fort McPherson, GA 30330. The forwarding correspondence will reflect this regulation as the authority to request disposition of the individual.

§ 635.23 DA Form 4833 (Commander's Report of Disciplinary or Administrative Action).

(a) *Use.* DA Form 4833 is used with DA Form 3975 to—

(1) Record actions taken against identified offenders.

(2) Report the disposition of offenses investigated by civilian law enforcement agencies.

(b) *Preparation by the Provost Marshal/Director of Emergency Services.* The installation Provost Marshal/Director of Emergency Services initiates this critical document and is responsible for its distribution and establishing a suspense system to ensure timely response by commanders. Disposition reports are part of the reporting requirements within DA, DOD, and DOJ.

(c) *Completion by the unit commander.* Company, troop, and battery level commanders are responsible and accountable for completing DA Form 4833 with supporting documentation in all cases investigated by MPI, civilian detectives employed by the Department of the Army, and the PMO. The Battalion Commander or the first Lieutenant Colonel in the chain of command is responsible and accountable for completing DA Form 4833 with support documentation (copies of Article 15s, court-martial orders, reprimands, etc) for all USACIDC investigations. The commander will complete the DA Form 4833 within 45 days of receipt.

(1) Appropriate blocks will be checked and blanks annotated to indicate the following:

(i) Action taken (for example, judicial, nonjudicial, or administrative). In the event the commander takes action against the soldier for an offense other than the one listed on the DA Form 3975, the revised charge or offense will be specified in the REMARKS section of the DA Form 4833.

(ii) Sentence, punishment, or administrative action imposed.

(iii) Should the commander take no action, the DA Form 4833 must be annotated to reflect that fact.

(2) If the commander cannot complete the DA Form 4833 within 45 days, a written memorandum is required to explain the circumstances. The delay will have an impact on other reporting requirements (e.g., submitting fingerprint cards to the FBI).

(d) *Procedures when subjects are reassigned.* When the subject of an offense is reassigned, the Provost Marshal/Director of Emergency Services will forward the DA Form 3975, DA Form 4833, and all pertinent attachments to the gaining installation Provost Marshal/Director of Emergency Services who must ensure that the new commander completes the document. Copies of the documents may be made and retained by the processing Provost Marshal Office/Directorate of Emergency Services before returning the documents to the losing installation Provost Marshal/Director of Emergency Services for completion of automated entries and required reports.

(e) *Report on subjects assigned to other installations.* When the DA Form 3975 involves a subject who is assigned to another installation, the initiating Provost Marshal/Director of Emergency Services will forward the original and two copies of DA Form 4833 to the Provost Marshal/Director of Emergency Services of the installation where the soldier is permanently assigned. The procedures in paragraph (d) of this section will be followed for soldiers assigned to other commands.

(f) *Offenses not reportable to USACRC.* When the offense is not within a category reportable to USACRC, the original DA Form 4833 is retained by the Provost Marshal/Director of Emergency Services. Otherwise, the original is sent to the Director, USACRC for filing with the MPR.

(g) *Civilian court proceedings.* If a soldier is tried in a civilian court, and the Provost Marshal/Director of Emergency Services has initiated a MPR, the Provost Marshal/Director of Emergency Services must track the civilian trial and report the disposition on DA Form 4833 as appropriate. That portion of the signature block of DA Form 4833 that contains the word "Commanding" will be deleted and the word "Reporting" substituted. The Provost Marshal/Director of Emergency Services or other designated person will sign DA Form 4833 before forwarding it to USACRC.

(h) *Dissemination to other agencies.* A copy of the completed DA Form 4833 reflecting offender disposition will also be provided to those agencies or offices that originally received a copy of DA Form 3975 when evidence is involved. The evidence custodian will also be informed of the disposition of the case. Action may then be initiated for final disposition of evidence retained for the case now completed.

(i) *Review of offender disposition by the Provost Marshal/Director of Emergency Services.* On receipt of DA Form 4833 reflecting no action taken,

the Provost Marshal/Director of Emergency Services will review the MPR. The review will include, but is not limited to the following—

(1) Determination of the adequacy of supporting documentation.

(2) Whether or not coordination with the supporting Staff Judge Advocate should have been sought prior to dispatch of the report to the commander for action.

(3) Identification of functions that warrant additional training of military police or security personnel (for example, search and seizure, evidence handling, or rights warning).

(j) *Offender disposition summary reports.* Provost Marshals/Directors of Emergency Services will provide the supported commander (normally, the general courts-martial convening authority or other persons designated by such authority) summary data of offender disposition as required or appropriate. Offender disposition summary data will reflect identified offenders on whom final disposition has been reported. These data will be provided in the format and at the frequency specified by the supported commander.

§ 635.24 Updating the COPS MPRS.

Installation Provost Marshals/Directors of Emergency Services will establish standard operating procedures to ensure that every founded offense is reported into the COPS MPRS. Timely and accurate reporting is critical. If a case remains open, changes will be made as appropriate. This includes reporting additional witnesses and all aspects of the criminal report.

§ 635.25 Submission of criminal history data to the CJIS.

(a) *General.* This paragraph establishes procedures for submitting criminal history data (fingerprint cards) to CJIS when the Provost Marshal/Director of Emergency Services has completed a criminal inquiry or investigation. The policy only applies to members of the Armed Forces and will be followed when a military member has been read charges and the commander initiates proceedings for—

(1) *Field Grade Article 15, Uniform Code of Military Justice.* Initiation refers to a commander completing action to impose non-judicial punishment. Final disposition shall be action on appeal by the next superior authority, expiration of the time limit to file an appeal, or the date the military member indicates that an appeal will not be submitted.

(2) *A special or general courts-martial.* Initiation refers to the referral of court-martial charges to a specified court by the convening authority or receipt by the commander of an accused soldier's request for discharge in lieu of court-martial. Final disposition of military judicial proceedings shall be action by the convening authority on the findings and sentence, or final approval of a discharge in lieu of court-martial. The procedures in this subpart meet administrative and technical requirements for submitting fingerprint cards and criminal history information to CJIS. No variances are authorized. Results of summary court-martial will not be reported to the FBI.

(3) *DA Form 4833.* In instances where final action is taken by a magistrate, the Provost Marshal/Director of Emergency Services will complete the DA Form 4833.

(4) *Fingerprint cards.* Provost Marshal Offices/Directorates of Emergency Services will submit fingerprint cards on subjects apprehended as a result of Drug Suppression Team investigations and operations unless the USACIDC is completing the investigative activity for a felony offense. In those cases, the USACIDC will complete the fingerprint report process.

(b) *Procedures.* The following procedures must be followed when submitting criminal history data to CJIS.

(1) Standard FBI fingerprint cards will be used to submit criminal history data to CJIS. FBI Form FD 249, (Suspect Fingerprint Card) will be used when a military member is a suspect or placed under apprehension for an offense listed in Appendix D of AR 190–45. Two FD 249s will be completed. One will be retained in the Provost Marshal/Director of Emergency Services file. The second will be sent to the Director, USACRC and processed with the MPR as prescribed in this subpart. A third set of prints will also be taken on the FBI Department of Justice (DOJ) Form R–84 (Final Disposition Report). The R–84 requires completion of the disposition portion and entering of the offenses on which the commander took action. Installation Provost Marshals/Directors of Emergency Services are authorized to requisition the fingerprint cards by writing to FBI, J. Edgar Hoover Building, Personnel Division, Printing Unit, Room lB973, 925 Pennsylvania Ave., NW., Washington, DC 20535–0001.

(2) Fingerprint cards will be submitted with the MPR to the Director, USACRC, ATTN: CICR–CR, 6010 6th Street, Fort Belvoir, VA 22060–5585 only when the commander has initiated judicial or nonjudicial action amounting to a Field Grade Article 15 or greater. The Director, CRC will forward the fingerprint card to CJIS. The USACRC is used as the central repository for criminal history information in the Army. They also respond to inquiries from CJIS, local, state and other federal law enforcement agencies.

(3) Submission of the MPR with the FD 249 to USACRC will normally occur upon a commander's initiation of judicial or nonjudicial proceedings against a military member. If final disposition of the proceeding is anticipated within 60 days of command initiation of judicial or nonjudicial proceedings, the FD 249 may be held and final disposition recorded on FD 249. Provost Marshals/Directors of Emergency Services and commanders must make every effort to comply with the 60 days reporting requirement to ensure that the FD Form 249 is used as the primary document to submit criminal history to CJIS. Approval of a discharge in lieu of court-martial will be recorded as a final disposition showing the nature and character of the discharge in unabbreviated English (e.g., resignation in lieu of court-martial; other than honorable discharge) and will also be forwarded to USACRC.

(4) If the commander provides the DA Form 4833 after the 60th day, a letter of transmittal will be prepared by the Provost Marshal/Director of Emergency Services forwarding the FBI (DOJ) R–84 with the DA Form 4833 to the USACRC within 5 days after disposition. Submission of fingerprint cards shall not be delayed pending appellate actions. Dispositions that are exculpatory (e.g., dismissal of charges, acquittal) shall also be filed.

(5) The procedures for submitting fingerprint cards will remain in effect until automated systems are in place for submission of fingerprints electronically.

§ 635.26 Procedures for reporting Absence Without Leave (AWOL) and desertion offenses.

(a) *AWOL reporting procedures.* (1) The commander will notify the installation Provost Marshal/Director of Emergency Services in writing within 24 hours after a soldier has been reported AWOL.

(2) The Provost Marshal/Director of Emergency Services will initiate an information blotter entry.

(3) If the AWOL soldier surrenders to the parent unit or returns to military control at another installation, the provisions of AR 630–10 will be followed.

(4) On receipt of written notification of the AWOL soldier's return or upon apprehension, the Provost Marshal/Director of Emergency Services will initiate a reference blotter entry indicating the soldier's return to

military control and will prepare an initial DA Form 3975, reflecting the total period of unauthorized absence, and the DA Form 4833. Both of these documents will be forwarded through the field grade commander to the unit commander.

(5) The unit commander will report action taken on the DA Form 4833 no later than the assigned suspense date or provide a written memorandum to the Provost Marshal/Director of Emergency Services explaining the delay.

(6) An original DD Form 460 (Provisional Pass) is issued to the soldier to facilitate their return to the parent unit. DD Form 460 will not be required if the Provost Marshal/Director of Emergency Services elects to return the soldier through a different means.

(7) If the soldier is apprehended at or returns to an installation other than his or her parent installation DA Form 3975 and 4833 with a copy of DD Form 460 will be sent to the parent installation Provost Marshal/Director of Emergency Services. The parent installation Provost Marshal/Director of Emergency Services will initiate an information blotter entry reflecting the AWOL soldiers return to military control. A DA Form 3975 and 4833 with an appropriate suspense will be sent through the field grade commander to the unit commander. On return of the completed DA Form 4833 from the unit commander, the original and one copy will be sent to the apprehending Provost Marshal/Director of Emergency Services. The parent installation Provost Marshal/Director of Emergency Services may retain a copy of DA Form 3975 and DA Form 4833.

(b) *Desertion reporting procedures.* (1) The unit commander must comply with the provisions of AR 630–10 when reporting a soldier as a deserter.

(2) On receipt of the DD Form 553 (Deserter/Absentee Wanted by the Armed Forces), the Provost Marshal/Director of Emergency Services will—

(i) Initiate a DA Form 3975 and a blotter entry reflecting the soldier's desertion status.

(ii) Complete portions of DD Form 553 concerning the soldier's driver's license and vehicle identification. In the remarks section, add other information known about the soldier such as confirmed or suspected drug abuse; history of violent acts; history of escapes; attempted escapes from custody; suicidal tendencies; suspicion of involvement in crimes of violence (for which a charge sheet has been prepared and forwarded); history of unauthorized absences; and any other information useful in the apprehension process or essential to protect the deserter or apprehending authorities.

(iii) An MPR number and a USACRC control number will be assigned to the case and be included in the remarks section of the DD Form 553.

(iv) The DD Form 553 must be returned to the unit commander within 24 hours.

(v) If the deserter surrenders to or is apprehended by the parent installation Provost Marshal/Director of Emergency Services, the Provost Marshal/Director of Emergency Services will telephonically verify the deserter's status with the U.S. Army Deserter Information Point (USADIP). A reference blotter entry will be completed changing the soldier's status from desertion to return to military control.

(vi) If the deserter surrenders to or is apprehended by an installation not the parent installation, the Provost Marshal/Director of Emergency Services will telephonically verify the deserter's status with USADIP. An information military police report will be prepared, utilizing the CRC number from the original military police report prepared by the parent installation. A blotter entry will also be prepared.

(vii) A DD Form 616 (Report of Return of Absentee) will be completed when deserters are apprehended or surrender to military authority. The USACRC control number assigned to the DD Form 553 will be included in the remarks section of the DD Form 616.

(viii) Upon return of the deserter to military control, DA Forms 3975, 2804 (Crime Records Data), fingerprint card and 4833 will be initiated. The MPR number and USACRC control number will be recorded on all four forms.

(ix) The original DA Form 3975 and other pertinent documents will be sent to the Director, USACRC. The DA Form 4833 must include the commander's action taken, to include the Commander, Personnel Control Facility, or other commander who takes action based on the desertion charge.

§ 635.27 Vehicle Registration System.

The Vehicle Registration System (VRS) is a module within COPS. Use of VRS to register vehicles authorized access to Army installations is mandated in AR 190–5. Within VRS there are various tabs for registration of vehicles authorized access to an installation, to include personal data on the owner of the vehicle. There are also tabs for registering weapons, bicycles, and pets. Information on individuals barred entry to an installation is also maintained within VRS.

§ 635.28 Procedures for restricted/unrestricted reporting in sexual assault cases.

Active duty Soldiers, and Army National Guard and U.S. Army Reserve Soldiers who are subject to military jurisdiction under the UCMJ, can elect either restricted or unrestricted reporting if they are the victim of a sexual assault.

(a) *Unrestricted Reporting.* Unrestricted reporting requires normal law enforcement reporting and investigative procedures.

(b) Restricted reporting requires that law enforcement and criminal investigative organizations not be informed of a victim's identity and not initiate investigative procedures. The victim may allow Sexual Assault Response Coordinators (SARC), health care providers (HCP), or chaplains to collect specific items (clothing, bedding, etc.) that may be later used as evidence, should the victim later decide to report the incident to law enforcement. In sexual assault cases additional forensic evidence may be collected using the "Sexual Assault Evidence Collection Kit," NSN 6640–01–423–9132, or a suitable substitute (hereafter, "evidence kit"). The evidence kit, other items such as clothing or bedding sheets, and any other articles provided by the HCP, SARC, or chaplain will be stored in the installation Provost Marshal/Directorate of Emergency Services' evidence room separate from other evidence and property. Procedures for handling evidence specified in AR 195–5, Evidence Procedures, will be strictly followed.

(c) Installation Provost Marshals/Directors of Emergency Services will complete an information report in COPS for restricted reporting. Reports will be completed utilizing the offense code from the 6Z series. An entry will be made in the journal when the evidence kit or property (clothing, bedding, etc.) is received. The journal entry will be listed using non-identifying information, such as a generic identifier. An entry will not be made in the blotter. Restricted reporting incidents are not reportable as Serious Incident Reports. Property and the evidence kit will be stored for one year and then scheduled/suspensed for destruction, unless earlier released to investigative authorities in accordance with the victim's decision to pursue unrestricted reporting. Thirty days prior to destruction of the property, a letter will be sent to the SARC by the Provost Marshal/Director of Emergency Services, advising the SARC that the property will be destroyed in thirty days, unless law enforcement personnel are notified by

the SARC that the victim has elected unrestricted reporting. Clothing, the evidence kit, or other personal effects may be released to the SARC for return to the victim. The information report will be updated when the evidence is destroyed, or released to investigative authorities.

(d) In the event that information about a sexual assault that was made under restricted reporting is disclosed to the commander from a source independent of the restricted reporting avenues or to law enforcement from other sources, but from a source other than the SARC, HCP, chaplain, or Provost Marshal/Director of Emergency Services, the commander may report the matter to law enforcement and law enforcement remains authorized to initiate its own independent investigation of the matter presented. Additionally, a victim's disclosure of his/her sexual assault to persons outside the protective sphere of the persons covered by the restricted reporting policy may result in an investigation of the allegations.

§ 635.29 Domestic Violence and Protection Orders.

(a) Responding to incidents of spouse abuse requires a coordinated effort by law enforcement, medical, and social work personnel, to include sharing information and records as permitted by law and regulation. AR 608–18 contains additional information about domestic violence and protective orders.

(b) Appendix C of AR 190–45 includes specific offense codes for domestic violence. All domestic violence incidents will be reported to the local PMO. All reported domestic violence incidents will be entered into MPRS, utilizing DA Form 3975. These codes will be utilized in addition to any other offense code that may be appropriate for an incident. For example, a soldier strikes his or her spouse. When entering the offense data into MPRS, both the offense code for assault (i.e. 5C2B) and the offense code for spouse abuse (from the 5D6 series) will be entered.

(c) A military Protection Order is a written lawful order issued by a commander that orders a soldier to avoid contact with his or her spouse or children. Violations of a military Protection Order must be reported on DA Form 3975, entered into COPS, and entered into NCIC. Violations of a military Protection Order may be violations of Article 92, UCMJ. The commander should provide a written copy of the order within 24 hours of its issuance to the person with whom the member is ordered not to have contact. A copy should be forwarded to the installation Family Advocacy Program Manager (FAPM), the Chief, Social Work Service, and the installation military police.

(d) A civilian Protection Order is an order issued by a judge, magistrate or other authorized civilian official, ordering an individual to avoid contact with his or her spouse or children. Pursuant to the Armed Forces Domestic Security Act a civilian protection order has the same force and effect on a military installation as such order has within the jurisdiction of the court that issued the order. Violations of a civilian Protection Order must be reported on DA Form 3975, entered into COPS, and entered into NCIC.

§ 635.30 Establishing domestic violence Memoranda of Understanding.

(a) Coordination between military law enforcement personnel and local civilian law enforcement personnel is essential to improve information sharing, especially concerning domestic violence investigations, arrests, and prosecutions involving military personnel. Provost Marshals/Directors of Emergency Services or other law enforcement officials shall seek to establish formal Memoranda of Understanding (MOU) with their civilian counterparts to establish or improve the flow of information between their agencies, especially in instances of domestic violence involving military personnel. MOUs can be used to clarify jurisdictional issues for the investigation of incidents, to define the mechanism whereby local law enforcement reports involving active duty service members will be forwarded to the appropriate installation law enforcement office, to encourage the local law enforcement agency to refer victims of domestic violence to the installation Family Advocacy office or victim advocate, and to foster cooperation and collaboration between the installation law enforcement agency and local civilian agencies.

(b) MOUs should address the following issues:

(1) A general statement of the purpose of the MOU.

(2) An explanation of jurisdictional issues that affect respective responsibilities to and investigating incidents occurring on and off the installation. This section should also address jurisdictional issues when a civilian order of protection is violated on military property (see 10 U.S.C. 1561a).

(3) Procedures for responding to domestic violence incidents that occur on the installation involving a civilian alleged offender.

(4) Procedures for transmitting incident/investigation reports and other law enforcement information on domestic violence involving active duty service members from local civilian law enforcement agencies to the installation law enforcement office.

(5) Procedures for transmitting civilian protection orders (CPOs) issued by civilian courts or magistrates involving active duty service members from local law enforcement agencies to the installation law enforcement office.

(6) Designation of the title of the installation law enforcement recipient of such information from the local law enforcement agency.

(7) Procedures for transmitting military protection orders (MPOs) from the installation law enforcement office to the local civilian law enforcement agency with jurisdiction over the area in which the service member resides.

(8) Designation of the title of the local law enforcement agency recipient of domestic violence and CPO information from the installation law enforcement agency.

(9) Respective responsibilities for providing information to domestic violence victims regarding installation resources when either the victim or the alleged offender is an active duty service member.

(10) Sharing of information and facilities during the course of an investigation in accordance with the Privacy Act of 1974 (see 5 U.S.C. 552a(b)(7)).

(11) Regular meetings between the local civilian law enforcement agency and the installation law enforcement office to review cases and MOU procedures.

§ 635.31 Lost, abandoned, or unclaimed property.

This is personal property that comes into the possession, custody, or control of the Army and is unclaimed by the owner. Property is considered to be abandoned only after diligent effort has been made to determine and locate its owner, the heir, next of kin, or legal representative. A military person who is ordered overseas and is unable to dispose of their personal property should immediately notify their chain-of-command. The commander will appoint a board to rule on the disposition of the property. If a law enforcement agency takes custody of the property it will be tagged and a record made as shown in paragraph (a) of this section. A report will be made to the installation commander who will take action in accordance with DOD

4160.21–M, chapter 4, paragraph 40, Defense Materiel Disposition Manual. Pending board action under DOD 4160.21–M, the law enforcement agency having physical custody is responsible for the safekeeping of seized property. The following procedures should be used:

(a) Property will be tagged using DA Form 4002 (Evidence/Property Tag) or clearly identified by other means, inventoried, and made a matter of record. These records are kept by the custodian of the property.

(b) Lost, abandoned, or unclaimed property will be kept in a room or container separate from one used to store property held as evidence. Records or logs of property not held as evidence will be separated from those pertaining to evidence. However, all property will be tagged, accounted for, and receipted for in a similar manner as evidence.

(c) Property that has been properly identified through board action under DOD 4160.21–M as having an owner will be segregated and tagged with the name of that person.

(d) Abandoned or unclaimed property will be held until its status can be determined. In many instances, lost property can be returned to the owner upon presentation of proof of ownership.

(e) In all cases, a receipt should be obtained at time of release.

Subpart D—Army Quarterly Trends and Analysis Report

§ 635.32 General.

(a) This subpart prescribes policies and procedures for the coordination and standardization of crime statistics reporting with HQDA. Crime statistical reports and trends provided to HQDA and other agencies and those related to special interests inquiries, the media, and the public must reflect uniformity in terminology, methods of presentation, and statistical portrayal to preclude misinterpretation of information.

(b) Any report containing Army-wide aggregate crime data or statistics addressed to the Secretary of the Army, Chief of Staff of the Army, or Vice Chief of Staff of the Army will be coordinated and cleared with HQDA, Office of the Provost Marshal General (DAPM–MPD–LE). Correspondence and reports will be coordinated with HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) prior to release to any agency, activity, or individual.

(c) HQDA staff agencies ACOM, ASCC and DRU authorized by regulation or statute to conduct independent investigations, audits, analyses, or inquiries need not coordinate reported information with HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) unless the information contains crime data for the Army as a whole. For example, reports submitted by USACIDC containing only USACIDC investigative data need not be coordinated with HQDA, Office of the Provost Marshal General (DAPM–MPD–LE).

§ 635.33 Crime rate reporting.

(a) The USACRC is the Army's collection point and analytic center for all Army aggregate crime data. Requests for Army-wide crime data reports will be forwarded through HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) to the Director, USACRC. Replies will be routed back through HQDA Office of the Provost Marshal General (DAPM–MPD–LE) where they will be coordinated, as appropriate, prior to release. Requests for USACIDC, ACOM, ASCC, DRU, or subordinate command specific crime data reports can be made directly to the specific command. Replies need not be coordinated with HQDA.

(b) Requests for Army aggregate crime reports are limited to data collected and accessible through the Automated Criminal Investigation and Intelligence System (ACI2) and COPS.

(c) Routine collection of ACOM, ASCC or DRU crime data, for use in Army-wide database, will be limited to that data collected by the above systems. ACOM, ASCC and DRU may determine internal data collection requirements.

(d) All Provost Marshal/Director of Emergency Services crime data will be recorded and forwarded by installations through ACOM, ASCC or DRU using the COPS system.

(e) In support of the Secretary of the Army and the Office of the Chief of Staff of the Army, the Chief, Operations Division, Office of the Provost Marshal General, will determine the requirements for routine publication of Army aggregate crime statistics.

(f) Normally, raw data will not be released without analysis on routine or non-routine requests. Comparison of ACOM, ASCC or DRU crime data is generally not reported and should be avoided. General categories of CONUS or OCONUS are appropriate.

Subpart E—Victim and Witness Assistance Procedures

§ 635.34 General.

(a) This subpart implements procedures to provide assistance to victims and witnesses of crimes that take place on Army installations and activities. The procedures in this subpart apply to—

(1) Every victim and witness.

(2) Violations of the UCMJ, including crimes assimilated under the Assimilative Crimes Act reported to or investigated by military police.

(3) Foreign nationals employed or visiting on an Army installation OCONUS.

(b) Provost Marshal/Director of Emergency Services personnel should refer to AR 27–10, Chapter 18, for additional policy guidance on the Army Victim/Witness Program.

§ 635.35 Procedures.

(a) As required by Federal law, Army personnel involved in the detection, investigation, and prosecution of crimes must ensure that victims and witnesses rights are protected. Victim's rights include—

(1) The right to be treated with fairness, dignity, and a respect for privacy.

(2) The right to be reasonably protected from the accused offender.

(3) The right to be notified of court proceedings.

(4) The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial, or for other good cause.

(5) The right to confer with the attorney for the Government in the case.

(6) The right to restitution, if appropriate.

(7) The right to information regarding conviction, sentencing, imprisonment, and release of the offender from custody.

(b) In keeping with the requirements listed in paragraph (a) of this section, Provost Marshals/Directors of Emergency Services must ensure that—

(1) All law enforcement personnel are provided copies of DD Form 2701 (Initial Information for Victims and Witnesses of Crime).

(2) A victim witness coordinator is appointed in writing.

(3) Statistics are collected and reported into COPS.

(4) Coordination with the installation staff judge advocate victim witness coordinator occurs to ensure that individuals are properly referred for information on restitution, administrative, and judicial proceedings.

(5) Coordination with installation Family Advocacy Program's Victim Advocate occurs to support victims of spouse abuse. Victim Advocacy services include crisis intervention, assistance in

securing medical treatment for injuries, information on legal rights and proceedings, and referral to military and civilian shelters and other resources available to victims.

§ 635.36 Notification.

(a) In addition to providing crime victims and witnesses a DD Form 2701, law enforcement personnel must ensure that individuals are notified about—

(1) Available military and civilian emergency medical care.

(2) Social services, when necessary.

(3) Procedures to contact the staff judge advocate victim/witness liaison office for additional assistance.

(b) Investigating law enforcement personnel, such as military police investigators—

(1) Must ensure that victims and witnesses have been offered a DD Form 2701. If not, investigating personnel will give the individual a copy.

(2) In coordination with the Provost Marshal/Director of Emergency Services victim witness coordinator, provide status on investigation of the crime to the extent that releasing such information does not jeopardize the investigation.

(3) Will, if requested, inform all victims and witnesses of the apprehension of a suspected offender.

§ 635.37 Statistical reporting requirements.

(a) DOD policies on victim witness assistance require reporting of statistics on the number of individuals who are notified of their rights. The DA Form 3975 provides for the collection of statistical information.

(b) The COPS system supports automated reporting of statistics. HQDA, Office of the Provost Marshal General (DAPM–PD–LE) as the program manager may require periodic reports to meet unique requests for information.

(c) It is possible that a victim or witness may initially decline a DD Form 2701. As the case progresses, the individual may request information. If a case is still open in the Provost Marshal Office/Directorate of Emergency Services, the Provost Marshal/Director of Emergency Services victim witness coordinator shall provide the DA Form 2701 to the individual and update the records. Once the case is referred to the staff judge advocate or law enforcement activity ceases, COPS will not be updated without prior coordination with the installation Staff Judge Advocate office.

[FR Doc. E7–10080 Filed 5–23–07; 8:45 am]
BILLING CODE 3710–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0985–200625; FRL–8318–1]

Approval and Promulgation of Implementation Plans Georgia: Enhanced Inspection and Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving two revisions to the Georgia State Implementation Plan (SIP), submitted by the Georgia Department of Natural Resources (GA DNR), through the Georgia Environmental Protection Division (GA EPD), on July 25, 2006, and January 25, 2007. The revisions include modifications to Georgia's Air Quality Rules found at Chapter 391–3–20, pertaining to rules for Enhanced Inspection and Maintenance (I/M). Enhanced I/M was required for 1-hour nonattainment areas classified as serious and above, under the CAA as amended in 1990. The I/M program is a way to ensure that vehicles are maintained properly and verify that the emission control system is operating correctly, in order to reduce vehicle-related emissions. This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

DATES: This direct final rule is effective July 23, 2007 without further notice, unless EPA receives adverse comment by June 25, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number, "EPA–R04–OAR–2006–0985," by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: harder.stacy@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* "EPA–R04–OAR–2006–0985," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8.30 a.m. to 4:30 p.m., excluding federal holidays.

Instructions: Direct your comments to Docket ID Number, "EPA–R04–OAR–2006–0985." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov index.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. EPA's Action
II. Analysis of the State's Submittal
III. Final Action
IV. Statutory and Executive Order Reviews

I. EPA's Action

EPA is approving two SIP revisions submitted by the State of Georgia, through the GA EPD, on July 25, 2006, and January 25, 2007, pertaining to rules for I/M. These revisions became State effective on January 10, 2007. The proposed revisions in the July 25, 2006, submittal include changes made by the State of Georgia to its Air Quality Rules, found at Chapters 391–3–20–.01, .02, .03, .04, .05, .07, .08 , .09, .10, .11, .12, .13, .15, .16, .17(1), .17(2)(a)1, .17(2)(b), .17(e), .18, .19, .20, .21, and .22. The proposed revisions in the January 25, 2007, submittal include changes to Chapters 391–3–20–.01(m), and 391–3–20–.17(2)(a)1.

II. Analysis of the State's Submittal

July 25, 2006 Submittal

Rule 391–3–20, Inspection and Maintenance, is being revised for the purpose of removing outdated requirements, updating portions for consistency with the CAA, enhancing enforcement capabilities, and performing overall housekeeping edits associated with such an extensive rule revision. Additionally, clarifying language is being added to the rule, which includes clarification of applicability and of inspector qualifications, the establishment of common terms, and the removal of outdated language. Finally, the "Waivers" section of this rule, is being revised to make the annual adjustment of the repair waiver limit using the consumer price index data as published by the Federal Bureau of Labor Statistics. For the test year 2006, the waiver limit shall be $710.00 of qualifying repairs.

January 25, 2007 Submittal

Rule 391–3–20–.01 "Definitions," is being revised for the purpose of incorporating the most recent version of the GA DNR motor vehicle emission I/M policy ("Enforcement Policy"), dated July 28, 2006. Additionally, the "Waivers" section of this rule (391–3–20–.17((2)(a)1), is being revised to make the annual adjustment of the repair waiver limit using the consumer price index data as published by the Federal Bureau of Labor Statistics. For the test year 2007, the waiver limit shall be $738.00 of qualifying repairs. For vehicles which otherwise qualify for waivers during the 2006 test year, the waiver limit shall be $710.00 of qualifying repairs.

III. Final Action

EPA is taking direct final action to approve the aforementioned revisions, specifically, Chapters 391–3–20–.01, .02, .03, .04, .05, .07, .08 , .09, .10, .11, .12, .13, .15, .16, .17(1), .17(2)(a)1, .17(2)(b), .17(e), .18, .19, .20, .21, and .22 into the Georgia SIP. These revisions were submitted by GA EPD on July 25, 2006, and January 25, 2007.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 23, 2007 without further notice unless the Agency receives adverse comments by June 25, 2007.

If EPA receives such comments, EPA will then publish a document withdrawing the direct final rule and informing the public that such rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 23, 2007 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 23, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 14, 2007.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section 52.570(c) is amended by revising the entry for "391–3–20" to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
391–3–20	Enhanced Inspection and Maintenance.	01/10/2007	05/24/2007 [Insert citation of publication].	
*	*	*	*	*

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[FR Doc. E7–10057 Filed 5–23–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AB67

Acquisition Regulation: Implementation of DOE's Cooperative Audit Strategy for Its Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its Acquisition Regulation (DEAR) by making minor amendments to existing contractor internal audit requirements, through the use of the Cooperative Audit Strategy.

DATES: *Effective Date:* June 25, 2007.

FOR FURTHER INFORMATION CONTACT: Helen Oxberger, U.S. Department of Energy, MA–61, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 287–1332 or submit electronically to *helen.oxberger@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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II. Discussion of Public Comments
III. Section-by-Section Analysis
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B. Review Under the Regulatory Flexibility Act
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L. Approval by the Office of the Secretary

I. Background

The Department contracts for the management and operation of its Government-owned or -controlled research, development, special production, or testing facilities through the use of management and operating (M&O) contracts. The Department historically expends approximately 73 percent of its annual appropriations through these M&O prime contracts. Thus, it is imperative for the Department to develop approaches which permit oversight of M&O contractor expenditures in order for the Department to satisfy its oversight responsibility and to ensure that DOE funds are expended on allowable costs.

The creation and maintenance of rigorous business, financial, and accounting systems by contractors are crucial to assuring the integrity and reliability of the cost data used by the DOE's Chief Financial Officer (CFO), the Inspector General (IG), and contracting officers (COs). To ensure the reliability of these systems, DOE requires some of its contractors to maintain an internal

audit activity, that is, an internal audit organization that is responsible for: (i) Performing operational and financial audits including incurred cost audits, and (ii) assessing the adequacy of management control systems.

The Cooperative Audit Strategy is a program that the IG, partnering with contractors' internal audit groups, the CFO, and the Office of DOE Procurement and Assistance Management, developed and implemented in October 1992 to maximize the overall audit coverage of M&O contractors' operations and to fulfill the IG's responsibility for auditing the costs incurred by major facilities contractors. The Cooperative Audit Strategy enhances DOE's efficient use of available audit resources by allowing the IG to rely on the work of contractors' internal audit organizations. The IG has adopted the Cooperative Audit Strategy at most major DOE facilities operated by contractors.

The success of the Cooperative Audit Strategy depends on the IG and contractor internal audit groups working closely with DOE. The contractor internal audit groups are committed to a continuing evaluation of the Cooperative Audit Strategy process and have established the Steering Committee for Quality Auditing to address current issues and implement on-going improvements.

DOE published a Notice of Proposed Rulemaking (NOPR) in the **Federal Register** on May 8, 2006 (71 FR 26723). The NOPR proposed to amend two Department of Energy Acquisition Regulation (DEAR) clauses to more effectively implement DOE's Cooperative Audit Strategy. The proposed changes would eliminate Alternate II of DEAR clause 970.5232–3, and revise and expand the contract clause to require the use of the DOE's Cooperative Audit Strategy in all M&O contracts. Currently, the Cooperative Audit Strategy is implemented under an alternate clause (Alternate II) in the Accounts, records, and inspection contract clause at 970.5232–3. Because Alternate II is being deleted, DOE has deleted the alternate prescription for the alternate at 970.3270 (a)(2)(ii).

In addition, the Department proposed to amend the DEAR clause 970.5203–1 entitled Management Controls by adding a sentence requiring the contractor to submit audit reports.

Four commenters responded to our May 8, 2006 NOPR. All the comments were directed toward the proposed Section 970.5232–3, paragraph (i) Internal Audit and paragraph (j) Remedies. Section II of this preamble presents a summary of the comments by subject, and the responses to the comments.

II. Discussion of Public Comments

Comments on Internal Audit Requirements

Comment: Four commenters made remarks on paragraph (i) of proposed Section 970.5232–3. One commenter stated that it believes paragraph (i) requirements of the DEAR clause 970.5232–3 for submittal of three reports related to the contractor's internal audit function amount to DOE's significant involvement in the contractor's day-to-day internal audit function operations.

That commenter believes that proposed paragraphs (i) (1), (i) (2), and (i) (3) contradict the Cooperative Audit Strategy objectives and may actually, per paragraph (i) (4), create a structure where the contractors' internal audit function may appear to report to the DOE contracting officer. The commenter argues that the proposed sections would permit the contracting officer to make unilateral decisions on the new requirements, the design plan for internal audits, the annual report, and the annual internal audits, thereby making it difficult for the contractor to manage and control the contractor's own assurance system.

One commenter believes that the proposed paragraph (i) requirements contradict an already existing clause in its contract with DOE, which states that the National Nuclear Security Administration (NNSA) will provide direction as to what NNSA wants and empowers the contractor to determine how the program is executed with the contractor accountable for its performance.

One commenter fully supports DOE's Cooperative Audit Strategy and the Department's efforts to continue an effective and efficient independent audit function at the M&O contractor facilities to ensure that internal audits are conducted reliably.

Response: As stated in the proposed rule, this rule will be used only in DOE's M&O contracts, involving annual reconciliation of expenditures using the DOE's Statement of Cost Incurred and Claimed (SCIC) process. The SCIC process is used in contracts involving well over $1 billion dollars in annual expenditures by the covered contractor. Those same contractors maintain a special bank account, for reasons of benefit to DOE and the U.S. Treasury, under which those contractors pay contractual obligations directly with DOE funds. The SCIC process would be meaningless without a systematic process to assess the adequacy of the contractor's system of financial controls. It is imperative for DOE to maintain processes which permit oversight of M&O contractor expenditures in order for DOE to accomplish its oversight responsibilities and to require the contractor to have an independent audit function capable of auditing the contractor's system of the financial controls needed to assure the proper use of the funds.

The purpose of the reports prescribed in paragraph (i) of the clause is to provide DOE's CFO, IG, and COs with confidence in the contractor's system of financial controls. DOE currently receives annual reports and annual plans from the DOE M&O contractor for two of the three required crucial reports. The third report, specified by the final rule as a requirement of the Internal Audit Implementation Plan, is critical to the Government's assurance and confidence in the M&O contractor's financial controls system. By providing the Internal Audit Implementation Plan, the M&O contractor will provide DOE with information about the operation of the contractor's internal audit function, which is important in establishing DOE's ability to rely on the contractor's internal audit organization to perform operational and financial audits, including incurred cost audits, and assessing the adequacy of the contractor's management control systems.

Current policy already exists for contracting officers to be empowered and operate under statutory mandates permitting them to make unilateral decisions, such as a reasonableness determination that is a common practice in Federal contract administration. The contracting officers must have the flexibility, as compelled by their authority, to make prudent decisions that are fair, reasonable and supportable.

DOE believes that this rule provides the necessary framework for a systematic process for use by its M&O contractors in the organization and operation of their internal audit function. The Government needs reasonable assurance that the contractor has an effective internal control structure for accountability and control over its funds. The Government also needs reasonable assurance that the contractor is complying with Federal laws and regulations and the terms and conditions of the contract related to the use of funds. The changes made by this final rule will maximize the overall audit coverage of the contractor's operations and fulfill the IG's responsibility for auditing the costs

incurred by all M&O contractors. The changes made by the final rule will better ensure DOE's efficient use of available audit resources by allowing the IG to rely on the work of the M&O contractor's internal audit organization.

One commenter separately made a comment relating to contract provisions it specifically negotiated and Chapter 70.4 of the Acquisition Guide, respectively. This comment is outside the scope of this rule.

Comments on Remedies Requirements

Comment: Three commenters made comments opposing the stated remedies of paragraph (j) of proposed § 970.5232–3. That paragraph would allow the DOE contracting officer unilaterally to suspend or revoke, in whole or in part, access to the Special Banking Financial Institution Accounts. The commenters asserted that the affected contractors would be subjected to greater risk, without any commensurate increase in associated fee, under such a contract. The commenters also stated that if the M&O contractor's use of the special financial institution account is revoked, there are no criteria for providing alternative compensation to the contractor for use of its working capital. Finally, the commenters contend there is no requirement for the use of this special financial institution account to be restored without undue delay.

One commenter stated that paragraph (j) of the proposed § 970.5232–3 is not consistent with Federal acquisition policy, as expressed in the Federal Acquisition Regulation (FAR) 31.201–2 *Determining allowability.*

Response: DOE disagrees and has not altered the final rule in response to the comments relating to paragraph (j). As explained in the preamble of the proposed rule (71 FR at 26724), DOE is amending two DEAR clauses to more effectively implement DOE's Cooperative Audit Strategy. These changes provide DOE insight into the use of the M&O contractor's SCIC for reconciliation of allowable costs, thus enhancing DOE's confidence in the integrity of its financial control systems. DOE proposed paragraph (j) to expressly include risk mitigation of the special financial institution accounts. The existing system of payment to the DOE's M&O contractor under the Cooperative Audit Strategy relies heavily on the contractor's internal audit function and system of financial controls. That reliance introduces risks. DOE believes that if a DOE contracting officer reasonably loses confidence in an M&O contractor's financial system of controls, he or she must be able to react immediately to prevent additional expenditures under the special bank account. This authority would be used only as a last resort. The contracting officer's authority to stop payment of funds is not new and he or she must have the ability to restrict access to the funds as a prescribed remedy in dealing with a failure of financial controls. This is a contract financial control issue, not a cost allowability issue. We believe the express statement of these remedies in paragraph (j) will enhance DOE's fulfillment of its fiduciary responsibility by minimizing risk to the Government as a result of a failure of the contractor's financial control system that could impact the SCIC and special bank accounts.

Revisions Incorporated Into This Final Rule

Comment: One commenter agrees with the proposal to use outside auditors to perform peer reviews of the work of a contractor's internal audit organization. The commenter stated that it would solicit the "concurrence of the DOE Contracting Officer before engaging any outside audit firm." The commenter believes that a review performed by such a third party would be no less effective, and perhaps more independent, than a review conducted by another M&O contractor's internal audit organization. The commenter fully supports the Cooperative Audit Strategy but suggests revising the language in paragraph (i) (viii) of proposed section 970.5232–3, regarding the Internal Audit Implementation Design, to permit the use of an independent audit organization approved by DOE.

Response: We have adopted the comment and expanded the language to read:

"The schedule for peer review of internal audits by other contractor internal audit organizations, or other independent third party audit entities approved by the DOE Contracting Officer."

III. Section-by-Section Analysis

DOE is amending the DEAR as follows:

1. Section 970.3270, Standard financial management clause, is amended by deleting the designator "i" from paragraph (a)(2)(i) and deleting paragraph (a)(2)(ii).

2. Section 970.5203–1, Management controls, paragraph (a)(4) is amended by adding a sentence which requires the contractor to annually, or at other times as directed by the contracting officer, provide copies of reports on the status of audit recommendations.

3. Section 970.5232–3, Accounts, records, and inspection, is amended by deleting Alternate II and by adding new paragraphs (i) and (j).

IV. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a significant regulatory action under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993). Accordingly, this action is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking" (67 FR 53461, August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.* DOE has reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The final rule would amend procurement policies that apply only to DOE M&O contracts and would impact only DOE's M&O contractors, none of whom are small entities. This rule would not have a significant economic impact on small entities. On the basis of the foregoing, DOE certifies that the final rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking.

C. Review Under the Paperwork Reduction Act

Existing burdens associated with the collection of certain contractor audit data have been previously cleared under OMB control number 1910–4100, which expires on April 30, 2008. The Department has concluded that the additional information collection burden resulting from this regulatory

action would apply to less than ten persons in any 12-month period and therefore is less than the threshold for submission to the Office of Management and Budget (OMB) under 5 CFR 1320.3(c). Therefore, DOE has not submitted this action to OMB.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this final rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this final rule deals only with agency procedures, and therefore, is covered under the Categorical Exclusion in paragraph A6 of Appendix A to Subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism" (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountability process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guideline issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Approval by the Office of the Secretary

The Office of the Secretary of Energy has approved issuance of this rule.

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC, on May 17, 2007.

Edward R. Simpson,

Director, Office of Procurement and Assistance Management, Department of Energy.

David O. Boyd,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

■ For the reasons stated in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is amended as set forth below:

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 1. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282a, 2282b, 2282c; 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

970.3270 [Amended]

■ 2. Section 970.3270 is amended by removing the paragragh designation "(i)" from paragraph (a)(2)(i) and removing paragraph (a)(2)(ii).

■ 3. Section 970.5203–1 is amended by adding a sentence to the end of paragraph (a)(4).

970.5203–1 Management controls.

* * * * *

(a) * * *

(4) * * * Annually, or at other intervals directed by the contracting officer, the contractor shall supply to the contracting officer copies of the reports reflecting the status of recommendations resulting from management audits performed by its internal audit activity and any other audit organization. This requirement may be satisfied in part by the reports required under paragraph (i) of 970.5232–3, Accounts, records, and inspection.

* * * * *

■ 4. Section 970.5232–3 is amended by:

■ a. Revising the date of the clause;

■ b. Adding new paragraph (i) and (j) before the "(End of clause)"; and

■ c. Removing Alternate II (including paragraph (i)).

The additions and revisions, read as follows:

970.5232–3 Accounts, records, and inspection.

* * *

Accounts, Records, and Inspection (JUNE 2007)

* * * * *

(i) *Internal audit.* The contractor agrees to design and maintain an internal audit plan and an internal audit organization.

(1) Upon contract award, the exercise of any contract option, or the extension of the contract, the contractor must submit to the contracting officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe:

(i) The internal audit organization's placement within the contractor's organization and its reporting requirements;

(ii) The audit organization's size and the experience and educational standards of its staff;

(iii) The audit organization's relationship to the corporate entities of the contractor;

(iv) The standards to be used in conducting the internal audits;

(v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;

(vi) The intended use of external audit resources;

(vii) The plan for audit of subcontracts, both pre-award and post-award; and

(viii) The schedule for peer review of internal audits by other contractor internal audit organizations, or other independent third party audit entities approved by the DOE contracting officer.

(2) By each January 31 of the contract performance period, the contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the contractor's system of business, financial, or management controls.

(3) By each June 30 of the contract performance period, the contractor must submit to the contracting officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and contractor management systems described in the internal audit design.

(4) The contracting officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.

(j) *Remedies.* If at any time during contract performance, the contracting officer determines that unallowable costs were claimed by the contractor to the extent of making the contractor's management controls suspect, or the contractor's management systems that validate costs incurred and claimed suspect, the contracting officer may, in his or her sole discretion, require the contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the contracting officer, where he or she deems it appropriate, may: Impose a penalty under 970.5242–1, Penalties for unallowable costs; require a refund; reduce the contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

(End of Clause)

* * *

[FR Doc. E7–10037 Filed 5–23–07; 8:45 am]
BILLING CODE 6450–01–P

Proposed Rules

Federal Register
Vol. 72, No. 100
Thursday, May 24, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28258; Directorate Identifier 2006–NM–251–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

> During a BCM (back-up control module) retrofit campaign, one resistor manufactured by SRT (Siegert) was found with an abnormal resistance drift. * * *
>
> * * * * *
>
> When the aircraft is in control back up configuration (considered to be an extremely remote case), an incorrect value on these resistors may cause degradation of the BCM piloting laws, potentially leading to erratic motion of the rudder and to possible impact on the Dutch Roll [uncommanded coupling of airplane roll and yaw motions].
>
> * * * * *

The unsafe condition is erratic motion of the rudder could result in reduced controllability of the airplane due to dutch roll characteristics. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 25, 2007.

ADDRESSES: You may send comments by any of the following methods:

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–28258; Directorate Identifier 2006–NM–251–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Airworthiness Directive 2006–0313, dated October 13, 2006 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During a BCM (back-up control module) retrofit campaign, one resistor manufactured by SRT (Siegert) was found with an abnormal resistance drift. This resistor was subject to humidity absorption and then to oxidation, which leads to increase the resistor value.
>
> This oxidation has been determined coming from a production quality issue.
>
> When the aircraft is in control back up configuration (considered to be an extremely remote case), an incorrect value on these resistors may cause degradation of the BCM piloting laws, potentially leading to erratic motion of the rudder and to possible impact on the Dutch Roll [uncommanded coupling of airplane roll and yaw motions].
>
> In order to detect a degradation of the BCM piloting laws due to resistor oxidation, this Airworthiness Directive (AD) mandates a repetitive ground operational test of the BCM fitted with resistor manufactured by SRT until accomplishment of terminating action (installation of BCM fitted with resistors manufactured by VISHAY).

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the service bulletins listed below. The actions described in the service information are intended to correct the unsafe condition identified in the MCAI.

- Airbus Service Bulletin A330–27–3142, dated August 17, 2006.
- Airbus Service Bulletin A330–27–3147, including Appendix 01, dated August 4, 2006.
- Airbus Service Bulletin A340–27–4142, dated August 17, 2006.
- Airbus Service Bulletin A340–27–4147, including Appendix 01, dated August 4, 2006.
- Airbus Service Bulletin A340–27–5036, dated August 17, 2006.
- Airbus Service Bulletin A340–27–5038, including Appendix 01, dated August 4, 2006.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a **Note** within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 20 products of U.S. registry. We also estimate that it would take about 15 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $24,000, or $1,200 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2007–28258; Directorate Identifier 2006–NM–251–AD.

Comments Due Date

(a) We must receive comments by June 25, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to airplanes specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD:

(1) Model A330 airplanes, certificated in any category, with Modification 49144 installed in production, but without Production Modification 55185 or Airbus Service Bulletin A330–27–3142 installed in-service.

(2) Model A340–200 and –300 series airplanes, certificated in any category, with Modification 49144 installed in production, but without Production Modification 55185 or Airbus Service Bulletin A340–27–4142 installed in-service.

(3) Model A340–500 and –600 series airplanes, certificated in any category, without Production Modification 55186 or Airbus Service Bulletin A340–27–5036 installed in-service.

Subject

(d) Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During a BCM (back-up control module) retrofit campaign, one resistor manufactured by SRT (Siegert) was found with an abnormal resistance drift. This resistor was subject to humidity absorption and then to oxidation, which leads to increase the resistor value.

This oxidation has been determined coming from a production quality issue.

When the aircraft is in control back up configuration (considered to be an extremely remote case), an incorrect value on these resistors may cause degradation of the BCM piloting laws, potentially leading to erratic motion of the rudder and to possible impact on the Dutch Roll [uncommanded coupling of airplane roll and yaw motions].

In order to detect a degradation of the BCM piloting laws due to resistor oxidation, this Airworthiness Directive (AD) mandates a repetitive ground operational test of the BCM

fitted with resistor manufactured by SRT until accomplishment of terminating action (installation of BCM fitted with resistors manufactured by VISHAY).

The unsafe condition is erratic motion of the rudder and could result in reduced controllability of the airplane due to dutch roll characteristics.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 900 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 900 flight hours, perform an operational test of the BCM and back-up power supply (BPS) by BITE (built in test equipment), and as applicable, apply the corrective actions, in accordance with instructions defined in Airbus Service Bulletin A330–27–3147, dated August 4, 2006; Airbus Service Bulletin A340–27–4147, dated August 4, 2006; or Airbus Service Bulletin A340–27–5038, dated August 4, 2006; as applicable. Replacement of affected BCM in accordance with Airbus Service Bulletin A330–27–3142, dated August 17, 2006; A340–27–4142, dated August 17, 2006; or A340–27–5036, dated August 17, 2006; cancels the mandatory repetitive operational test.

(2) Within 26 months after the effective date of this AD, install modified BCM in accordance with instructions given in Airbus Service Bulletin A330–27–3142, dated August 17, 2006; Airbus Service Bulletin A340–27–4142, dated August 17, 2006; or Airbus Service Bulletin A340–27–5036, dated August 17, 2006; as applicable.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No Differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Backman, Aerospace Engineer; 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149. Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2006–0313, dated October 13, 2006; and the service bulletins listed in Table 1 for related information.

TABLE 1.—AIRBUS SERVICE BULLETINS

Airbus Service Bulletin—	Dated—
A330–27–3123	December 13, 2004.
A330–27–3142	August 17, 2006.
A330–27–3147, including Appendix 01.	August 4, 2006.
A340–27–4124	December 13, 2004.
A340–27–4142	August 17, 2006.
A340–27–4147, including Appendix 01.	August 4, 2006.
A340–27–5036	August 17, 2006.
A340–27–5038, including Appendix 01.	August 4, 2006.

Issued in Renton, Washington, on May 15, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–10043 Filed 5–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28257; Directorate Identifier 2007–NM–034–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200B, –200C, and –200F Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–100, –200B, –200C, and –200F series airplanes. This proposed AD would require performing repetitive inspections for cracks in the fuselage skin at the cutout of the bulk cargo door light, and corrective actions if necessary. This proposed AD also provides terminating action for airplanes with a certain type of damage. This proposed AD results from a report of a 2-inch crack through the fuselage skin and internal bonded doubler at the cutout of the bulk cargo door light. We are proposing this AD to detect and correct cracks in the fuselage skin at the cutout of the bulk cargo door light, which could result in reduced structural integrity of the fuselage at the bulk cargo door and consequent rapid decompression of the fuselage.

DATES: We must receive comments on this proposed AD by July 9, 2007.

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

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2007–28257; Directorate Identifier 2007–NM–034–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the

comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

We have received a report indicating that a 2-inch crack through the fuselage skin and internal bonded doubler at the cutout of the bulk cargo door light was found during a visual fuselage skin inspection on a Model 747–200F series airplane. The crack was located at the forward lower corner of the cutout of the bulk cargo door light between stations 2060 and 2070, stringers 32R and 33R. The airplane had accumulated approximately 24,613 flight cycles and 99,339 flight hours. This condition, if not corrected, could result in reduced structural integrity of the fuselage at the bulk cargo door and consequent rapid decompression of the fuselage.

The subject area on certain Model 747–100, 200B, and –200C series airplanes is almost identical to that on the affected Model 747–200F series airplanes. Therefore, those airplanes are subject to the unsafe condition revealed on the Model 747–200F series airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2673, dated February 8, 2007. The service bulletin describes procedures for repetitive high frequency eddy current (HFEC) inspections for cracks in the fuselage skin at the cutout of the bulk cargo door light, and corrective actions if necessary. The corrective actions are as follows:

- For airplanes on which a crack is found that is 2.0 inches or less in length from the edge of the light cutout forward lower corner, Part 2 of the Accomplishment Instructions of the service bulletin describes procedures for installing a repair filler, doubler, and tripler, and performing an additional HFEC inspection of the trim edge for cracks and repairing any crack. Accomplishing these corrective actions eliminates the need for the repetitive inspections.
- For airplanes on which a crack is found that is more than 2.0 inches in total length from the edge of the light cutout forward lower corner, or is at a location other than the light cutout forward lower corner, the service bulletin recommends contacting Boeing for repair instructions and doing the repair.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and Service Information."

Difference Between the Proposed AD and Service Information

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Costs of Compliance

There are about 65 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 36 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $5,760, or $160 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the ADDRESSES section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–28257; Directorate Identifier 2007–NM–034–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 9, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, –200B, –200C, and –200F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2673, dated February 8, 2007.

Unsafe Condition

(d) This AD results from a report of a 2-inch crack through the fuselage skin and internal bonded doubler at the cutout of the bulk cargo door light. We are issuing this AD to detect and correct cracks in the fuselage skin at the cutout of the bulk cargo door light, which could result in reduced structural integrity of the fuselage at the bulk cargo door and consequent rapid decompression of the fuselage.

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.

Inspections/Corrective Actions

(f) Before the accumulation of 20,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever is later: Perform a high frequency eddy current (HFEC) inspection for cracks in the fuselage skin at the cutout of the bulk cargo door light, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2673, dated February 8, 2007. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

(1) If no crack is found: Repeat the inspection required by paragraph (f) of this AD at the time specified.

(2) If any crack is found that is 2.0 inches or less in length from the edge of the light cutout forward lower corner: Before further flight, do all the corrective actions (including an additional HFEC inspection for cracks) in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Accomplishing Part 2 ends the repetitive inspections required by paragraph (f) of this AD.

(3) If any crack is found during the inspection required by paragraph (f) of this AD that is more than 2.0 inches in total length from the edge of the light cutout forward lower corner, or is at a location other than the light cutout forward lower corner: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (g)(2) of this AD.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

(3) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on May 15, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–10045 Filed 5–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28259; Directorate Identifier 2007–NM–024–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model SN–601 (Corvette) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Cracks have been evidenced on the nose landing gear LH (left-hand) and RH (right-hand) hinge fittings due to stress corrosion on in-service aircraft. If undetected, they could lead to complete rupture of one or two of the fittings.

The unsafe condition is collapse of the nose landing gear. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 25, 2007.

ADDRESSES: You may send comments by any of the following methods:

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

This proposed AD references the MCAI and related service information that we considered in forming the

engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–28259; Directorate Identifier 2007–NM–024–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the aviation authority for France, has issued French Airworthiness Directive F–2004–169, dated October 27, 2004 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Cracks have been evidenced on the nose landing gear LH (left-hand) and RH (right-hand) hinge fittings due to stress corrosion on in-service aircraft. If undetected, they could lead to complete rupture of one or two of the fittings.

The unsafe condition is collapse of the nose landing gear. The MCAI requires repetitive inspections of the nose landing gear LH and RH hinge fittings for cracking, and replacing the hinge fitting with a new fitting if any cracking is found. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued SN–601 Corvette Service Bulletin 32–17, dated September 23, 2004. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a **Note** within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 3 products of U.S. registry. We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,680, or $560 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket No. FAA–2007–28259; Directorate Identifier 2007–NM–024–AD.

Comments Due Date

(a) We must receive comments by June 25, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Aerospatiale Model SN–601 (Corvette) airplanes, all serial numbers; certificated in any category.

Subject

(d) Landing gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

> Cracks have been evidenced on the nose landing gear LH (left-hand) and RH (right-

hand) hinge fittings due to stress corrosion on in-service aircraft. If undetected, they could lead to complete rupture of one or two of the fittings.

The unsafe condition is collapse of the nose landing gear. The MCAI requires repetitive inspections of the nose landing gear LH and RH hinge fittings for cracking, and replacing the hinge fitting with a new fitting if any cracking is found.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 200 flight hours or 6 months after the effective date of this AD, whichever occurs first: Inspect the nose landing gear LH (left-hand) and RH (right-hand) hinge fittings for cracking, in accordance with the instructions of Airbus SN–601 Corvette Service Bulletin 32–17, dated September 23, 2004.

(2) In case of finding one or several cracks, before further flight, replace the hinge fitting with a new hinge fitting in accordance with the instructions of Airbus SN–601 Corvette Service Bulletin 32–17, dated September 23, 2004. Repeat the requirements of paragraph (f)(1) of this AD thereafter at intervals not to exceed 3,600 flight hours or 36 months, whichever occurs first.

(3) If no crack is detected, repeat the requirements of paragraph (f)(1) of this AD thereafter at intervals not to exceed 3,600 flight hours or 36 months, whichever occurs first.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: Although the MCAI or service information allows further flight after cracks are found during compliance with the required action, paragraph (f)(2) of this AD requires that you repair the cracks before further flight.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Borfitz, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI French Airworthiness Directive F–2004–169, dated October 27, 2004; and Airbus SN–601 Corvette Service Bulletin 32–17, dated September 23, 2004; for related information.

Issued in Renton, Washington, on May 15, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–10046 Filed 5–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28255; Directorate Identifier 2007–NM–023–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model 1329 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Lockheed Model 1329 series airplanes. This proposed AD would require determining the part number on the steering cylinder assembly for the nose landing gear (NLG), determining the total flight cycles accumulated on the NLG steering cylinder assembly, repetitive replacement of the assembly, inspecting for missing tow turning limit markings, and performing corrective actions if necessary. This proposed AD results from reports of numerous failures of the NLG steering cylinder. We are proposing this AD to prevent the loss of hydraulic pressure and steering control.

DATES: We must receive comments on this proposed AD by June 25, 2007.

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

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

Contact Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Hector Hernandez, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6069; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2007–28255; Directorate Identifier 2007–NM–023–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza

level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received reports of numerous failures of the nose landing gear (NLG) steering cylinder on Lockheed Model 1329 series airplanes. These failures have been attributed to stress corrosion cracking, compounded by towing of the aircraft and exceeding the allowable turn limits with the scissor links connected. The manufacturer has reviewed service history and performed structural analysis on the cylinder assembly. Failure of the steering cylinder, if not corrected, could result in the loss of hydraulic pressure and steering control.

Relevant Service Information

We have reviewed the Lockheed service bulletins identified in the following table.

SERVICE BULLETINS

Service bulletin	Revision	Date	Affected airplanes
329–300	C	September 5, 2006	1329–23A, 1329–23D, 1329–23E.
329II–32–8	B	September 5, 2006	1329–25.

The service bulletins describe procedures for the following actions:

- Inspecting the NLG steering cylinder assembly for the installed part number;
- Removing from service NLG steering cylinder assemblies, part number (P/N) JL1955–1 and JL1955–3;
- Reviewing airplane records to determine the total flight cycles accumulated on the cylinder assembly;
- Removing from service those cylinders that have exceeded their life limit;
- Establishing life limits (including a repetitive replacement schedule) for all other part-numbered cylinder assemblies (as set forth in the Life Limits table below);
- Replacing, with new parts, any cylinder assembly if its part number is JL1955–1 or JL1955–3 or its components' life limits have been exceeded;
- Inspecting the exterior fuselage to confirm that the tow turning limit markings are present on the airplane; and
- Restoring/applying the markings.

JETSTAR NLG STEERING CYLINDER ASSEMBLY LIFE LIMITS

Component	Part No.	Life limit (in flight cycles)
7049–T73 die forging	JL1955–7	2,100
7050–T7451 plate	JL1955–9	1,075
4340 steel bar	JL1955–801	3,100
15–5PH plate	JL1955–13 ..	>1,000,000

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

We have determined that a reliable inspection of the subject area is not possible. Because the initial detectable crack is longer than the critical crack length in this case, we cannot show crack growth using damage tolerance analysis or develop appropriate inspection intervals. Further, disassembling the actuator steering cylinder—the only possible way to perform the inspection—would destroy the cylinder. As a result of service history and engineering evaluation, a fatigue-based life limit of the actuator steering cylinder is necessary to ensure the continued airworthiness of the fleet.

Costs of Compliance

There are about 48 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
3	$80	$0	$240	34	$8,160

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Lockheed: Docket No. FAA–2007–28255; Directorate Identifier 2007–NM–023–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 25, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplanes, certificated in any category.

(1) Lockheed Model 1329–23A, 1329–23D, and 1329–23E series airplanes; serial numbers 5001 through 5162 inclusive.

(2) Lockheed Model 1329–25 series airplanes, serial numbers 5201 through 5240 inclusive.

Unsafe Condition

(d) This AD results from reports of numerous failures of the nose landing gear (NLG) steering cylinder. We are issuing this AD to prevent the loss of hydraulic pressure and steering control.

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.

Service Information

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD.

TABLE 1.—SERVICE BULLETINS

Lockheed service bulletin	Revision	Date	Affected airplanes
329–300	C	September 5, 2006	1329–23A, 1329–23D, 1329–23E.
329II–32–8	B	September 5, 2006	1329–25.

Inspection for Cylinder Assembly Part Number

(g) Within 30 days after the effective date of this AD, inspect to determine the part number (P/N) on the steering cylinder assembly for the nose landing gear (NLG). A review of airplane maintenance records is acceptable in lieu of this inspection if the part number can be conclusively determined from that review. Replace any cylinder assembly having P/N JL1955–1 or JL1955–3 with a new assembly before further flight in accordance with the applicable service bulletin.

Life Limits

(h) Within 30 days after the effective date of this AD: Review the airplane records to determine the total flight cycles accumulated on the NLG steering cylinder assembly, in accordance with the applicable service bulletin. Before any steering cylinder assembly component reaches its life limit, as specified in Table 1 of the Accomplishment Instructions of the applicable service bulletin, or within 30 days after the effective date of this AD, whichever occurs later: Replace the cylinder assembly with a new assembly in accordance with the applicable service bulletin. If the steering cylinder assembly's age cannot be positively determined from the records review, replace it within 30 days after the effective date of this AD, in accordance with the applicable service bulletin. Thereafter, replace the cylinder assembly at intervals not to exceed the life limits as specified in the applicable service bulletin.

Inspection for Tow Turning Limit Markings

(i) Within 30 days after the effective date of this AD: Perform a general visual inspection above the NLG doors to detect missing tow turning limit markings, in accordance with the applicable service bulletin. If any markings are absent, restore/apply markings before further flight in accordance with the applicable service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Parts Installation

(j) As of the effective date of this AD, do not install on any airplane a NLG steering cylinder assembly that has P/N JL1955–1 or JL1955–3.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on May 15, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–10033 Filed 5–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28256; Directorate Identifier 2007–NM–041–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

> It has been found the occurrence of smoke on the passenger cabin originated from the valance panel lighting system wiring.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 25, 2007.

ADDRESSES: You may send comments by any of the following methods:

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–28256; Directorate Identifier 2007–NM–041–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2007–01–03, effective January 22, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> It has been found the occurrence of smoke on the passenger cabin originated from the valance panel lighting system wiring.

The corrective action is replacement of the valance panel lighting system wiring. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EMBRAER has issued Service Bulletin 145LEG–25–0070, dated October 11, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would

affect about 15 products of U.S. registry. We also estimate that it would take about 36 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost between $7,900 and $8,610 per product, depending on the airplane configuration. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be between $161,700 and $172,350 for the fleet, or between $10,780 and $11,490 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2007–28256; Directorate Identifier 2007–NM–041–AD.

Comments Due Date

(a) We must receive comments by June 25, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ airplanes, certificated in any category, serial numbers 145412, 145462, 145484, 145495, 145505, 145516, 145528, 145540, 145549, 145555, 145586, 145625, 145637, 145642, 145644, and 145678.

Subject

(d) Equipment/Furnishings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

"It has been found the occurrence of smoke on the passenger cabin originated from the valance panel lighting system wiring."

The corrective action is replacement of the valance panel lighting system wiring.

Actions and Compliance

(f) Within 48 months after the effective date of this AD, unless already done, replace the wiring of the valance panel lighting system by another one that complies with the current inverter specifications, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–25–0070, dated October 11, 2006.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2007–01–03, effective January 22, 2007, and EMBRAER Service Bulletin 145LEG–25–0070, dated October 11, 2006, for related information.

Issued in Renton, Washington, on May 15, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–10026 Filed 5–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD01–07–011]

RIN 1625–AA01

Anchorage Regulations; Edgecomb Maine, Sheepscot River

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a general anchorage area in Edgecomb, Maine, on the Sheepscot River. This action is necessary to facilitate safe navigation in that area and to provide safe and secure anchorages

for transient vessels visiting the area. This proposal is intended to increase the safety for life and property on the Sheepscot River, improve the safety of anchored vessels, provide for ample anchorages for transient vessels, and provide for the overall safe and efficient flow of recreational vessels and commerce.

DATES: Comments and related material must reach the Coast Guard on or before July 23, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, who maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, Telephone (617) 223–8355 or e-mail at *John.J.Mauro@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–07–011), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed rule is the result of colloboration with the Town of Edgecomb's Waterfront Committee to accommodate transient vessels mooring in the area. Currently, the Town of Edgecomb has two large condominium/marina complexes under construction in the harbor. Due to this growth, the Waterfront Committee wants to be proactive and to insure that there will always be suitable anchorages available to vessels transiting the area. The proposed rule would establish a general anchorage area adjacent to the current town mooring fields. These fields currently accommodate approximately 40 moorings for vessels greater than 27 feet, and 35 moorings for vessels smaller than 27 feet. The proposed rule is designed to reserve approximately 15 anchorages for transient vessels visiting the area from May through October each year. The anchorage would accommodate both sail and power vessels with a 3-to-12-foot draft. Vessels would use their own ground tackle.

In developing this proposed rule, the Coast Guard has consulted with the Army Corps of Engineers, Northeast, located at 696 Virginia Road., Concord, MA 01742.

Discussion of Proposed Rule

The proposed rule would create a general anchorage area located in Edgecomb, Maine on the Sheepscot River. The proposed rule conforms to the changing needs of the Town of Edgecomb in addition to the needs of the recreational, fishing, and commercial vessels. The rule provides for the best use of the available navigable water. This anchorage is in the interest of safe navigation, and would protect the vessels moored at the Town of Edgecomb and marine environment.

Mariners using the anchorage area would be encouraged to contact local and state authorities, such as the local harbormaster, to ensure compliance with any applicable state and local laws. Such laws may involve, for example, compliance with direction from the local harbormaster when anchoring within the anchorage.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The proposed anchorage area does not impede the passage of recreational or commercial vessels as it is not located in the primary channel of the Sheepscot River, and thus, will have a minimal economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of recreational or commercial vessels intending to transit in a portion of the Sheepscot River in and around the anchorage area. However, this anchorage area would not have a significant economic impact on these entities for the following reasons: The proposed anchorage area is not located near the primary channel of the river and will not restrict vessel traffic transiting up or down the Sheepscot River. Thus, the anchorage area will not impede safe and efficient vessel transits.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave.,

Boston, Massachusetts 02110, Telephone (617) 223–8355 or e-mail at *John.J.Mauro@uscg.mil*.

The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(f) as it would establish an anchorage ground.

A preliminary "Environmental Analysis Check List" and "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. Add § 110.131 to read as follows:

§ 110.131 Sheepscot River in vicinity of Edgecomb, Maine.

(a) *Anchorage grounds.* All of the waters enclosed by a line starting from a point located at the southwestern end of Davis Island at latitude 43°59.655′ N., longitude 69°39.617′ W.; thence to latitude 43°59.687′ N., longitude 69°39.691′ W.; thence to latitude 43°59.847′ N., longitude 69°39.743′ W.; thence to latitude 43°59.879′ N., longitude 69°39.559′ W.; thence to latitude 43°59.856′ N., longitude 69°39.488′ W.; thence to latitude 43°59.771′ N., longitude 69°39.585′ W.; thence to the point of beginning.

DATUM: NAD 83

(b) *Regulations.* (1) This anchorage is reserved for vessels of all types, with drafts of from 3 to 12 feet.

(2) These anchorage grounds are authorized for use from May through October.

(3) Vessels are limited to a maximum stay of 1 week.

(4) Fixed moorings, piles or stakes are prohibited.

(5) Vessels must not anchor so as to obstruct the passage of other vessels proceeding to or from other anchorage spaces.

(6) Anchors must not be placed in the channel and no portion of the hull or

rigging of any anchored vessel shall extend outside the limits of the anchorage area.

(7) The anchorage of vessels is under the coordination of the local Harbormaster.

Dated: April 9, 2007.

Timothy S. Sullivan,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. E7–9968 Filed 5–23–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD01–07–009]

RIN 1625–AA01

Anchorage Regulations; Yarmouth, Maine, Casco Bay

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish three special anchorage areas in Yarmouth, Maine on Casco Bay. This action is necessary to facilitate safe navigation in that area and to provide safe and secure anchorages for vessels of not more than 65 feet. This proposal is intended to increase the safety for life and property on Casco Bay, improve the safety of anchored vessels, create workable boundaries for future mooring expansion, and provide for the overall safe and efficient flow of recreational vessels and commerce.

DATES: Comments and related material must reach the Coast Guard on or before July 23, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, who maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, Telephone (617) 223–8355 or e-mail at *John.J.Mauro@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–07–009), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed rule is the result of collaboration with the Town of Yarmouth's Harbor and Waterfront Committee and Yarmouth town council to accommodate vessels mooring in the area. The proposed rule would establish three separate special anchorage areas organized from the current accommodations of approximately 350 moorings. The proposed rule is designed to aid the Town of Yarmouth in enforcing its mooring and boating regulations by clearly defining the available mooring fields. In addition, the proposed rule will provide finite expansion boundaries of town mooring fields, ensure that there are transient anchorage areas available, and extend the convenience of a special anchorage to local vessel owners. The areas under consideration are currently established mooring areas.

In developing this proposed rule, the Coast Guard has consulted with the Army Corps of Engineers, Northeast, located at 696 Virginia Road., Concord, MA 01742.

Discussion of Proposed Rule

The proposed rule would create three special anchorage areas located in Yarmouth, Maine on Casco Bay: (1) Littlejohn Island/Doyle Point Cousins Island Special Anchorage,(2) Madeleine and Sandy Point Special Anchorage, and (3) Drinkwater Point and Princes Point Special Anchorage.

The Town of Yarmouth has delineated transient anchorage areas in each of the three special anchorage areas. These transient anchorage areas are located near or next to town-owned property that has limited access to parking and, in some cases, dock tie-up space.

The special anchorage areas would be limited to vessels no greater than 65 feet in length. Vessels not more than 65 feet in length are not required to sound signals as required by rule 35 of the Inland Navigation Rules (33 U.S.C. 2035) nor exhibit anchor lights or shapes required by rule 30 of the Inland Navigation Rules (33 U.S.C 2030) when at anchor in a special anchorage area. Mariners utilizing the anchorage areas are encouraged to contact local and state authorities, such as the local harbormaster, to ensure compliance with any additional applicable state and local laws. Such laws may involve, for example, compliance with direction from the local harbormaster when placing or using moorings within the anchorage.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This finding is based on the fact that this proposal conforms to the changing needs of the Town of Yarmouth, the changing needs of recreational, fishing and commercial vessels, and to make the best use of the available navigable water. The proposed special anchorage areas do not impede the passage of recreational or commercial vessels as they are not located in the primary entrance channel to Yarmouth Harbor. The proposed special anchorage areas are a consolidation and delineation of existing mooring fields. Thus, the special anchorage area will have a minimal economic impact. This proposed rule is in the interest of safe navigation, protection of the vessels moored at the Town of Yarmouth, and protection of the marine environment.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of recreational or commercial vessels intending to transit in a portion of the Casco Bay in and around the special anchorage areas. However, these special anchorage areas would not have a significant economic impact on these entities for the following reasons: The proposed special anchorage areas are not located near the primary entrance into Yarmouth Harbor. The Littlejohn Island/Doyle Point Cousins Island Special Anchorage allows for a 100 yard channel between its boundary and buoy N "18" on the south side of Littlejohn Island. This is more than enough room for the types of vessels which operate in the area. The Town of Yarmouth will set two red (nun) and two green (can) seasonal buoys between April and November to mark an eighty foot fairway from the main channel to the Wharf Road Dock to delineate the path taken by the Chebeague Island Transportation Company (CTC) ferry. The largest vessel operated by CTC is a 65 foot tow vessel and barge. The special anchorage area will not impede safe and efficient vessel transit in the area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, Telephone (617) 223–8355 or e-mail at *John.J.Mauro@uscg.mil.*

The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast

Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction from further environmental documentation. This rule fits the category selected from paragraph (34)(f) as it would establish a special anchorage area.

A preliminary "Environmental Analysis Check List" and "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.5 by adding paragraph (f) to read as follows:

§ 110.5 Casco Bay, Maine.

* * * * *

(f) *Yarmouth Harbor and adjacent waters*—(1) *Littlejohn Island/Doyle Point Cousins Island Special Anchorage.* All of the waters enclosed by a line connecting the following points: starting from the northernmost point of Littlejohn Island at latitude 43°45′86″ N., longitude 70°06′95″ W.; thence to latitude 43°45′78″ N., longitude 70°06′89″ W.; thence to latitude 43°45′43″ N., longitude 70°07′38″ W.; thence to latitude 43°45′28″ N., longitude 70°07′68″ W.; thence to latitude 43°44′95″ N., longitude 70°08′45″ W.; thence to latitude 43°44′99″ N., longitude 70°08′50″ W. DATUM: NAD 83.

(2) *Madeleine and Sandy Point Special Anchorage.* All of the waters enclosed by a line connecting the following points: starting from a point northeast of Birch Point on Cousins Island at latitude 43°45′27″ N., longitude 70°09′32″ W.; thence to latitude 43°45′35″ N., longitude 70°09″50′ W.; thence to latitude 43°45′63″ N., longitude 70°09′18″ W.; thence to latitude 43°45′95″ N., longitude 70°08′98″ W.; thence to latitude 43°45′99″ N., longitude 70°08′83″ W. DATUM: NAD 83.

(3) *Drinkwater Point and Princes Point Special Anchorage.* All of the waters enclosed by a line connecting the following points: starting south of Drinkwater Point in Yarmouth, Maine at latitude 43°46′42″ N., longitude 70°09′25″ W.; thence to latitude 43°46′35″ N., longitude 70°09′16″ W.; thence to latitude 43°46′07″ N., longitude 70°09′77″ W.; thence to latitude 43°45′48″ N., longitude 70°10′40″ W.; thence to latitude 43°45′65″ N., longitude 70°10′40″ W. DATUM: NAD 83.

Note to § 110.5(f): An ordinance of the Town of Yarmouth, Maine requires the approval of the Yarmouth Harbor Master for the location and type of moorings placed in these special anchorage areas. All anchorings in the areas are under the supervision of the Yarmouth Harbor Master or other such authority as may be designated by the authorities of the Town of Yarmouth, Maine. All moorings are to be so placed that no moored vessel will extend beyond the limit of the area.

Dated: April 9, 2007.

Timothy S. Sullivan,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. E7–9969 Filed 5–23–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Part 75

[Docket ID ED–2007–OCFO–0132]

RIN 1890–AA15

Direct Grant Programs

AGENCY: Office of the Chief Financial Officer, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations in 34 CFR part 75, regarding the determination and recovery of indirect costs by grantees. The proposed amendments would address procedural aspects related to the establishment of temporary indirect cost rates, specify the temporary rate that would apply to grants generally, and clarify how indirect costs are determined for a group of applicants that apply for a single training grant.

DATES: We must receive your comments on or before June 25, 2007.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select "Department of Education" from the agency drop-down menu, then click "Submit." In the Docket ID column, select ED–2007–OCFO–0132 to add or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for submitting comments, accessing documents, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Richard Mueller, U.S. Department of Education, 830 First Street, NE., room 21C7, Washington, DC 20202–4450.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing on the Federal eRulemaking Portal at *http://www.regulations.gov* All submissions will be posted to the Federal eRulemaking Portal without change, including personal identifiers and contact information.

FOR FURTHER INFORMATION CONTACT: Richard Mueller. *Telephone:* (202) 377–3838 or *via Internet: Richard.Mueller@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of

your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should provide to reduce the potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's Direct Grant programs.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 21C7, 830 First Street, NE., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Changes to Indirect Cost Policy

The Secretary proposes amendments to improve the Department's ability under 34 CFR 75.560 to provide a temporary indirect cost rate. The temporary rate for a grantee that does not have a federally recognized indirect cost rate at the time the Department awards its first grant to the grantee would be ten percent of the direct salaries and wages of the project. These changes would permit the use of a temporary indirect cost rate under the grant award for the first ninety days after the date the Department issues the Grant Award Notification. A grantee may continue to charge indirect costs at the temporary rate after the first ninety days if the grantee submits a formal indirect cost proposal to its cognizant agency within those ninety days. If, after the ninety-day period, a grantee has not submitted an indirect cost proposal to its cognizant agency, it must stop using the temporary rate. After that period, the grantee would not be allowed to charge any indirect costs to its grant until it obtained a federally recognized indirect cost rate from its cognizant agency.

These regulations are needed to make the Department's practice consistent with the practice of other Federal agencies and reduce the number of improper payments that result when applicants budget indirect costs that are greater than the actual indirect costs the applicant can expect to recover under Federal cost principles. Currently, new grantees of the Department are not recovering any indirect costs until they negotiate an indirect cost rate with their cognizant agencies. These proposed regulations would help a new grantee by permitting it to recover indirect costs at the temporary rate until it negotiate a rate with its cognizant agency or for ninety days if it does not submit its indirect cost rate proposal to its cognizant agency within the ninety-day period.

The proposed regulations would also clarify how the modified total direct cost base is determined when a grant is subject to the eight percent indirect cost rate limitation for training grants and would specify how that rate is applied when the Department awards a grant to a group of applicants. These changes are necessary to correct an oversight in the current regulations.

Significant Proposed Regulations

34 CFR Part 75

Section 75.560 General Indirect Cost Rates; Exceptions

The Secretary proposes to amend § 75.560 (c) and (d) to specify the procedures used to establish temporary indirect cost rates for any grantee that does not have a federally recognized indirect cost rate. The proposed language would require such a grantee to submit an indirect cost rate proposal to its cognizant agency within ninety days after the date the Department issues the Grant Award Notification to the grantee. In most cases, the cognizant agency is the agency that provides the most federal funding to a grantee under programs that authorize grantees to charge indirect costs to their grants. Under the proposed regulations, the grantee could charge indirect costs at a temporary indirect cost rate of ten percent of the budgeted direct salaries and wages. If a grantee does not submit an indirect cost rate proposal to its cognizant agency by the end of the ninety-day period, the proposed regulations would provide that the grantee could not charge any more indirect costs to its grant until it negotiated a federally recognized rate.

If a grantee negotiates an indirect cost rate that would recover more funds than the temporary rate has recovered, the proposed regulations would permit the grantee to recover the difference between the amount it would have recovered under the federally recognized rate and the amount it already recovered under the temporary rate after the date the indirect cost proposal was submitted to the cognizant agency.

Example: The project period for a grant starts on June 1 and the grantee starts recovering indirect costs at ten percent of direct salaries and wages; the indirect cost proposal is submitted to the cognizant agency on July 1; and the grantee obtains a federally recognized indirect cost rate on September 15.

From June 1 through June 30, the grantee expends $5,000 in direct salaries and wages. Using the temporary rate of ten percent of direct salaries and wages, the grantee recovers $500 in indirect costs for this period. From July 1 through September 15, the grantee charges its grant $12,500 in direct salaries and wages, which produces an indirect cost recovery of $1,250 under the temporary rate.

The grantee negotiates an indirect cost rate with its cognizant agency of twenty percent of its modified total direct cost base. For the period July 1 through September 15, the grantee expends $15,000 in modified total direct costs. Thus, under the negotiated rate, the grantee is entitled to recover $3,000 for the period July 1 through September 15. Assuming sufficient funds are available within the grant budget, the grantee can recover an additional amount of $1,750 in un-recovered indirect costs for the period July 1 through September 15. This $1,750 represents the difference between the $1,250 it already recovered for that period and the $3,000 that it could have recovered under the negotiated rate. The grantee cannot claim indirect costs at the negotiated rate for the period June 1 through June 30 because it did not submit its indirect cost proposal until July 1. However, it can keep the $500 in indirect costs it recovered under the temporary rate for that period. [End of example]

Under the proposed regulations, the grantee would have to obtain prior approval from the Department to shift direct costs to indirect costs. This limitation is needed to ensure that the shifting of funds from direct costs to indirect costs does not result in a change in the scope or objectives of the project. To reduce the potential for adverse budget implications for the Department, the grantee would not be permitted to request additional funds in order to fully recover indirect costs.

Section 75.562 Indirect Cost Rates for Educational Training Projects

The Secretary proposes to amend § 75.562(c) to clarify that—a grantee cannot include the amount of a sub-award[1] that exceeds $25,000 in the modified total direct cost base used to determine and charge its indirect cost rate. For example, if a grantee hired an evaluator for its grant and the sub award to the evaluator cost the grantee $60,000, the grantee could claim only the first $25,000 of that contract in its claim for indirect costs. This exclusion of costs above $25,000 for sub-awards recognizes the fact that the grantee is not responsible for most of the costs of support services that the contractor supplies for its own services to the grantee. That is because the contractor builds those costs into the cost of the contract to the grantee. Also, we note that if the contract is a multi-year contract, the grantee can only recover indirect costs against the first $25,000 of the contract in the first year of the contract because, after the year that the grantee awards the contract, the grantee has no special indirect costs associated with the contract.

These proposed regulations would also clarify that the definition of the word equipment, as used in this section, is the same as the definition of equipment in parts 74 and 80. Under that definition, a grantee may choose to treat as equipment items of useful value of less than $5,000 but, if it does so, all equipment above the lower threshold must be excluded from the modified total direct cost base.

Example: If a grantee has a policy of capitalizing equipment that costs $3,000 or more, then it must exclude all equipment that has a useful value of $3,000 or more from the modified total direct cost base for the project.

Section 75.564 Reimbursement of Indirect Costs

The Secretary proposes to amend § 75.564(e) to clarify the determination of indirect costs for a training grant in the context of a grant to a group of organizations that apply together for a grant under the procedures in 34 CFR 75.127—75.129.

[1] The term "sub-award" as used in the proposed regulation covers both sub grants and contracts made under a grant. However, because virtually all of the Department's discretionary grant programs do not authorize grantees to award sub grants, we only describe in this preamble the effect of the proposed regulation on contracts awarded by grantees.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits—both quantitative and qualitative—of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering the Department's Direct Grant programs effectively and efficiently. In assessing the potential costs and benefits of this regulatory action, we have determined that the benefits would justify the costs.

Summary of Potential Costs and Benefits

These regulations impose no additional burdens on applicants for discretionary grants or recipients of grants. The regulations merely specify the rate at which grantees can recover indirect costs during a temporary period when the grantee does not have an indirect cost rate recognized by the Federal Government and establish procedural requirements regarding temporary indirect cost rates. While these proposed regulations would prohibit a grantee from recovering indirect costs if the grantee has not submitted its indirect cost proposal within the ninety days after the date the Department issues the grant award notification, the burden and timing of submitting a proposal under the federal cost principles does not change at all.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§ " and a numbered heading; for example, *§ 75.210 General selection criteria.*
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities because the proposed regulations do not impose any new burdens at all.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

These proposed regulations affect Direct Grant programs of the Department that are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and to strengthen federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official

edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 75

Administrative practice and procedure, Education Department, Grant programs—education, Grant administration, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

Dated: May 18, 2007.

Margaret Spellings,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 75 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. Section 75.560 is amended by revising paragraphs (b) and (c), redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 75.560 General indirect cost rates; exceptions.

* * * * *

(b) A grantee must have obtained a current indirect cost rate agreement from its cognizant agency, to charge indirect costs to a grant. To obtain an indirect cost rate, a grantee must submit an indirect cost proposal to its cognizant agency within ninety days after the date the Department issues the grant award notification.

(c) If a grantee does not have a federally recognized indirect cost rate agreement, the Secretary may permit the grantee to charge its grant for indirect costs at a temporary rate of ten percent of budgeted direct salaries and wages.

(d)(1) If a grantee fails to submit an indirect cost rate proposal to its cognizant agency within the required ninety days, the grantee may not charge indirect costs to its grant from the end of the ninety-day period until it obtains a federally recognized indirect cost rate agreement applicable to the grant.

(2) If the Secretary determines that exceptional circumstances warrant continuation of a temporary indirect cost rate, the Secretary may authorize the grantee to continue charging indirect costs to its grant at the temporary rate specified in paragraph (c) of this section even though the grantee has not submitted its indirect cost rate proposal within the ninety-day period.

(3) Once a grantee obtains a federally recognized indirect cost rate that is applicable to the affected grant, the grantee may use that indirect cost rate to claim indirect cost reimbursement for expenditures made on or after the date the grantee submitted its indirect cost proposal to its cognizant agency or the start of the project period, whichever is later. However, this authority is subject to the following limitations:

(i) The total amount of funds recovered by the grantee under the federally recognized indirect cost rate is reduced by the amount of indirect costs recovered under the temporary indirect cost rate after the date the indirect cost proposal was submitted to the cognizant agency.

(ii) The grantee must obtain prior approval from the Secretary to shift direct costs to indirect costs in order to recover indirect costs at a higher negotiated indirect cost rate.

(iii) The grantee may not request additional funds to recover indirect costs that cannot be recovered by shifting direct costs to indirect costs.

* * * * *

3. Section 75.562 is amended by revising paragraph (c) to read as follows:

§ 75.562 Indirect cost rates for educational training projects.

* * * * *

(c)(1) Indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less.

(2) For the purposes of this section, a modified total direct cost base consists of total direct costs minus the following:

(i) The amount of each sub-award in excess of $25,000.

(ii) Stipends.

(iii) Tuition and related fees.

(iv) Equipment, as defined in 34 CFR 74.2 and 80.3, as applicable.

Note: If the grantee has established a threshold for equipment that is lower than $5,000 for other purposes, it must use that threshold to exclude equipment under the modified total direct cost base for the purposes of this section.

(3) The eight percent indirect cost reimbursement limit specified in paragraph (c)(1) of this section also applies to sub-awards that fund training, as determined by the Secretary under paragraph (b) of this section.

(4) The eight percent limit does not apply to agencies of State or local governments, including federally recognized Indian tribal governments, as defined in 34 CFR 80.3.

(5) Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

* * * * *

4. Section 75.564 is amended by revising paragraph (e) to read as follows:

§ 75.564 Reimbursement of indirect costs.

* * * * *

(e)(1) Indirect costs for a group of eligible parties (See §§ 75.127–75.129) are limited to the amount derived by applying the rate of the applicant, or a restricted rate when applicable, to the direct cost base for the grant in keeping with the terms of the applicant's federally recognized indirect cost rate agreement.

(2) If a group of eligible parties applies for a training grant under the group application procedures in §§ 75.127–75.129, the grant funds allocated among the members of the group are not considered sub-awards for the purposes of applying the indirect cost rate in 34 CFR 75.562(c).

(Authority: 20 U.S.C. 1221e–3 and 3474)

[FR Doc. E7–10036 Filed 5–23–07; 8:45 am]

BILLING CODE 4000–01–P

POSTAL SERVICE

39 CFR Part 111

Electronic Option for Delivery Confirmation Service Required for Priority Mail Open and Distribute

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service currently allows mailers to use the electronic option for Delivery Confirmation service on Priority Mail Open and Distribute containers. We are proposing to make this optional extra service a requirement.

DATES: Submit comments on or before June 25, 2007.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor North, Washington, DC 20260–0004.

FOR FURTHER INFORMATION CONTACT: Jean Arnao, Package Services, 202–268–7467; or Garry Rodriguez, Mailing Standards, 202–268–7281.

SUPPLEMENTARY INFORMATION: On February 1, 2007, the Postal Service replaced Express Mail Drop Shipment and Priority Mail Drop Shipment with Express Mail Open and Distribute and Priority Mail Open and Distribute. The revised standards were designed to enhance the Postal Service's ability to provide mailers with expedited service to destination delivery units and other mail processing facilities. In the revision, we provided mailers with an option to use the electronic option for Delivery Confirmation service to verify delivery. We offered this option to enable mailers to receive, at no additional cost, vital performance information that includes the date, ZIP Code, and time their Priority Mail Open and Distribute containers are delivered to their destination. The new requirement for electronic option Delivery Confirmation service on all Priority Mail Open and Distribute containers would allow the Postal Service to monitor these mailings by providing increased visibility to the individual mail containers, providing a measurement tool, and effectively communicating to mailers the delivery status of each container.

Our proposal would require mailers to use the electronic option for Delivery Confirmation service for Priority Mail Open and Distribute containers in accordance with instructions in Publication 91, *Confirmation Services Technical Guide*. The required use of the electronic option for Delivery Confirmation service for Priority Mail Open and Distribute containers would be effective October 1, 2007.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

16.0 Express Mail Open and Distribute and Priority Mail Open and Distribute

* * * * *

16.4 Additional Standards for Priority Mail Open and Distribute

* * * * *

16.4.2 Extra Services

[Revise the first sentence in 16.4.2 to require the use of electronic option Delivery Confirmation service on each container of Priority Mail Open and Distribute as follows:]

Electronic option Delivery Confirmation service is required on all Priority Mail Open and Distribute containers. * * *

* * * * *

16.5 Preparation

* * * * *

16.5.4 Tags 161 and 190—Priority Mail Open and Distribute

[Delete item c.]

* * * * *

16.6.7 Delivery Confirmation Service

[Revise the text of 16.6.7 as follows:]

Mailers should prepare address labels on Label 23, Tag 161, and Tag 190, using the formats in 16.6.8 through 16.6.11. A Delivery Confirmation service barcode must be incorporated in the address label (see 16.4.2). Mailers must obtain USPS certification for each printer used to print barcoded Delivery Confirmation service labels. Further certification and formatting specifications are included in Publication 91, *Confirmation Services Technical Guide*.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

Neva Watson,

Attorney, Legislative.

[FR Doc. E7–9967 Filed 5–23–07; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0985–200625; FRL–8317–9]

Approval and Promulgation of Implementation Plans Georgia: Enhanced Inspection and Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revisions submitted by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD), on July 25, 2006, and January 25, 2007, pertaining to rules for Enhanced Inspection and Maintenance (I/M). In the Final Rules Section of this **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 submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before June 25, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2006–0985, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: harder.stacy@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* "EPA–R04–OAR–2006–0985," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such

deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8965. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: May 14, 2007.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

[FR Doc. E7–10059 Filed 5–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 601

[EPA–HQ–OAR–2005–0173; FRL–8317–2]

RIN 2060–AN68

SAFETEA–LU High Occupancy Vehicle Facilities Exemption Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Act, which was signed into law on August 10, 2005, contains provisions which apply to state High Occupancy Vehicle (HOV) facilities. Among other exceptions, SAFETEA–LU Section 1121, which is codified at 23 United States Code (U.S.C.) 166 now allows an exemption from the HOV facility occupancy requirement for vehicles certified as "low emission and energy-efficient." As directed by the 2005 Transportation Act, EPA must issue regulations for certifying vehicles as "low emission and energy-efficient." Specifically, this action proposes the requirements for "low emission and energy-efficient", including procedures for making fuel economy comparisons and the requirements for labeling these vehicles. As the Department of Transportation (DOT) is responsible for the planning and implementation of HOV programs, any changes to HOV programs as a result of this action would also be implemented by DOT and enforced by the individual states that choose to adopt these requirements. As directed by the 2005 Transportation Act, the HOV multiple-occupancy exemption for low emission and energy-efficient vehicle expires September 30, 2009.

DATES: Comments on this Notice of Proposed Rulemaking must be submitted on or before July 9, 2007. A public hearing will be held on June 8, 2007. Requests to present oral testimony must be received on or before June 1, 2007. If EPA receives no requests to present oral testimony by this date, the hearing will be canceled.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0173, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: pugliese.holly@epa.gov.*
- *Fax:* 734–214–4053.
- *Mail:* EPA–OAR–2005–0173, Environmental Protection Agency, 2000 Traverwood. Ann Arbor, MI 48105
- *Hand Delivery:* Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0173. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. EPA recommends that you include your name and other contact information in the body of your comment if you submit an electronic comment or with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105; telephone number: 734–214–4288; fax number: 734–214–4053; e-mail address: *pugliese.holly@epa.gov.*

Access to Rulemaking Documents Through the Internet: This action is available electronically on the date of publication from EPA's **Federal Register** Web site listed below. Electronic versions of this preamble, regulatory language, and other documents associated with this proposal rule are available from the EPA Office of Transportation and Air Quality Web site, listed below, shortly after the rule is signed by the Administrator. These services are free of charge, except any cost that you already incur for connecting to the Internet. EPA **Federal Register** Web site: *http://www.epa.gov/docs/fedrgstr/epa-air/* (either select a desired date or use the Search feature).

EPA Office of Transportation and Air Quality Web site: *http://www.epa.gov/otaq/* (look in What's New or under specific rulemaking topic).

Please note that due to differences between the software used to develop the documents and the software into

which the documents may be downloaded, changes in format, page length, etc., may occur.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Regulated categories and entities covered by this proposal are described in the following table:

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated parties
State governments	92 (Public Admin)	9131 (Exec and Legislative Offices Cmb).	State governments involved with transportation and/or high occupancy vehicle facilities.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) System.

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by this action, you should carefully examine the proposed regulations. You may direct questions regarding the applicability of this action to the person listed in **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting Comments With Confidential Business Information (CBI)

Commenters who wish to submit proprietary information or CBI for consideration should clearly separate such information from other comments by (1) labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**). Do not submit CBI to EPA through the docket, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the CBI must be submitted for inclusion in the public docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

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I. Why Is This Action Being Taken?

On August 10, 2005, President Bush signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59). In general, SAFETEA–LU builds on the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA–21) to supply funds and improve the programmatic framework for investments needed to maintain and grow the U.S. transportation infrastructure. SAFETEA–LU specifically covers Federal surface transportation programs for highways, highway safety, and transit from 2005 until 2009. The HOV facilities provisions of Section 1121 of SAFETEA–LU, which are codified at 23 U.S.C. 166, are the subject of this proposal.

With a number of exceptions described more fully in Section 1121 of SAFETEA–LU, vehicles using HOV facilities must have two or more occupants. One of those exceptions is contained in 23 U.S.C. 166 and provides

an exemption to this occupancy requirement for "inherently low emission" vehicles and other 'low emission and energy-efficient' vehicles. Specifically, SAFETEA–LU added section 166(b)(5)(A) to title 23 of the U.S.C., which permits states to allow vehicles certified as "inherently low emission" vehicles to be exempted from the HOV facility occupancy requirements. "Inherently low emitting" vehicles are defined in title 40 section 88.311–93 of the Code of Federal Regulations (CFR). In addition, 23 U.S.C. 166 allows, but does not require, states to include a new occupancy exemption for the use of "low emission and energy-efficient" vehicles that do not meet the minimum occupancy requirement in HOV facilities. Section 166(e) of 23 U.S.C. lays the groundwork for this proposal. Specifically, it directs EPA to issue regulations for certifying "low emission and energy-efficient vehicles," establishing procedures for making fuel economy comparisons in order to determine qualifying vehicles, and providing requirements for labeling these vehicles. States with HOV facilities may optionally adopt this exemption, which expires September 30, 2009. This expiration date means that, unless Congress issues a reauthorization for the provisions in 23 U.S.C. 166, state programs allowing low emission and energy-efficient vehicles that do not meet the minimum occupancy requirement to use HOV facilities will no longer be federally permitted and low emission and energy-efficient vehicles that do not meet the established occupancy requirement will no longer be eligible to use HOV facilities.

According to section 1121(c) of SAFETEA–LU, it is the sense of Congress to provide additional incentives (including the use of HOV facilities on State and Interstate highways) for the purchase and use of hybrid and other fuel efficient vehicle technologies, which have been proven to reduce exhaust emissions and decrease fossil fuel consumption by the transportation sector.

EPA believes that this proposed rulemaking appropriately meets the requirements of 23 U.S.C. 166 by providing a useful methodology for designating vehicles as low emission and energy-efficient, thereby furthering the intent of Congress.

II. What Are EPA's Proposed Requirements for the Certification of Low Emission and Energy-Efficient Vehicles?

To fulfill the requirements of 23 U.S.C. 166, a low emission and energy-efficient vehicle must meet the definition provided in 23 U.S.C. 166(f)(3). This definition includes separate components for emissions and energy efficiency. The sections below discuss EPA's proposed criteria for determining a "low emission" and "energy-efficient" vehicle, based on the statutory definition.

A. How Is EPA Proposing To Determine a Low Emission Vehicle?

Section 166(f)(3)(A) defines the "low emission" component of a "low emission and energy-efficient" vehicle to be a vehicle that has been certified by EPA as meeting "the Tier II emission level established in regulations prescribed by the EPA under section 202(i) of the Clean Air Act (CAA) for that vehicle's make, model, and model year" ("Tier II" will hereafter be referred to as "Tier 2"). The Tier 2 emission certification standards phase in over time and by vehicle classification. The standards took effect beginning in model year 2004 and will be fully implemented for light-duty vehicles and light light-duty trucks, up to 6000 pounds (lbs.) gross vehicle weight rating (GVWR), in 2007 (40 CFR 86.1811–04(k)). The standards for heavy light-duty trucks, 6000 to 8500 lbs. GVWR, will not be fully implemented until the 2009 model year. The Tier 2 standards also apply to medium-duty passenger vehicles, 8501 to 10,000 lbs. GVWR, but these vehicles are not included in this proposal, as vehicles weighing over 8500 lbs. GVWR are statutorily exempted from federal fuel economy requirements until 2011,[1] as described in 49 U.S.C. 32908(a).

The Tier 2 emission standards are based on a system of emission bins in which light-duty vehicles and light-duty trucks are certified in one of eight bins;[2] Bin 1 represents the cleanest or lowest emitting vehicles, and Bin 8 represents the highest emitting vehicles of the Tier 2 bins. Thus, some Tier 2 vehicles will be more polluting than others. The emission standards for a manufacturer's vehicle fleet must comply on average with the Tier 2 Bin 5 level. Thus, the Tier 2 Bin 5 emission certification levels are the average of the Tier 2 emission levels with lower bins (i.e. 4, 3, 2, or 1) representing lower emitting vehicles and higher bins (i.e. 6, 7, or 8) representing vehicles that are more polluting.

In addition, while 23 U.S.C. 166 specifically mentions the Federal emission certification levels of Tier 2, not all vehicles are certified to comply with federal standards. California has separate emission standards (along with a number of states that have adopted California's emission standards as permitted under Section 177 of the Clean Air Act (42 U.S.C. 7507.), which are generally equivalent to the Tier 2 standards. The current California emission standards are known as Low Emission Vehicle–II (LEV–II) standards (Final Regulation Order as Filed with the Secretary of State, October 28, 1999).[3] California-certified vehicles were required to begin phasing-in to the LEV–II standards in 2004.

The LEV–II standards are grouped in the following categories (listed in order of least to most stringent): Low emission vehicle (LEV), ultra low emission vehicle (ULEV), super low emission vehicle (SULEV), partial zero emission vehicle (PZEV), and zero emission vehicle (ZEV). There are separate emission standards under each of these categories for passenger cars,[4] up to 8500 lbs. GVWR and medium-duty vehicles, 8501–14,000 lbs. GVW. As discussed above, this proposal applies only to vehicles with vehicle weight at or below 8500 lbs. GVWR, so the standards for medium-duty vehicles are not relevant to the proposal.

Since 23 U.S.C. 166 specifies that vehicles meet "the Tier II emission level", and since Tier 2 Bin 5 represents the required manufacturer fleet average, this action proposes that in order to be considered as a "low emission vehicle," a vehicle must comply with Tier 2 Bin 5 or better (Bins 5, 4, 3, 2 and 1). For the purpose of this proposal, we are considering vehicles certified to the California LEV II standards (13 CCR 1961(a)(1)) for passenger cars and light trucks (LEV II, ULEV II, SULEV II, PZEV, and ZEV) as meeting the Tier 2 emission level, because the emission levels required by those standards are equivalent to or more stringent than the Tier 2 Bin 5 level (13 CCR 1961(a)(1)).

There are several reasons why EPA believes it is appropriate to propose that

[1] The National Highway Traffic Safety Administration recently finalized a rulemaking, "Average Fuel Economy Standards for Light Trucks Model Years 2008–2011" (March 29, 2005), that extends fuel economy provisions for CAFE for medium-duty passenger vehicles weighing 8501–10,000 lbs. GVWR. However, these provisions do not take effect until 2011 and thus will not impact this notice. *http://www.nhtsa.dot.gov/stoticfiles/DOT/NHTSA/Rulemaking/Rules/Associoted%20Files/2006FinolRule.pdf*, last viewed 4/5/06.

[2] In actuality, there are up to 11 Bins for Tier 2. However, Bins 9–11 are only interim phase-in bins that expired at the end of the 2006 model year for cars and light trucks.

[3] *http://www.arb.co.gov/msprog/levprog/levii/levii.htm*, last viewed 4/5/06.

[4] California passenger cars include light-duty vehicles and light-duty trucks, including most sport utility vehicles and most large pickup trucks.

a vehicle must meet EPA Tier 2 Bin 5 or better to be designated as "low emission." First, these standards meet the 23 U.S.C. 166 requirement that vehicles meet the Tier 2 emission level, which is best understood to mean the average level. Second, EPA believes it is appropriate to limit the bins to Tier 2 Bin 5 or cleaner, because Bin 5 represents the required manufacturer fleet average emission standard. Any vehicle certified to comply with a less stringent bin would have emission levels higher than the required fleet average, and thus is not reasonably considered a "low emission" vehicle. Third, this proposal is generally consistent with a separate statutory requirement in the Energy Policy Act of 2005 (hereafter referred to as "Energy Act") (Pub. L. 109–58, August 8, 2005) which requires a vehicle to meet, at a minimum, the Tier 2 Bin 5 emission levels, along with a minimum fuel economy, in order to qualify for a motor vehicle tax credit.

Therefore, based on the rationale described above, this action proposes that a "low emission" vehicle must be certified to the EPA Tier 2 Bin 5 or cleaner, or California LEV–II, ULEV–II, SULEV–II, PZEV, and ZEV emission levels for light-duty vehicles and light-duty trucks up to 8500 lbs. GVWR.

B. How Is EPA Proposing To Determine an Energy-Efficient Vehicle?

23 U.S.C. 166 states that a vehicle must be "energy-efficient" in order to be eligible for exemption from the HOV facility occupancy requirements. In particular, section 166(f)(3)(B) states that the term "energy-efficient" vehicle means:

(1) A vehicle that achieves a 50 percent increase in city fuel economy at a minimum or a 25 percent increase in combined city-highway fuel economy at a minimum relative to a comparable gasoline-fueled vehicle, excluding gasoline-hybrid technologies; or

(2) An alternative fuel vehicle.

EPA's proposed methodology for determining a comparable gasoline-fueled vehicle (excluding hybrid technology), and thus determining eligibility for an HOV occupancy exemption based on a fuel economy comparison, is described below. In addition, to help ensure HOV facility performance would not be degraded as a result of the occupancy exemption, 23 U.S.C. 166 provides states with the discretion to require more stringent fuel economy criteria (that is, a greater city or city-highway fuel economy percent increase) for their HOV programs.

In addition to defining an energy-efficient vehicle based on the fuel economy criteria referenced above, 23 U.S.C. 166 allows specified alternative fuel vehicles to be considered as energy-efficient. The specified alternative fuels that are covered by 23 U.S.C. 166, and hence this proposal, are listed in section D below.

1. What Fuel Economy Values Are Being Used To Determine if a Vehicle Is Energy-Efficient?

To ensure that there is no added test burden imposed on manufacturers, we are proposing that the fuel economy values to be used to determine if a vehicle is energy-efficient are the unadjusted city, highway and combined fuel economy values obtained during the fuel economy testing required under the Energy Policy and Conservation Act of 1975 (EPCA). Under EPCA, EPA is required to determine the test methods and calculations for two major fuel economy programs: Corporate Average Fuel Economy (CAFE) and consumer-friendly fuel economy information (city and highway estimates posted on new vehicle labels). The underlying tests specified by EPA are the same for both programs; however, the resulting city, highway, and combined fuel economy results are different.

The CAFE values are based on two tests—the city test and the highway test. The test results are combined by harmonically averaging them, with city weighted 55 percent and highway weighted 45 percent. The combined city-highway fuel economy value is then put through a series of complex calculations to determine the manufacturers' average fuel economy values separately for their entire car and truck fleets.

The label values for 2007 and earlier models are likewise based on the same two city and highway tests. However, the results are adjusted downward (the city by 10 percent and the highway by 22 percent), to better match a driver's real-world fuel economy experience. For 2008 and later models, EPA recently finalized new regulations removing those adjustment factors and instead requiring data from three additional tests to be included in the calculations to bring the estimates even closer to drivers' experience. (71 FR 77872, December 27, 2006). The fuel economy of 2008 and later models will not be able to be easily compared to that of earlier models. Not only would this be more complex to administer, it would create the possibility for consumer confusion in that a 2008 vehicle may not qualify whereas its identical 2007 counterpart would (or vice versa). For that reason, it is less desirable to use the label values as the basis for determining if a vehicle is "energy efficient" under the meaning of 23 U.S.C. 166.

For these reasons, we are therefore proposing that the fuel economy values to be used are the unadjusted city, highway and combined values used to determine CAFE (referred to hereafter as "unadjusted" city, highway, and combined fuel economy). These values provide a more constant baseline for comparison.

2. How Is EPA Proposing To Determine a "Comparable Vehicle"?

The Transportation Act did not specify what criteria EPA should use in determining what a "comparable" vehicle is. There are considerable challenges in determining a "comparable" vehicle. There are infinite parameters against which a comparison could be made. For instance, should the comparison parameters consider similar vehicle weights, similar body designs, similar power ratings, similar make/model names, similar transmission types, similar drive trains, etc. Moreover, EPA, as well as other government agencies, has described, either by regulation or by policy, so-called "comparable" vehicle classes in which vehicles are lumped together based on some sorts of similarities. For the purpose of this proposed rule, we considered three different methods to look at "comparable" vehicles. These are: (1) A hybrid-to-gasoline vehicle comparison (the method we are proposing in this action), (2) a grouping of vehicles into inertia weight classes as specified in the 2005 Energy Act, and (3) a comparison to the "Best in Class", using the comparable classes used by EPA's annual Fuel Economy Guide, which is jointly published by EPA and DOE. Further detail can be found in the Draft Technical Support Document, which has been placed in the docket for this rulemaking (EPA–HQ–OAR–2005–0173).

In choosing a comparison strategy for this proposal, we considered the intent of Congress which, according to 23 U.S.C. 166, was to "provide additional incentives (including the use of HOV facilities on State and Interstate highways) for the purchase and use of hybrid and other fuel efficient vehicles" (23 U.S.C. 166(c)). We also considered the potential for lane degradation caused by allowing more vehicles in HOV facilities as determined by the number of vehicles that would qualify for the occupancy exemption under the comparison strategy. A shorter, more conservative list that highlights truly energy-efficient vehicles would help to minimize any additional vehicle volume added to HOV facilities.

Based on our evaluation of each potential "comparison vehicle" methodology, we are proposing to compare hybrid-electric vehicles to their gasoline counterparts, that is, those of the same or similar make and model type, to see if the fuel economy of the hybrid had the prescribed percent increase over the gasoline model. This method only compares hybrid vehicles to gasoline vehicles, and does not compare any gasoline, diesel, or flexible-fuel vehicles to a gasoline vehicle.[5]

This methodology appears to best reflect the intent of Congress expressed in 23 U.S.C. 166(c) and in the legislative history of this provision.[6]

(1) How does EPA propose to develop baseline fuel economy values for the hybrid-to-gasoline vehicle comparison methodology?

In this method, hybrid vehicles would be compared to their gasoline namesake counterparts (e.g. the Ford Escape Hybrid would be compared to the Ford Escape gasoline model).

However, there are some hybrids that do not have similar gasoline counterparts (e.g. the Honda Insight and the Toyota Prius). For those vehicles, EPA is proposing that the comparison be based on gasoline vehicles within the same comparable class as used EPA's annual Fuel Economy Guide, which is jointly published by EPA and DOE. The median unadjusted fuel economy of all the gasoline vehicles in that class would be determined, and then compared against the hybrid's fuel economy. This comparison would be done separately for each model year. For example, the Honda Insight is classified as a "two-seater." For each model year, we would identify all of the "two-seater" gasoline vehicles and determine the median unadjusted city and unadjusted combined city-highway fuel economy values. These fuel economy values would form the baseline fuel economy values to be used for the Honda Insight comparison.

As fuel economy can vary from year to year, these comparisons must be made separately for each model year.

(2) How is the comparison determined, based on a percent increase in vehicle fuel economy value?

We are proposing the following process for making a fuel economy comparison using the hybrid-to-gasoline vehicle comparison methodology:

(1) Determine the list of all hybrid vehicles (separately for each model year) emission-certified by EPA prior to September 30, 2009.

(2) For hybrid vehicles with a similar gasoline counterpart, compare the unadjusted city and unadjusted combined city-highway fuel economy values to the similar gasoline counterpart.

(3) For hybrid vehicles with no similar gasoline counterpart, calculate the median unadjusted city and/or unadjusted combined city-highway fuel economy values for all gasoline vehicles in the same EPA comparable vehicle class and then compare the hybrid vehicle fuel economy values to the median unadjusted city fuel economy value and the unadjusted city-highway value for the comparison gasoline vehicle.

(4) Evaluate the results according to the following criteria:

If the candidate hybrid vehicle's city fuel economy is 50 percent greater than the city fuel economy value of its gasoline counterpart then the vehicle would qualify as energy-efficient;

If the candidate hybrid vehicle's combined city-highway fuel economy is 25 percent greater than the combined city/fuel economy of its gasoline counter part, then the vehicle would qualify as energy-efficient; or

Conversely, if the hybrid vehicles do not meet either of these required fuel economy thresholds relative to their gasoline counterparts, then the vehicle would not qualify as energy-efficient.

Based on the low emission and energy-efficient vehicle criteria using the hybrid-to-gasoline vehicle comparison methodology described above, the potential lists of vehicles eligible for an HOV occupancy exemption are shown in Tables 1 and 2 below. These lists are based on the most recent certification data available to EPA through model year 2007. This list will be expanded as necessary to include additional 2007–2010 model year vehicles certified by EPA. It is also important to note that an individual state's list may differ from these lists, since states have the option to increase the stringency of the designated fuel economy percent increase values. States do not have the option to increase the emission standard stringency.

TABLE 1.—LIST OF ELIGIBLE LOW EMISSION AND ENERGY-EFFICIENT VEHICLES USING THE HYBRID-TO-GASOLINE VEHICLE COMPARISON METHODOLOGY

MY	Mfr	Vehicle model	Engine family	Tran	Fuel economy guide class	Tier 2 std	Unadj city FE (mpg)	City FE Inc over baseline (%)	Unadj Cmb FE (mpg)	Cmb FE Inc over baseline (%)
CARS										
2003	Honda	Civic Hybrid	3HNXV01.36CV	AV	Compact	B5	52.6	52	56.0	75
2003	Honda	Civic Hybrid	3HNXV01.36CV	M5	Compact	B5	50.0	59	55.7	74
2003	Honda	Insight	3HNXV01.0PCE	AV	Two-seater	B5	62.8	249	66.4	66
2004	Honda	Civic Hybrid	4HNXV01.37CP	AV	Compact	B5	52.6	50	56.0	75
2004	Honda	Civic Hybrid	4HNXV01.37CP	M5	Compact	B5	50.0	42	55.7	74
2004	Honda	Insight	4HNXV01.0NCE	AV	Two-seater	B5	62.8	214	66.4	66
2004	Toyota	Prius	4TYXV01.5MC1	AV	Midsize	B3	66.6	200	65.8	106
2005	Honda	Civic Hybrid	5HNXV01.3YCV	AV	Compact	B2	52.6	50	56.0	41
2005	Honda	Civic Hybrid	5HNXV01.3YCV	M5	Compact	B2	50.0	42	55.7	40
2005	Honda	Insight	5HNXV01.0XCE	AV	Two-seater	B5	62.8	224	66.4	185
2005	Honda	Accord Hybrid	5HNXV03.01B4	L5	Midsize	B5	32.2	37	37.48	32
2005	Toyota	Prius	5TYXV01.5MC1	AV	Midsize	B3	66.6	201	65.6	140

[5] Alternate fuel vehicles are considered "energy-efficient," but not subject to this comparison criterion.

[6] See House Report 109–203, pp. 852–53:

With respect to the determination of fuel economy performance requirements for a low emission or energy efficient vehicle not meeting occupancy requirements that is propelled by on-board hybrid technologies, the conferees have agreed to accept language in the Senate-passed legislation. Under this subsection, a low emission or energy efficient vehicle propelled by hybrid technology may access the HOV lane if the EPA certifies that it has achieved not less than a 50-percent increase in city fuel economy or not less than a 25-percent increase in combined city-highway fuel economy * * *

TABLE 1.—LIST OF ELIGIBLE LOW EMISSION AND ENERGY-EFFICIENT VEHICLES USING THE HYBRID-TO-GASOLINE VEHICLE COMPARISON METHODOLOGY—Continued

MY	Mfr	Vehicle model	Engine family	Tran	Fuel economy guide class	Tier 2 std	Unadj city FE (mpg)	City FE Inc over baseline (%)	Unadj Cmb FE (mpg)	Cmb FE Inc over baseline (%)
2006	Honda	Civic Hybrid	6HNXV01.3XCP	AV	Compact	B2	54.6	62	58.8	51
2006	Honda	Insight	6HNXV01.0VK5	AV	Two-seater	B5	62.8	211	66.4	173
2006	Toyota	Prius	6TYXV01.5MC1	AV	Midsize	B3	66.6	200	65.8	144
2007	Honda	Accord Hybrid	7HNXV03.0ZMC	L5	Midsize	B2	31.3	37	36.3	31
2007	Honda	Civic Hybrid	7HNXV01.3JCP	AV	Compact	B2	54.6	67	58.8	51
2007	Toyota	Camry Hybrid	7TYXV02.4HC1	AV	Midsize	B3	44.2	66	45.9	44
2007	Toyota	Prius	7TYXV01.5HC1	AV	Midsize	B3	66.6	210	65.8	154
			TRUCKS							
2005	Ford	Escape Hybrid 2WD.	5FMXT02.31EE	AV	SUV	B4	39.6	65	39.5	46
2005	Ford	Escape Hybrid 4WD.	5FMXT02.31EE	AV	SUV	B4	36.6	78	36.7	57
2006	Ford	Escape Hybrid 4WD.	6FMXT02.32EE	AV	SUV	B4	36.6	59	36.7	41
2006	Ford	Escape Hybrid FWD.	6FMXT02.32EE	AV	SUV	B4	39.6	59	39.5	42
2006	Lexus	RX 400H 2WD	6TYXT03.3CC1	AV	SUV	B3	36.8	141	36.2	96
2006	Lexus	RX 400H 4WD	6TYXT03.3CC1	AV	SUV	B3	34.3	124	34.3	86
2006	Lexus	Tribute Hybrid 4WD.	6FMXT02.32EE	AV	SUV	B4	36.6	59	36.7	41
2006	Mercury	Mariner Hybrid 4WD.	6FMXT02.32EE	AV	SUV	B4	36.6	75	36.7	53
2006	Toyota	Highlander Hybrid 2WD.	6TYXT03.3CC1	AV	SUV	B3	36.8	72	36.2	45
2006	Toyota	Highlander Hybrid 4WD.	6TYXT03.3CC1	AV	SUV	B3	34.3	67	34.3	42
2007	Ford	Escape Hybrid 2WD.	7FMXT02.32ZE	AV	SUV	B3	35.8	55	36.5	39
2007	Ford	Escape Hybrid FWD.	7FMXT02.32ZE	AV	SUV	B3	41.1	64	40.6	45
2007	Lexus	RX 400H 2WD	7TYXT03.3CC1	AV	SUV	B3	35.7	135	35.0	95
2007	Lexus	RX 400H 4WD	7TYXT03.3CC1	AV	SUV	B3	34.3	126	34.3	91
2007	Mercury	Mariner Hybrid 4WD.	7FMXT02.32ZE	AV	SUV	B3	35.8	55	36.5	39
2007	Toyota	Highlander Hybrid 2WD.	7TYXT03.3CC1	AV	SUV	B3	35.7	67	35.0	40
2007	Toyota	Highlander Hybrid 4WD.	7TYXT03.3CC1	AV	SUV	B3	34.3	52	34.3	32
			DEDICATED ALTERNATIVE FUEL (CNG) VEHICLES							
2003	Honda	Civic—CNG	3HNXV01.73W3		N/A	B2	DEDICATED ALTERNATIVE FUEL (CNG) VEHICLE.			
2004	Honda	Civic—CNG	4HNXV01.74W0		N/A	B2	DEDICATED ALTERNATIVE FUEL (CNG) VEHICLE.			
2005	Honda	Civic—CNG	5HNXV01.7BF3		N/A	B2	DEDICATED ALTERNATIVE FUEL (CNG) VEHICLE.			
2003	Ford	Crown Victoria—CNG.	3FMXV04.6VP5		N/A	B3	DEDICATED ALTERNATIVE FUEL (CNG) VEHICLE.			
2004	Ford	Crown Victoria—CNG.	4FMXV04.6VP5		N/A	B3	DEDICATED ALTERNATIVE FUEL (CNG) VEHICLE.			

Unless noted as a dedicated alternative fuel vehicle, all of the listed vehicles operate on gasoline, and some may also be flexible-fuel vehicles.
MY = Model Year
Mfr = Manufacturer
Tran = Transmission type
Int Wgt = Inertia Weight Class
Std = Standard
Unadj = Unadjusted
FE = Fuel Economy
Inc = Increase
Cmb = Combined city-highway
B = Bin

For states that have adopted the California emission certification standards, based on the California LEV–II (LEV–II, ULEV–II, SULEV–II, and ZEV) emission standards for passenger vehicles and a comparison based on the

hybrid-to-gasoline vehicle comparison methodology or a dedicated alternative fuel vehicle, the proposed list of vehicles eligible for the HOV occupancy exemption is as follows:

TABLE 2.—LIST OF CALIFORNIA-CERTIFIED ELIGIBLE LOW EMISSION AND ENERGY-EFFICIENT VEHICLES USING THE HYBRID-TO-VEHICLE VEHICLE COMPARISON METHODOLOGY

MY	Mfr	Vehicle model	Engine family	Tran	Fuel economy guide class	LEV-II std	Unadj city FE (mpg)	City FE Inc over baseline (%)	Unadj Cmb FE (mpg)	Cmb FE Inc over baseline (%)
CARS										
2003	Honda	Civic Hybrid	3HNXV01.36CV	AV	Compact	S2	52.6	52	56.0	45
2003	Honda	Civic Hybrid	3HNXV01.36CV	M5	Compact	S2	50.0	59	55.7	46
2003	Honda	Insight	3HNXV01.0PCE	AV	Two-Seater	S2	62.8	249	66.4	201
2004	Honda	Civic Hybrid	4HNXV01.37CP	AV	Compact	S2	52.6	50	56.0	41
2004	Honda	Civic Hybrid	4HNXV01.37CP	M5	Compact	S2	50.0	42	55.7	40
2004	Honda	Insight	4HNXV01.0NCE	AV	Two-seater	S2	62.8	214	66.4	177
2004	Toyota	Prius	4TYXV01.5MC1	AV	Midsize	S2	66.6	200	65.8	139
2005	Honda	Civic Hybrid	5HNXV01.3YCV	AV	Midsize	S2	52.6	50	56.0	41
2005	Honda	Civic Hybrid	5HNXV01.3YCV	M5	Compact	S2	50.0	42	55.7	40
2005	Honda	Insight	5HNXV01.0XCE	AV	Compact	S2	62.8	224	66.4	185
2005	Honda	Accord Hybrid	5HNXV03.01B4	L5	Midsize	S2	32.2	37	37.48	32
2005	Toyota	Prius	5TYXV01.5MC1	AV	Two-seater	S2	66.6	201	65.8	140
2006	Honda	Civic Hybrid	6HNXV01.3XCP	AV	Midsize	S2	54.6	62	58.8	51
2006	Honda	Insight	6HNXV01.0VK5	AV	Compact	S2	62.8	211	66.4	173
2006	Toyota	Prius	6TYXV01.5MC1	AV	Two-seater	S2	66.6	200	65.8	144
2007	Honda	Accord Hybrid	7HNXV03.0ZMC	L5	Midsize	S2	31.3	37	36.3	31
2007	Honda	Civic Hybrid	7HNXV01.3JCP	AV	Midsize	S2	54.6	67	58.8	51
2007	Toyota	Camry Hybrid	7TYXV02.4HC1	AV	Midsize	S2	44.2	66	45.9	44
2007	Toyota	Prius	7TYXV01.5HC1	AV	Midsize	S2	66.6	210	65.8	154
TRUCKS										
2005	Ford	Escape Hybrid 2WD.	5FMXT02.31EE	AV	4000	S2	39.6	65	39.5	46
2005	Ford	Escape Hybrid 4WD.	5FMXT02.31EE	AV	4000	S2	36.6	78	36.7	57
2006	Ford	Escape Hybrid 4WD.	6FMXT02.32EE	AV	SUV	S2	36.6	59	36.7	41
2006	Ford	Escape Hybrid FWD.	6FMXT02.32EE	AV	SUV	S2	39.6	59	39.5	42
2006	Lexus	RX 400H 2WD	6TYXT03.3CC1	AV	SUV	S2	36.8	141	36.2	96
2006	Lexus	RX 400H 4WD	6TYXT03.3CC1	AV	SUV	S2	34.3	124	34.3	86
2006	Mazda	Tribute Hybrid 4WD.	6FMXT02.32EE	AV	SUV	S2	36.6	59	36.7	41
2006	Mercury	Mariner Hybrid 4WD.	6FMXT02.32EE	AV	SUV	S2	36.6	75	36.7	53
2006	Toyota	Highlander Hybrid 2WD.	6TYXT03.3CC1	AV	SUV	S2	36.8	72	36.2	45
2006	Toyota	Highlander Hybrid 4WD.	6TYXT03.3CC1	AV	SUV	S2	34.3	67	34.3	42
2007	Ford	Escape Hybrid 4WD.	7FMXT02.32ZE	AV	SUV	S2	35.8	55	36.5	39
2007	Ford	Escape Hybrid FWD.	7FMXT02.32ZE	AV	SUV	S2	41.1	64	40.6	45
2007	Lexus	RX 400H 2WD	7TYXT03.3CC1	AV	SUV	S2	35.7	135	35	95
2007	Lexus	RX 400H 4WD	7TYXT03.3CC1	AV	SUV	S2	34.3	126	34.3	91
2007	Mercury	Mariner Hybrid	7FMXT02.32ZE	AV	SUV	S2	35.8	55	36.5	39
2007	Toyota	Highlander Hybrid 2WD.	7TYXT03.3CC1	AV	SUV	S2	35.7	103	35	69
2007	Toyota	Highlander Hybrid 4WD.	7TYXT03.3CC1	AV	SUV	S2	34.3	52	34.3	32
DEDICATED ALTERNATIVE FUEL (CNG) VEHICLES										
2004	Honda	Civic—CNG	4HNXV01.74W2	N/A		S2	DEDICATED ALTERNATIVE FUEL (CNG) VEHICLE.			
2005	Honda	Civic—CNG	5HNXV01.7BF4	N/A		S2	DEDICATED ALTERNATIVE FUEL (CNG) VEHICLE.			

Unless noted as a dedicated alternative fuel vehicle, all of the listed vehicles operate on gasoline, and some may also be flexible-fuel vehicles.
MY = Model Year
Mfr = Manufacturer
Tran = Transmission

Int Wgt = Inertia Weight Class
Std = Standard
Unadj = Unadjusted
FE = Fuel Economy
Inc = Increase
Cmb = Combined city-highway
S2 = SULEVII
U2 = ULEVII

3. What Other Methods Did EPA Consider for Determining a "Comparable Vehicle"?

(a) Inertia Weight Class Methodology

EPA also considered using inertia weight classes to determine comparable vehicles. This approach would consider all vehicles, regardless of fuel type or technology, as potentially energy-efficient, rather than just hybrid vehicles, as under the hybrid-to-gasoline vehicle comparison method. Thus, any gasoline, diesel, flexible-fuel, or hybrid vehicle could be considered energy-efficient, as long as it meets the fuel economy criteria referenced above.

EPA considered this fuel-neutral approach because, while the legislative history of SAFETEA–LU indicates an intent by Congress to limit this provision to hybrid and alternative fuel vehicles, the statutory provisions enacted by Congress do not explicitly limit this option to those types of vehicles. Additionally, a fuel-neutral approach would encourage fuel efficiency for all types of vehicles, not just hybrid vehicles. On the other hand, this approach would increase the number of vehicles potentially eligible to use HOV facilities under this provision, which could create the potential for substantial HOV lane degradation. We are not proposing this method, but request comment on it.

With the inertia weight class methodology, a comparable vehicle would be based on vehicle inertia weight classes,[7] which are consistent with those prescribed by the 2005 Energy Act. As the inertia weight classes are already defined in the 2005 Energy Act,[8] with an associated baseline city fuel economy value, the definition of a comparable vehicle would be based on the average fuel economy of all gasoline vehicles within the same inertia weight class for a vehicle type (car or truck). A baseline city fuel economy value and a baseline combined city-highway fuel economy value would then be used as the basis for the fuel economy comparison for each inertia weight class, separately for cars and trucks.

The baseline city fuel economy value would be the unadjusted CAFE city fuel economy as described above in section B.1 for the 2002 model year, as specified in the 2005 Energy Act. EPA believes that the baseline city fuel economy in the 2005 Energy Act was derived from gasoline vehicles only (excluding any gasoline-fueled hybrids) based on reverse-calculations using a sales-weighted harmonic average. Further detail on how these calculations were performed can be found in the Draft Technical Support Document, which has been placed in the docket for this rulemaking (EPA–HQ–OAR–2005–0173).

With regard to the baseline model for comparison using the inertia weight class method, we considered it most appropriate to use the model year 2002 data as a baseline for fuel economy comparisons for two reasons. First, the model year 2002 data was chosen in the 2005 Energy Act for alternative motor vehicle tax credit purposes. Second, the EPA Fuel Economy Trends Report (EPA420–R–06–011, July 2006) shows that overall fuel economy has been relatively constant over the past eight model years, except for light truck fuel economy, which has increased for two years. This increase is likely due, at least in part, to higher light-truck CAFE standards. Overall, fuel economy has been influenced by marginal changes in gasoline technology prior to the introduction of hybrid technology.[9] Thus, choosing a 2002 baseline can still be considered an appropriate baseline value for vehicle fuel economy comparisons, as it was calculated with gasoline vehicles whose overall fuel economy performance has remained somewhat constant for many years, except for the increase seen in light trucks over the last two years. Furthermore, applying one baseline for all model year comparisons would reduce time spent generating annual baselines and reduces the need to analyze annual sales data, which is often provided later in the model year than the date when a baseline would be required. Overall, EPA believes this approach would have a benefit of streamlining the implementation of the rule without impacting its effectiveness.

For the inertia weight class methodology, the following process would be used for making a fuel economy comparison:

(1) Sort the list of all potential vehicles (all model years available for sale prior to September 30, 2009) into two categories—car and light-duty truck.

(2) Sort both the car list and the light-duty truck list by inertia weight classes.

(3) Compare each vehicle's unadjusted city and unadjusted combined city-highway fuel economy values to the baseline values separately for cars and trucks.

(4) Calculate the percent increase in fuel economy for a candidate vehicle compared to the baseline for its given inertia weight class.

(5) Evaluate the results according to the following criteria;

a. If the percent increase for city fuel economy is greater than 50 percent over the baseline city fuel economy for the given inertia weight class, then the vehicle would qualify as energy-efficient;

b. If the percent increase for combined city-highway fuel economy is greater than 25 percent over the baseline combined city-highway fuel economy for the given inertia weight class, then the vehicle would qualify as energy-efficient; or

c. Conversely, if the candidate vehicle's fuel economy does not meet these required thresholds when compared to the baseline fuel economy for that inertia weight class category of that vehicle, then the vehicle would not qualify as energy-efficient.

Therefore, to qualify under the inertia weight class methodology, a candidate vehicle must achieve 25 percent or better city fuel economy or 50 percent or better combined city-highway fuel economy than the average of all vehicles in its inertia weight class.

Using this approach, the lists of potentially qualifying vehicles include a few models that fail to achieve the level of the CAFE standard. Therefore, we

[7] Inertia weight classes are determined by EPA regulations at 40 CFR 86.129–94. Inertia weight class is the class into which a vehicle is grouped for testing purposes based on its loaded vehicle weight (nominal empty vehicle weight plus 300 lbs. used for cars and for light-duty trucks up through 6000 lbs. GVWR) or adjusted loaded vehicle weight (average of nominal empty weight and gross vehicle weight rating used for light-duty trucks greater than 6000 lbs. GVWR).

[8] § 30B.1(b)(2)(B)(i) of Internal Revenue Code, 26 U.S.C.

[9] Hellman, Karl, and Robert Heavenrich. "Light-Duty Automotive Technology and Fuel Economy Trends: 1975 Through 2004" (FE Trends). EPA420–R–04–001, 2004.

believe that an additional criterion is necessary to determine if a vehicle is fuel efficient, not only on a relative basis, but on an absolute basis as well. Thus it is appropriate to add an additional comparison criterion, to be used as a "floor" to prevent the inclusion of vehicles which may be fuel efficient relative to others in the same inertia weight class, but which fail to have a combined fuel economy that is higher than 25 percent above the applicable CAFE car or truck standard. For example, the 2007 CAFE standard for light trucks is 22.2 miles per gallon (MPG). In order for a light truck to qualify for use in HOV facilities using the inertia weight class method, it would have to meet a minimum fuel economy of 27.75 MPG in order to qualify. We believe that this additional criterion is in keeping with the Transportation Act requirement that the combined fuel economy be 25 percent better than a comparable gasoline vehicle.

A complete discussion of the inertia weight class methodology, including the list of vehicles that would qualify using this approach, can be found in the Draft Technical Support Document located in the docket for this rulemaking.

EPA requests comment on using the inertia weight class methodology as a means for defining a comparable vehicle.

(b) "Best in Class" Methodology

EPA also considered defining a "comparable vehicle" as the vehicle with the best fuel economy of a particular class of vehicles as defined by the annual Fuel Economy Guide, which is jointly published by EPA and DOE. This approach is not a fuel and technology neutral approach, meaning that it only considers hybrid vehicles. No gasoline, diesel, or flexible-fuel would be considered for an HOV facilities exemption using this methodology. The primary benefit of this approach is that it would result in the smallest list of eligible vehicles and thus have the least potential impact on traffic congestion.

For the "best in class" methodology, the following process would be used for making a fuel economy comparison:

(1) Sort the list of all hybrid vehicles (all model years certified for sale prior to September 30, 2009) by the vehicle classes defined in the annual Fuel Economy Guide (*http://www.fueleconomy.gov/feg/feg2000.htm*) for each model year. The vehicle classes are defined in the Fuel Economy Guide as follows: Two-seater, Minicompact Vehicle, Subcompact Vehicle, Compact Vehicle, Midsize Vehicle, Large Vehicle, Small Station Wagon, Midsize Station Wagon, Large Station Wagon, Small Pickup Truck, Standard Pickup Truck, Passenger Van, Cargo Van, Minivan, Sport Utility Vehicle (SUV), and Special Purpose Vehicle.

(2) For each model year and each vehicle class, determine which gasoline vehicle has the highest unadjusted city and unadjusted city-highway combined fuel economy values. For example, for the 2006 model year, the compact vehicle with the highest unadjusted city and unadjusted combined city-highway fuel economy values is the Toyota Corolla. The Toyota Corolla would be the comparison vehicle for any 2006 hybrid vehicle that is classified as a compact car. In this case, the 2006 Honda Civic hybrid is the only hybrid classified as a compact car.

(3) Compare the hybrid vehicle fuel unadjusted economy values to the unadjusted city fuel economy value and the unadjusted city-highway fuel economy value for the comparison gasoline vehicle.

(4) Evaluate the results according to the following criteria:

- If the percent increase for city fuel economy is greater than 50 percent over the baseline city fuel economy for the given specific vehicle, then the vehicle would qualify as energy-efficient;
- If the percent increase for combined city-highway fuel economy is greater than 25 percent over the baseline combined city-highway fuel economy for the given specific vehicle, then the vehicle would qualify as energy-efficient; or
- Conversely, if the candidate vehicle's fuel economy does not meet these required thresholds when compared to the baseline fuel economy for that class of vehicle, then the vehicle would not qualify as energy-efficient.

A complete discussion of the "best in class" methodology, including the list of vehicles that would qualify using this approach, can be found in the technical support document located in the docket for this rulemaking.

EPA requests comment on using the "best in class" methodology as a means for defining a comparable vehicle.

C. Will All Hybrid Vehicles Qualify for the HOV Facilities Exemption?

(1) Hybrids That Do Not Meet the Low Emission Criterion

As discussed in this proposal, in order for a vehicle to qualify for HOV exemptions, that vehicle must be considered both low-emission and energy-efficient. As discussed above, EPA is proposing that vehicles must be certified to comply with EPA's Tier 2 Bin 5 or cleaner emission standards (or the equivalent CARB emissions standards) in order to be considered as "low emission." When we apply this criterion, there are some hybrid electric vehicles which do not meet the Tier 2 Bin 5 or better threshold. The 2003 Toyota Prius would not qualify for the HOV exemption because it does not meet the Tier 2 Bin 5 or better criterion for "low emission" as proposed in this action. In addition, some versions of the Honda Insight and Honda Civic Hybrid in specific model years would not qualify. To distinguish which versions of the Insight and Civic Hybrid would qualify from those that would not, it is necessary to know the EPA engine family name (also referred to as "test group name"), which is the unique EPA identifier pointing to the manufacturer's emission certification for that vehicle. This identifier is required to be printed on the emission information label located under the hood of every vehicle.

Table 3 below shows the Honda Civic Hybrid and Insight models which would not comply with Tier 2 Bin 5 or better emission standards, along with their model year counterparts which are Bin 5 or better and would therefore qualify for an HOV facilities exemption. These vehicles would not qualify regardless of which fuel efficiency methodology is applied.

TABLE 3.—COMPARISON OF ENGINE FAMILIES/TEST GROUPS THAT WOULD OR WOULD NOT QUALIFY BASED ON THE TIER 2 BIN 5 OR BETTER CRITERION

Model year and name	Engine family/test groups that do not qualify	Engine family/test group that would qualify
2003 Honda Civic Hybrid	3HNXV01.34A5	3HNXV01.36CV
2004 Honda Civic Hybrid	4HNXV01.35A6	4HNXV01.37CP
2005 Honda Civic Hybrid	5HNXV01.33A6	5HNXV01.3YCV
2003 Honda Insight	3HNXV01.01A4	3HNXV01.0PCE

TABLE 3.—COMPARISON OF ENGINE FAMILIES/TEST GROUPS THAT WOULD OR WOULD NOT QUALIFY BASED ON THE TIER 2 BIN 5 OR BETTER CRITERION—Continued

Model year and name	Engine family/test groups that do not qualify	Engine family/test group that would qualify
2004 Honda Insight	4HNXV01.02A6	4HNXV01.0NCE
2005 Honda Insight	5HNXV01.02A6	5HNXV01.0XCE
2006 Honda Insight	6HNXV01.0YJV	6HNXV01.0VK5

(2) Hybrids That Would Not Meet the Fuel Efficiency Criteria

With the hybrid-to-gasoline vehicle comparison methodology, the 2006 Honda Accord Hybrid would not qualify because its unadjusted city and unadjusted city-highway fuel economy values are not above the 25 percent and 50 percent thresholds when compared to the closest Honda Accord gasoline counterpart. In addition, the 2007 Lexus GS450H would not qualify either. Because the 2007 Lexus GS450H, which is classified as a compact car, does not have an identical gasoline counterpart, EPA compared its unadjusted city and unadjusted city-highway fuel economy to the median fuel economy values of all gasoline-fueled 2007 compact cars. When making this comparison, the GS 450H unadjusted city and unadjusted city-highway fuel economy values are not above the 25 percent and 50 percent thresholds and therefore would not qualify for an HOV facilities exemption.

D. What Alternative Fuel Vehicles Could Qualify for the HOV Facilities Exemption?

Alternative fuel vehicles would also qualify as energy-efficient vehicles under the HOV provisions in 23 U.S.C. 166. Congress specified that an alternative fuel vehicle must be operating on the alternative fuel in order to be eligible for an exemption from the HOV facility occupancy requirement. According to Section 166(f)(1) of 23 U.S.C. 166, the term "alternative fuel vehicle" means a vehicle that is operating on:

(1) Methanol, denatured ethanol, or other alcohols;

(2) A mixture containing at least 85 percent of methanol, denatured ethanol, and other alcohols by volume with gasoline or other fuels;

(3) Natural gas;

(4) Liquefied petroleum gas;

(5) Hydrogen;

(6) Coal derived liquid fuels;

(7) Fuels (except alcohol) derived from biological materials;

(8) Electricity (including electricity from solar energy); or

(9) Any other fuel that the Secretary prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits, including fuels regulated under section 490 of title 10, Code of Federal Regulations (or successor regulations).

There are, however, typically three different types of vehicles that might be considered alternative fuel vehicles—flexible-fuel vehicles, which can operate on a designated alternative fuel (such as 85 percent ethanol, 15 percent gasoline, known as E85), on a conventional fuel (such as gasoline), or any blend of the two; dual-fuel vehicles, which have two separate fuel systems allowing them to operate on either an alternative fuel (such as compressed natural gas) or on a conventional fuel (such as gasoline); or dedicated alternative fuel vehicles, which operate solely on a designated alternative fuel.

Since the statute specifies that the vehicle must be operating on the alternative fuel to qualify for the HOV facilities exemption, and there is no way to determine that flex-fuel and dual-fuel vehicles are actually using the designated alternative fuel while they are being operated in an HOV facility, we are proposing to exclude dual-fuel and flex-fuel vehicles from the HOV exemption as "alternative fuel" vehicles. While the computer systems on flex-fuel vehicles are calibrated to operate in different manners depending on what type of fuel the vehicle is operating, a state official trying to enforce the HOV facility exemptions would not be able to visually determine which fuel a flexible-fuel or dual-fuel vehicle is operating on at any given time. Since current enforcement of HOV requirements relies on vehicle labels that can be easily viewed from a distance, verifying that a vehicle is operating on a flexible fuel at any given time would require a more detailed (and potentially traffic-disrupting) interaction between enforcement officials and the driver, such as requiring a receipt showing recent proof of purchase of the alternative fuel. It is also important to note that the actual usage rate of an alternative fuel in a flexible or dual-fuel vehicle is estimated at somewhat less than one percent.[10] Furthermore, while there are around five million flexible-fuel vehicles on the road today, the majority of alternative fuel refueling stations are located in the midwestern states, while the majority of HOV facilities reside in urban areas of Eastern and Western states, making it even more unlikely that these vehicles would actually be using the alternative fuel while in the HOV facilities. There is a national effort underway to increase the availability of alternative fueling stations, especially E85, but it is unlikely that the numbers will increase significantly before the expiration of these HOV exemption provisions.

Therefore, to ensure the enforceability of the HOV occupancy exemption, this notice proposes to allow only dedicated alternative fuel vehicles to be eligible under the "energy-efficient" provision. provided that they also meet the proposed minimum "low-emission" criteria of Tier 2 Bin 5 or cleaner, as described in section II.A.1 above.

The dedicated alternative fuel vehicles that qualify are show above in Tables 1 and 2.

E. How Will EPA Make Available the List of Eligible Vehicles?

EPA is proposing to annually update the list of vehicles which it certifies would be eligible for exemption from the HOV facility requirement based on the low emission and energy-efficient requirements. This list of eligible vehicles would be provided to the Department of Transportation, which is responsible for implementation of HOV facilities, including these new HOV exemption provisions. EPA would also consider the most appropriate way to make the information available to the general public including posting the list on EPA's and DOT's web sites and/or publishing a notice in the **Federal Register**. It is important to note that while states have the flexibility to incorporate this HOV occupancy exemption for low emission and energy-efficient vehicles into their HOV facility

[10] National Highway and Traffic Safety Administration. "Analysis of the Effects of on Energy Conservation and the Environment." *http://www.nhtsa.gov/cars/rules/rulings/CAFE/alternativefuels/analysis.htm.*

programs, they are not required to offer it. In addition, because states have the option to increase the stringency of the designated fuel economy percent increase values, an individual state's list may differ from the list of eligible vehicles made available by EPA. Therefore, a vehicle on EPA's list may not qualify in one or more states depending on how DOT and the states choose to implement these regulations. Vehicle owners interested in the HOV facilities exemption must consult with their state and local transportation authorities to ensure that a particular vehicle qualifies in his or her particular state.

F. What Labeling Requirements Is EPA Proposing for Low Emission and Energy-Efficient Vehicles?

Under 23 U.S.C. 166(e)(1), EPA must supply requirements for labeling low emission and energy-efficient vehicles that are eligible for the HOV occupancy exemption. To date, there are 22 states (AZ, CA, CO, CT, FL, GA, HI, IL, MA, MD, MN, NC, NJ, NY, NV, OR, PA, TN, TX, UT, VA, and WA) in addition to Washington DC with existing HOV facilities.

Under TEA–21 (Pub. L. 105–178, June 9, 1998), states were authorized to temporarily allow single-occupant clean fuel (i.e., alternative fuel) vehicles to use HOV facilities. As a result, many states already have labels. Label formats include decals and license plates, and these labels are used to identify the vehicle as eligible for the HOV occupancy exemption.

An example of California's 2005 decal is depicted in Figure 1. This decal is one of four California decals placed on a vehicle and is color-coded to represent either an alternative fuel (white) or hybrid vehicle (yellow). The sticker has a box where a vehicle identification or registration number is located ("XXXXXXXX" in Figure 1). This number links the vehicle to the decal so that decals cannot be transferred from vehicle to vehicle. Since a vehicle that does not meet the minimum occupancy requirements for use in HOV facilities must have a special designation, the decal registration number provides the state with a method for tracking how many vehicles have qualified for use in HOV facilities. In addition, these existing formats are important for each state's ability to enforce the occupancy exemption allowance of vehicles in its HOV facilities.

Figure 1: Example of California Decal permitting vehicles that do not meet the minimum occupancy requirements for Use in HOV facilities

We are proposing that vehicles allowed in the HOV facilities which do not meet the minimum occupancy requirement be labeled to identify this special occupancy exemption. We are also proposing to allow states to use their existing decals or license plates, provided the format requires the vehicle to be registered within the state of use. Other formats may also be deemed appropriate by the Department of Transportation if they meet all labeling requirements.

We are not proposing to require a single standardized label for a number of reasons. First, EPA does not believe that a federally imposed label would be appropriate, since 23 U.S.C. 166 does not require states to allow low emission and energy-efficient vehicles that do not meet the established occupancy requirements in their HOV facilities. Thus, the requirements for labeling vehicles need to be limited to locales where they are eligible for use in HOV facilities. Moreover, since 23 U.S.C. 166 allows states to increase the stringency of the fuel economy comparison criteria, thereby decreasing the Federal list of eligible vehicles to use HOV facilities, states need flexibility to label only the eligible vehicles, as opposed to labeling all federally eligible vehicles.

Second, since certain states already have labeling methods, they have a developed knowledge and local experience enforcing HOV facilities based on their current labeling method. As a result, it would be potentially time consuming and costly to require states to revise or replace any current labeling method. It would also place an unnecessary inconvenience to vehicle owners to have to change labels.

Third, the most important purpose of the label is to facilitate a state's ability to enforce proper use of its HOV facilities, as well as monitor any degraded operational performance, by ensuring that only eligible low emission and energy-efficient vehicles are permitted in that state's HOV facilities. Thus, the format for a label must provide flexibility for each state to adopt what it believes is most enforceable.

This notice proposes that states would be responsible for printing and/or distributing the labels and, as a result, states could charge a registration fee for issuing a label to an owner. In addition, states would be responsible for tracking the labels by linking each label to a specific vehicle, through a registration number such as that depicted on Figure 1 or by the license plate number on

license plate formats. States would have to include information on the label that distinguishes a vehicle as low emission and as energy-efficient; wording such as that on California's decal (such as "Clean Air Vehicle") in addition to color coding to distinguish between alternative fuel and meeting fuel economy requirements would be deemed acceptable. Thus options that states may want to consider for designating a vehicle as an eligible low emission and energy-efficient vehicle may include, but are not limited to, wording or color coding.

EPA requests comment on how states with HOV facilities that border other states with HOV facilities (e.g. Virginia and Maryland), would address implementation and enforcement of the HOV facilities exemption.

In summary, with respect to vehicle labeling requirements, this action proposes that:

- Low emission and energy-efficient vehicles would be required to be labeled for the use in HOV facilities with easily visible labels for enforcement purposes;
- Labels already implemented by States would be acceptable for continued use. Any state with an HOV facility that does not have an existing label would be required to develop one based on the formats already accepted or create a new format which includes all proposed requirements and subject to approval by the Department of Transportation;
- Labels have a registration number that would link the label to the particular vehicle so that labels could not be transferred;
- States are responsible for printing and/or distributing the labels;
- Labels easily identify low emission and energy-efficient vehicles that are exempted from the HOV occupancy requirements and therefore permitted to use HOV facilities, based on factors such as, location, color, and wording that designates the vehicle as low emission and energy-efficient; and
- States must include an expiration date on their labels.

We believe it would be most appropriate for states to develop labels for purposes of identifying vehicles that qualify to be used in HOV facilities. However, we are seeking comment on the potential use of a federally-developed labeling program. By way of example, EPA has developed a voluntary "SmartWay" program that includes a variety of ways to reduce greenhouse gas and air pollution across a number of different industry sectors. While the program success to date has primarily been in the heavy-duty sector, SmartWay criteria have been established to designate light-duty vehicles that are environmental leaders, in terms of greenhouse gas and air pollution. There are two stringency levels for SmartWay vehicles: SmartWay and SmartWay Elite. Currently, these designations are used only on EPA's Green Vehicle Guide web site, which is targeted at car-buyers. The SmartWay logo used is shown in Figure 2 below.

Figure 2: SmartWay Logo

There are currently no "decals" or "stickers" to place on vehicles, nor has EPA established guidelines to car makers to do so. However, if EPA were to specify a format, the SmartWay logo could potentially serve this purpose.

EPA seeks comment on the usefulness and feasibility of a permanent federal SmartWay label on eligible vehicles as a potential component of the HOV labeling requirement.

G. What Impacts Are Associated With This Rulemaking?

The main impact associated with this rulemaking is the impact consistent with the Congressional intent to provide non-financial incentives to increase the purchase of hybrids and other fuel efficient vehicles (23 U.S.C. 166(c)) as an alternative to higher emitting and less fuel efficient vehicles. There is some evidence supporting Congress' intent that this incentive would help increase interest in purchasing low emission and fuel efficient vehicles. For instance, in the State of Virginia, the HOV allowance for hybrid-electric vehicles that do not meet the established occupancy requirement proved to increase the use of hybrids by threefold from 2003 to 2004.[11] In Virginia, for 2004, an increase of 4300 hybrid vehicles means a reduction in carbon dioxide of 430–1720 lbs. per mile. Even after the occupancy exemption for low emission and energy-efficient vehicles in HOV facilities expires in September 2009, the benefit of introducing these vehicles into each state's fleet remain due to the improved fuel efficiency. Thus, 23 U.S.C. 166 has predetermined that there are benefits to this allowance. There are no foreseen adverse economic or air quality impacts associated with providing a comparison methodology through this rulemaking, as described below.

1. What Are the Economic Impacts?

There are no anticipated economic impacts of this proposal as there are no associated costs. The HOV exemption for low emission and energy-efficient vehicles is an optional exemption. 23 U.S.C. 166 is explicit that states are not required to implement this exemption, but may voluntarily choose to implement this exemption. Thus, there are no required costs for any state to implement an HOV exemption. While states that voluntarily choose to implement the HOV facility exemption are responsible for ensuring that HOV facilities do not become overcrowded; enforcing the use of HOV facilities by the exempted vehicles; and issuing labels for the vehicles, there are compensation mechanisms in place. For instance, states could charge for the label, and enforcement provisions can result in collected fines. Moreover, as 23

[11] Second Report of the High Occupancy Vehicle Enforcement Task Force, January 4, 2005, *http://www.vdot.virginia.gov/infoservice/news/newsrelease.asp?ID=NOVA-NR05-02.*

U.S.C. 166 prescribed, states have authority to charge a toll for low emission and energy-efficient vehicles that do not meet the occupancy requirement in HOV facilities.

2. What Are the Congestion Impacts on HOV Facilities?

Since there are relatively few HOV facilities that currently allow environmentally-friendly vehicles, data on the potential impact of hybrid vehicles on HOV facilities is limited.

The best publicly available information comes from a report by the Virginia Department of Transportation's High-Occupancy Vehicle Enforcement Task Force dated January 4, 2005. This report illustrates that the growth in the number of clean special fuel license plates issued in Virginia has increased significantly since hybrid vehicles became available. In fall 2003, hybrid vehicles accounted for between two percent and 12 percent of the peak-period volumes in the HOV lanes in northern Virginia. In the fall of 2004, hybrid vehicles accounted for between 11 percent and 17 percent of vehicles in the I–95 HOV lanes during the three-hour morning peak-period. The actual number of hybrids during the morning peak period ranged from 844 to 1,422 and the corresponding total vehicle volumes in the HOV lane ranged from 7,994 to 8,450. While we do not have more current data, we would expect that these percentages have continued to grow over the last two years.

The Task Force report concluded that, "The rapid growth in hybrids has helped push the I–95 HOV lanes beyond the recommended HOV operating capacity, which is 1,500 to 1,800 vehicles per lane, per hour. The Task Force recommends that only the cleanest hybrid vehicles be allowed to use the HOV lanes and that the current hybrid exemption from HOV restrictions expire in 2006, as provided in the current Virginia law." [12] Subsequent to the report, Virginia did not let the hybrid exemption expire, but instead capped the number of hybrid vehicle plates.

For demonstration purposes, EPA has also estimated the potential number of vehicles that are projected to be available for sale nationwide in the 2007 model year for each of the comparable vehicle methodologies described above (see Table 4 below).

TABLE 4.—POTENTIAL NUMBER OF ELIGIBLE VEHICLES BASED ON NATIONWIDE SALES FOR EACH VEHICLE COMPARISON METHODOLOGY

Model year	Hybrid-to-Gasoline comparison	Inertia weight comparison	Hybrid-to-"Best in Class" comparison
2003	33593	33593	1011
2004	71334	71334	48513
2005	105505	238424	79773
2006	213338	328250	124536
2007	326245	665157	147583
Total	750015	1336758	401416

These values include actual sales data whenever it is available. In cases where actual sales data is unavailable, we used projected sales data that are provided to EPA by each manufacturer. In addition, these values reflect nationwide sales data. Without state by state vehicle registration data, it is not possible to estimate with any accuracy the actual vehicles that are used in areas with HOV occupancy exemptions.

3. What Are the Other Impacts?

There are no associated adverse air quality impacts of this proposal. 23 U.S.C. 166 requires EPA to codify a procedure for certifying low emission and energy-efficient vehicles and places the responsibility on individual states to determine if an HOV exemption for low emission and energy-efficient vehicles benefits or impedes the air quality goals of that state. As a result, 23 U.S.C. 166 provides mechanisms to ensure that such an exemption does not adversely impact air quality.

First, 23 U.S.C. 166 designates the HOV exemption for low emission and energy-efficient vehicles as a voluntary program. Thus, a state chooses whether this exemption meets its needs or not. Second, 23 U.S.C. 166 allows states to increase the fuel economy thresholds per the energy-efficient designation in order to further minimize the number of vehicles which qualify as low emission and energy-efficient, thereby managing the number of exempted vehicles using the limited excess capacity of HOV facilities. Third, 23 U.S.C. 166 requires states that choose to implement this HOV exemption to ensure that the HOV facilities are not overburdened by the addition of exempted vehicles and provides minimum operating speed guidelines for assessing HOV facility degradation. Finally, EPA is proposing regulations to ensure that only the "cleanest" of the Tier 2 fleet qualify as "low emission" and the minimum number of truly energy-efficient vehicles qualify as "energy-efficient." Therefore, these four safeguards form our belief that there would be no adverse environmental impacts due to the HOV exemption for low emission and energy-efficient vehicles.

III. Request for Comments

Although EPA requests comments on all aspects of this proposal, we are specifically requesting comment on the following topics proposed in this action:

- Eligibility for a low emission vehicle based on Tier 2 Bin 5 or cleaner for light-duty vehicles, or comparable California LEV–II or cleaner for passenger vehicles to comply with the 23 U.S.C. 166 Tier 2 requirements.
- Use of a hybrid-to-gasoline vehicle comparison methodology to determine vehicle eligibility.
- Use of a "best in class" methodology to determine vehicle eligibility.
- Eligibility for an energy-efficient vehicle based on operating on an alternative fuel limited to dedicated alternative fuel vehicles only.
- Necessity of a Federal versus state-by-state labeling system.
- Proposed labeling requirements, as well as any necessary enforcement

[12] Second Report of the High Occupancy Vehicle Enforcement Task Force, January 4, 2005, *http://www.vdot.virginia.gov/infoservice/news/newsrelease.asp?ID=NOVA-NR05-02.*

provisions that should be required on a label.

The following topics were not proposed in this action, but EPA is specifically requesting comment on them:

- Use of an inertia weight class methodology to determine vehicle eligibility.
- For the inertia weight class methodology, the usefulness of requiring an additional criterion that any vehicle which meets the low emissions and criteria must also have an unadjusted combined fuel economy that is at least 25 percent higher than the applicable car or truck CAFE standard.
- The availability of technology or other methodology that can demonstrate when a flexible-fuel vehicle is operating on an alternative fuel versus a conventional fuel.
- Data indicating the extent to which flexible-fuel vehicles are operating on the alternative fuel in an area or region.

IV. What Are the Opportunities for Public Participation?

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

We are opening a formal comment period by publishing this document. We will accept comments for the period indicated under **DATES** above. If EPA receives requests to present oral testimony, a public hearing will be scheduled. Information regarding the timing for requesting a public hearing is indicated under **DATES** above.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the proposal, we encourage you to suggest and analyze alternate approaches to meeting the goals described in this proposal. You should send all comments, except those containing proprietary information, to our Docket (see **ADDRESSES**) before the end of the comment period.

A. Copies of This Proposal and Other Related Information

1. Docket

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OAR–2005–0173. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include confidential business information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing by referencing Docket No. EPA–HQ–OAR–2005–0173 (see **ADDRESSES**).

You may submit comments electronically, by mail, or through hand delivery/courier as described below. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked late. EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Section IV.C. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official 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 appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing (see **DATES**) should notify the general contact person (see **FOR FURTHER INFORMATION CONTACT**) no later than five days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. Testimony will be scheduled on a first come, first served basis. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first come, first served basis following the previously scheduled testimony.

EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submissions should be directed to Docket No. EPA–HQ–OAR–2005–0173 (see **ADDRESSES**). The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

V. What Are the Administrative Requirements for This Proposed Rule?

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. This action does not require any state to implement the provisions of this action. In addition, this action does not require that any information is collected, but rather supplies guidance and a comparison methodology for generating a list of eligible low emission and energy-efficient vehicles that are exempted from the HOV occupancy requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposal on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration 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 this proposed rule on small entities, EPA certifies that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule would not impose any requirements on small entities. This action proposes regulations for defining low emission and energy-efficient vehicles and for labeling these vehicles in HOV facilities, according to the provisions defined by Congress in SAFETEA–LU. As also prescribed by Congress, these definitions and comparison strategies are implemented optionally by the states; there is no requirement that a state would have to allow low emission and energy-efficient vehicles to use the HOV facilities. Furthermore, this action proposes a flexible format for labeling vehicles, so as to minimize the burden on states with existing HOV programs and labeling strategies. We have therefore concluded that this proposed rule would not impact, or would have a neutral impact on, burden for all small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

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 to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposal contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. This action proposes to implement mandates specifically and explicitly set forth by the Congress in SAFETEA–LU without the exercise of any policy discretion by EPA, and the proposal would impose no enforceable duty on any state, local or tribal governments or the private sector. This proposal provides clarification on determining whether a vehicle is low emission and energy-efficient and a comparison strategy for designating a comparable vehicle for performing fuel economy percent increase calculations. This action was prescribed by Congress,

and SAFETEA–LU is explicit that states are not required to adopt these provisions. Instead, participation in this program would be voluntary and would allow voluntary measures to increase the stringency of the comparison strategy to meet individual state's needs.

EPA has determined that this proposal does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. These provisions are applicable for states with existing HOV facilities and do not require any state to install HOV facilities. In addition, the labeling requirements have been proposed as flexible in order to avoid causing expenditures on a new method of labeling vehicles in states where labeling systems already exists. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The provisions in this proposed rule do not require that a state implement them, and the stringency of the provisions can be optionally increased. This proposed rule defines requirements that could be used to implement HOV occupancy exemptions for low emission and energy-efficient vehicles, but provides ample flexibility for states to decide whether or not to implement and/or whether or not to increase stringency. Thus, Executive Order 13132 does not apply to this proposal. Although section 6 of Executive Order 13132 does not apply to this proposal, EPA did consult with representatives of state and local governments in developing it. The conversations resulted in requests for flexibility in labeling and allowing states to determine any implementation or enforcement provisions. This action would allow both.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule would not have tribal implications, as specified in Executive Order 13175. This proposed rule would apply to state highways with HOV facilities, and involves state governments and/or transportation entities if a state chooses to implement the rule. Thus, Executive Order 13175 does not apply to this proposed rule.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, 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. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This proposed rule is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is the result of a directive by 23 U.S.C. 166 to codify the certification of low emission and energy-efficient vehicles. The sense of Congress is to "provide additional incentives (including the use of high occupancy vehicle facilities on State and Interstate highways) for the purchase and use of hybrid and other fuel efficient vehicles, which have been proven to minimize air emissions and decrease consumption of fossil fuels" (Section 1121(c) of 23 U.S.C. 166). This intent demonstrates Congress's belief that this rule would not have adverse effects on the supply, distribution, or use of energy. In fact, the HOV occupancy exemption provision for "low emission and energy-efficient" vehicles should have a positive effect, reducing the effect on the supply, distribution, or use of energy by encouraging the purchase and use of fuel efficient vehicles. Thus, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

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

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to

explain why such standards should be used in this regulation.

VI. What Are the Statutory Provisions and Legal Authority for This Proposed Rule?

Statutory authority for this action is found in 23 U.S.C. 166. This action is being proposed under the administrative and procedural provisions of the Administrative Procedures Act, 5 U.S.C. 553.

List of Subjects in 40 CFR Part 601

Environmental protection, Administrative practice and procedure, Fuel economy, Reporting and recordkeeping requirements.

Dated: May 16, 2007.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, title 40 Chapter I of the Code of Federal Regulations is proposed to be amended by adding a new part 601 as follows:

PART 601—QUALIFICATION CRITERIA FOR LOW EMISSION AND ENERGY-EFFICIENT VEHICLES

Sec.

601.1 General applicability.
601.2 Definitions.
601.3 Abbreviations.
601.4 Criteria for qualifying as a low emission and energy-efficient vehicle.
601.5 Criteria for qualifying as a low emission vehicle.
601.6 Criteria for qualifying as an energy-efficient vehicle.
601.7 Criteria for determining a comparable gasoline-fueled vehicle based upon the unadjusted city fuel economy.
601.8 Criteria for determining a comparable gasoline-fueled vehicle based upon the unadjusted combined city-highway fuel economy.
601.9 How to determine if a candidate vehicle meets the "energy-efficient" criteria based on fuel economy.
601.10 Certification requirements.
601.11 Labeling requirements for low emission and energy-efficient vehicles.

Authority: 23 U.S.C. 166.

§ 601.1 General applicability.

The provisions of this part are applicable to 2002 and later model year vehicles that may qualify for use in high occupancy vehicle facilities in states that elect to allow such use. These provisions expire on September 30, 2009.

§ 601.2 Definitions.

Any terms defined in 40 CFR parts 86 and 600 and not defined in this part shall have the meaning given them in §§ 86.1803 and 600.002 of this chapter.

Alternative fuel vehicle means a vehicle that is operating on—

(1) Methanol, denatured ethanol, or other alcohols;

(2) A mixture containing at least 85 percent of methanol, denatured ethanol, and other alcohols by volume with gasoline or other fuels;

(3) Natural gas;

(4) Liquefied petroleum gas;

(5) Hydrogen;

(6) Coal derived liquid fuels;

(7) Fuels (except alcohol) derived from biological materials;

(8) Electricity (including electricity from solar energy); or

(9) Any other fuel that the Secretary of Transportation prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits, including fuels regulated under section 490 of title 10, Code of Federal Regulations (or successor regulations).

Unadjusted city fuel economy means the model type city fuel economy as calculated in 40 CFR 600.207–93.

Unadjusted combined city-highway fuel economy means the model type combined fuel economy as calculated in 40 CFR 600.207–93.

§ 601.3 Abbreviations.

The abbreviations of 40 CFR parts 86 and 600 also apply to this part. The abbreviations in this section apply to this part only.

HOV means High Occupancy Vehicle.

§ 601.4 Criteria for qualifying as a low emission and energy-efficient vehicle.

In order to meet the criteria for being certified as a low emission and energy-efficient vehicle under this part, a vehicle must meet the criteria for qualifying as a low emission vehicle under § 601.5 and must meet the criteria for qualifying as an energy-efficient vehicle under § 601.6. A state that elects to allow low emission and energy-efficient vehicles to use HOV facilities may require that a vehicle meet a level of comparative percentage increase in fuel economy that is greater than the percentages in § 601.6(b) and (c) in order to qualify as a low emission and energy-efficient vehicle in that state.

§ 601.5 Criteria for qualifying as a low emission vehicle.

Light-duty vehicles and light-duty trucks up to 8500 lbs. GVWR must be certified by the U.S. Environmental Protection Agency as meeting emission standards that are as or more stringent than the Tier 2 Bin 5 emission standard as specified in Table S04–1 of 40 CFR 86.1811–04.

§ 601.6 Criteria for qualifying as an energy-efficient vehicle.

Light-duty vehicles and light-duty trucks up to 8500 lbs. GVWR must be certified by the U.S. Environmental Protection Agency as meeting the criteria of either paragraph (a) or (b) of this section:

(a) It is an alternative fuel vehicle. This does not include flexible-fuel or dual-fuel vehicles.

(b) It meets one of the unadjusted fuel economy criteria in this paragraph:

(1) The unadjusted city fuel economy of the vehicle must be at least 50 percent higher than the city fuel economy of a comparable gasoline-fueled vehicle, as determined in § 601.7; or

(2) The unadjusted combined city-highway fuel economy of the vehicle must be at least 25 percent higher than the unadjusted combined city-highway fuel economy of a comparable gasoline-fueled vehicle, as determined in § 601.8.

§ 601.7 Criteria for determining a comparable gasoline-fueled vehicle based upon unadjusted city fuel economy.

(a) For hybrid vehicles with a similar gasoline counterpart (e.g. same make/model), the Administrator will compare the unadjusted city fuel economy value as determined under 40 CFR 600.207–93 of a candidate hybrid vehicle, to the unadjusted city fuel economy value of the similar gasoline counterpart.

(b) For hybrid vehicles with no similar gasoline counterpart, the Administrator will determine the candidate vehicle by calculating the median unadjusted city fuel economy values for all gasoline vehicles in the same comparable vehicle class as defined in EPA's annual Fuel Economy Guide, which is jointly published by EPA and DOE. The Administrator will then compare the unadjusted city fuel economy value of the candidate hybrid vehicle, as determined under 40 CFR 600.207–93, to the median unadjusted city fuel economy value for the comparison gasoline vehicle in same vehicle class.

§ 601.8 Criteria for determining a comparable gasoline-fueled vehicle based upon the unadjusted combined city-highway fuel economy.

(a) For hybrid vehicles with a similar gasoline counterpart (e.g. same make/model), the Administrator will compare the unadjusted combined city-highway fuel economy value of the candidate hybrid vehicle, as determined under 40 CFR 600.207–93, to the unadjusted combined city-highway fuel economy value of the similar gasoline counterpart.

(b) For hybrid vehicles with no similar gasoline counterpart, the Administrator will determine the candidate vehicle by calculating the median unadjusted combined city-highway fuel economy values for all gasoline vehicles in the same comparable vehicle class as used in the annual Fuel Economy Guide published jointly by EPA and the Department of Energy. The Administrator will then compare the unadjusted combined city-highway fuel economy value of the candidate hybrid vehicle, as determined under 40 CFR 600.207–93, to the median unadjusted combined city-highway fuel economy value for the comparison gasoline vehicle in same vehicle class.

§ 601.9 How to determine if a candidate vehicle meets the "energy-efficient" criteria based on fuel economy.

(a) The Administrator will compare the candidate vehicle's unadjusted city fuel economy and unadjusted combined city-highway fuel economy to the city fuel economy values and combined-city highway fuel economy values for the applicable gasoline comparable vehicle as described in §§ 601.7 and 601.8.

(b) A candidate vehicle qualifies as energy-efficient if it meets either of the following fuel economy criteria:

(1) The percent increase for the unadjusted city fuel economy is greater than 50 percent over the baseline city fuel economy of the comparable vehicle; or

(2) The percent increase for the unadjusted combined city-highway fuel economy is greater than 25 percent over the baseline combined city-highway fuel economy of the comparable vehicle.

§ 601.10 Certification requirements.

The Administrator will annually certify those vehicles that qualify as low emission and energy-efficient vehicles, as determined in § 601.4 and provide a list of certified vehicles to the Department of Transportation.

§ 601.11 Labeling requirements for low emission and energy-efficient vehicles.

(a) States that elect to allow low emission and energy-efficient vehicles to use HOV facilities must label low emission and energy-efficient vehicles for usage in HOV facilities in a manner that allows state enforcement officials to easily identify these vehicles.

(b) States with existing programs to allow the use of low emission and energy-efficient vehicles in HOV facilities may continue to use the labels they have designed for use in such programs, as long as they meet the other requirements of this section. States without labels must develop labels based on existing formats, i.e., decals or license plates, and the criteria in § 601.11.

(c) States are responsible for printing and/or distributing the labels and may charge a registration fee for issuing a label to an owner.

(d) Labels must identify the vehicle as low emission and energy-efficient by such means as specific wording and/or color coding.

(e) Labels must contain an identifier that is unique to the specific vehicle such that they could not be transferred.

[FR Doc. E7–9821 Filed 5–23–07; 8:45 am]
BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 72, No. 100
Thursday, May 24, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces our intention to request a three year extension of a currently approved information collection in support of the reporting and recordkeeping requirements under the Clear Title program. This approval is required under the Paperwork Reduction Act.

DATES: We will consider comments that we receive by July 23, 2007.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *E-Mail:* Send comments via electronic mail to *comments.gipsa@usda.gov*.
- *Mail:* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Fax:* Send comments by facsimile transmission to: (202) 690–2755.
- *Hand Delivery or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.

Instructions: All comments should make reference to the date and page number of this issue of the **Federal Register**.

Background Documents: Information collection package and other documents relating to this action will be available for public inspection in the above office during regular business hours.

Read Comments: All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: For information regarding the information collection activities and the use of the information, contact Catherine Grasso at, (202)720–7201 or *Catherine.M.Grasso@usda.gov*.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers the Clear Title program for the Secretary of Agriculture. The Clear Title program is authorized by Section 1324 of the Food Security Act of 1985 and requires that States implementing central filing system for notification of liens on farm products must have such systems certified by the Secretary of Agriculture. The regulations implementing the Clear Title program are contained in 9 CFR part 205, Clear Title-Protection for Purchasers of Farm Products. Nineteen States currently have certified central filing systems.

Title: "Clear Title" Regulations to implement section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631).

OMB Number: 0580–0016.

Expiration Date of Approval: November 30, 2007.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The information is needed to carry out the Secretary's responsibility for certifying a State's central filing system under section 1324 of the Food Security Act of 1985. Section 1324 of the Food Security Act of 1985 enables States to establish central filing systems to notify potential buyers, commission merchants, and selling agents of security interests (liens) against farm products. The Secretary of Agriculture has delegated authority to GIPSA for certifying the systems. Nineteen States have certified central filing systems. The purpose of this notice is to solicit comments from the public concerning our information collection.

Estimate of Burden: Public reporting and recordkeeping burden for this collection of information is estimated to be 5 to 40 hours per response (amendments to certified systems require less time, new certifications require more time).

Respondents (Affected Public): States seeking certification of central filing systems to notify buyers of farm products of any mortgages or liens on the products.

Estimated Number of Respondents: Less than 1 per year. Since 2004, one State requested an amendment to its certification. However, a change to the Clear Title enabling legislation and subsequent change in the regulations allowing States to use an approved unique identifier number other than a social security number may result in a larger number of amendments in the next several years.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5–40 hours.

As required by the Paperwork Reduction Act (44 U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), we specifically request 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 will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden on 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.

All responses to this notice will be summarized and included in the request for the Office of Management and Budget approval. All comments will also become a matter of public record.

Authority: 44 U.S.C. 3506 and 5 CFR 1320.8.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E7–10050 Filed 5–23–07; 8:45 am]
BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces our intention to request a three year extension and revision of a currently approved information collection in support of the reporting and recordkeeping requirements under the Packers and Stockyards Act. This approval is required under the Paperwork Reduction Act.

DATES: We will consider comments that we receive by July 23, 2007.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *E-Mail:* Send comments via electronic mail to *comments.gipsa@usda.gov.*
- *Mail:* Send hard copy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Fax:* Send comments by facsimile transmission to: (202) 690–2755.
- *Hand Delivery or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All comments should make reference to the date and page number of this issue of the **Federal Register**.

Background Documents: Information collection package and other documents relating to this action will be available for public inspection in the above office during regular business hours.

Read Comments: All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: For information regarding the information collection activities and the use of the information, contact Catherine Grasso at (202) 720–7201 or *Catherine.M.Grasso@usda.gov.*

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181–229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Title: Packers and Stockyards Programs Reporting and Recordkeeping Requirements.

OMB Number: 0580–0015.

Expiration Date of Approval: November 30, 2007.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The P&S Act and the regulations under the P&S Act authorize the collection of information for the purpose of enforcing the P&S Act and regulations and to conduct studies as requested by Congress. The information is needed for GIPSA to carry out its responsibilities under the P&S Act. The information is necessary to monitor and examine financial, competitive, and trade practices in the livestock, meat packing, and poultry industries. The purpose of this notice is to solicit comments from the public concerning our information collection.

Estimate of Burden: Public reporting and recordkeeping burden for this collection of information is estimated to average 8.5 hours per response.

Respondents (Affected Public): Livestock auction markets, livestock dealers, packer buyers, meat packers, and live poultry dealers.

Estimated Number of Respondents: 10,950.

Estimated Number of Responses per Respondent: 3.3.

Estimated Total Annual Burden on Respondents: 304,106 hours.

Copies of this information collection can be obtained from Tess Butler; see **ADDRESSES** section for contact information.

As required by the Paperwork Reduction Act (44U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), we specifically request 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 will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden on 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.

All responses to this notice will be summarized and included in the request for the Office of Management and Budget approval. All comments will also become a matter of public record.

Authority: 44 U.S.C. 3506 and 5 CFR 1320.8.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E7–10051 Filed 5–23–07; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA47

Endangered and Threatened Species; Recovery Plans

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

ACTION: Notice of availability; recovery plan

SUMMARY: The National Marine Fisheries Service (NMFS) announces the adoption of an Endangered Species Act (ESA) Recovery Plan (Recovery Plan) for the Hood Canal and Eastern Strait of Juan de Fuca Summer Chum Salmon (*Oncorhynchus keta*) Evolutionarily Significant Unit (ESU). The Recovery Plan consists of two documents: the Hood Canal and Eastern Strait of Juan de Fuca Summer Chum Salmon Recovery Plan prepared by the Hood Canal Coordinating Council (HCCC Plan), and a NMFS Final Supplement to the HCCC Plan (Supplement). The Final Supplement contains revisions and additions in consideration of public comments on the proposed Recovery Plan for Hood Canal summer chum salmon.

ADDRESSES: Additional information about the Recovery Plan may be obtained by writing to Elizabeth Babcock, National Marine Fisheries Service, 7600 Sandpoint Way N.E., Seattle, WA 98115, or calling (206) 526–4505.

Electronic copies of the Recovery Plan and the summary of and response to public comments on the proposed Recovery Plan are available online at *www.nwr.noaa.gov/Salmon Recovery Planning/Recovery Domains/Puget Sound/Index.cfm*, or the Hood Canal Coordinating Council website, www.hccc.wa.gov/. A CD–ROM of the documents can be obtained by calling Sharon Houghton at (503) 230–5418 or by e-mailing a request to *sharon.houghton@noaa.gov*, with the subject line "CD–ROM Request for Final ESA Recovery Plan for Hood Canal Summer Chum Salmon."

FOR FURTHER INFORMATION CONTACT: Elizabeth Babcock, NMFS Puget Sound Salmon Recovery Coordinator at (206) 526–4505, or Elizabeth Gaar, NMFS Salmon Recovery Division at (503) 230–5434.

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions beneficial to the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The ESA requires that recovery plans, to the extent practicable, incorporate (1) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions that may be necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for listed species unless such a plan would not promote the recovery of a particular species.

NMFS' goal is to restore endangered and threatened Pacific salmon ESUs and steelhead distinct population segments (DPSs) to the point that they are again self-sustaining members of their ecosystems and no longer need the protections of the ESA. NMFS believes it is critically important to base its recovery plans on the many state, regional, tribal, local, and private conservation efforts already underway throughout the region. Therefore, the agency supports and participates in locally led collaborative efforts to develop recovery plans, involving local communities, state, tribal, and Federal entities, and other stakeholders. As the lead ESA agency for listed salmon, NMFS is responsible for reviewing these locally produced recovery plans and deciding whether they meet ESA statutory requirements and merit adoption as ESA recovery plans.

On November 15, 2005, the Hood Canal Coordinating Council (HCCC), a regional council of governments, presented its locally developed listed species recovery plan (HCCC Plan) to NMFS. The HCCC is a watershed-based council of governments that was established in 1985 in response to concerns about water quality problems and related natural resource issues in the watershed. It was incorporated in 2000 as a 501(c)(3) Public Benefit Corporation under RCW 24.03. Its board of directors includes the county commissioners from Jefferson, Kitsap, and Mason counties, and elected tribal council members from the Skokomish and Port Gamble S'Klallam Tribes. It also includes a slate of ex-officio board members composed of representatives from state and Federal agencies.

After reviewing the HCCC Plan, NMFS prepared a Supplement, clarifying how the HCCC Plan satisfies ESA recovery plan requirements and addressing additional elements needed to comply with those requirements. A notice of availability soliciting public comments on the proposed Recovery Plan was published in the **Federal Register** on August 16, 2006 (71 FR 47180). NMFS received three comment letters on the HCCC Plan and draft Supplement. NMFS summarized the public comments and prepared responses, now available on the NMFS website at *www.nwr.noaa.gov/Salmon-Recovery-Planning/Recovery-Domains/Puget-Sound/Hood-Canal-Plan.cfm*. NMFS has revised its Supplement based on the comments received. The HCCC Plan and the Final Supplement now, together, constitute the ESA Recovery Plan for the Hood Canal and eastern Strait of Juan de Fuca summer-run chum salmon.

By endorsing this locally developed recovery plan, NMFS is making a commitment to implement the actions in the plan for which it has authority, to work cooperatively on implementation of other actions, and to encourage other Federal agencies to implement Recovery Plan actions for which they have responsibility and authority. NMFS will also encourage the State of Washington to seek similar implementation commitments from state agencies and local governments. NMFS expects the Recovery Plan to help NMFS and other Federal agencies take a more consistent approach to future ESA Section 7 consultations and other ESA decisions. For example, the Recovery Plan will provide greater biological context for the effects that a proposed action may have on the listed ESU. Recovery Plan science will become a component of the "best available information" reviewed for ESA section 7 consultations, section 10 permits and habitat conservation plans, and other ESA decisions. Such information includes viability criteria for the ESU and its independent populations, better understanding of and information on limiting factors and threats facing the ESU, better information on priority areas for addressing specific limiting factors, and better geographic context for assessing where the ESU can tolerate varying levels of risk while still maintaining overall viability.

The Recovery Plan

The HCCC Plan is one of many ongoing salmon recovery planning efforts funded under the Washington State Strategy for Salmon Recovery. The State of Washington designated the HCCC as the Lead Entity for salmon recovery planning for the Hood Canal watershed. The HCCC has consistently involved the public in its recovery planning process.

The HCCC Plan draws extensively on the research and publications of the Summer Chum Salmon Conservation Initiative (SCSCI) (WDFW and PNPTT 2000), an ongoing planning forum initiated in 2000 by the Point No Point Treaty Tribes (PNPTT) and Washington Department of Fish and Wildlife (WDFW) (WDFW and PNPTT 2000). PNPTT and WDFW are the co-managers directly responsible for fisheries harvest and hatchery management for the Hood Canal and eastern Strait of Juan de Fuca watersheds. The PNPTT comprises the Skokomish, Port Gamble S'Klallam, Jamestown S'Klallam, and Lower Elwha Klallam Tribes, which have Treaty rights to usual and accustomed fishing in this area. The SCSCI provides a mechanism for the development and implementation of harvest management regimes and supplementation programs designed to bring about the recovery of summer chum salmon when integrated with habitat protection and restoration, also considered in the process. Annual reviews are documented in supplemental reports (e.g., WDFW and PNPTT 2003 and PNPTT and WDFW 2003), which can be found at *wdfw.wa.gov/fish/chum/chum.htm*.

The HCCC Plan makes extensive use of the SCSCI and subsequent supplemental reports, as well as the watershed plans for Watershed Resource Inventory Areas 14, 15, 16, 17, and 18 (Correa, 2002; Correa, 2003; Kuttel, 2003). The fishery co-managers (WDFW and PNPTT) participated in the development of aspects of this plan, and it is designed to support and complement the co-managers' fisheries

and salmon recovery goals and objectives.

As in other regional domains defined by NMFS Northwest Region, the Hood Canal planning effort was supported by a NMFS-appointed science panel, the Puget Sound Technical Recovery Team (PSTRT). This panel of seven scientific experts from Federal, state, local, private, and tribal organizations identified historical populations and recommended ESU viability criteria. They provided scientific review of the HCCC Plan. In addition, staff biologists of the Skokomish and Port Gamble S'Klallam Tribes reviewed the HCCC Plan at each stage, and County staff reviewed the land use planning sections. NMFS Northwest Region staff biologists also reviewed draft versions of the HCCC Plan and provided substantial guidance for revisions.

The Recovery Plan incorporates the NMFS viable salmonid population (VSP) framework as a basis for biological status assessments and recovery goals for Hood Canal summer chum salmon, and the Supplement incorporates the most recent work of the PSTRT on viability criteria for this ESU.

ESU Addressed and Planning Area

The Recovery Plan will be implemented within the range of the Hood Canal summer-run chum salmon ESU (*Oncorhynchus keta*), listed as threatened on March 25, 1999 (64 FR 14508). NMFS reviewed the ESU in 2005 and determined that it still warranted ESA protection (Good *et al.*, 2005). The range of the Hood Canal summer-run chum salmon is the northeastern portion of the Olympic Peninsula in Washington State. The ESU includes summer-run chum salmon populations that spawn naturally in tributaries to Hood Canal as well as in Olympic Peninsula rivers between Hood Canal and Dungeness Bay. The recovery planning area includes portions of the Washington counties of Jefferson, Mason, Kitsap, and Clallam; the reservations of the Skokomish, Port Gamble S'Klallam, and Jamestown S'Klallam Tribes; and portions of Water Resource Inventory Areas 14, 15, 16, 17, and 18.

The Recovery Plan focuses on the recovery of Hood Canal summer chum salmon. Two other ESA-listed salmonid species, Puget Sound Chinook salmon and Coastal/Puget Sound bull trout, are indigenous to the Hood Canal and eastern Strait of Juan de Fuca regions encompassed by the Recovery Plan. On June 30, 2005, the Shared Strategy for Puget Sound, a nonprofit organization that coordinates recovery planning for Puget Sound Chinook, submitted a recovery plan for Puget Sound Chinook salmon to NMFS. On December 27, 2005, NMFS published a Notice of Availability of the Shared Strategy plan as a proposed recovery plan for Puget Sound Chinook (70 FR 76445). The final Puget Sound Chinook Salmon Recovery Plan was published January 19, 2007. Coastal/Puget Sound bull trout are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and are the subject of a recovery plan published by the USFWS in May 2004. Many of the actions identified in the Hood Canal summer chum salmon plan will also benefit the latter two species. The Shared Strategy and HCCC will work together to make their respective recovery efforts consistent and complementary.

The PSTRT identified two independent populations of Hood Canal summer chum. The Strait of Juan de Fuca population spawns in rivers and streams entering the eastern Strait and Admiralty Inlet. The Hood Canal population includes all spawning aggregations within the Hood Canal watershed (Sands *et al.*, 2007).

Sixteen historically present "stocks," of which eight are extant, made up the Hood Canal Summer-Run Chum Salmon ESU. The co-managers identified these stocks in the SCSCI and subsequent supplemental reports (WDFW and PNPTT 2000, 2003). The PSTRT considers these stocks "subpopulations, which contribute to either the Hood Canal or Strait of Juan de Fuca population, depending on their geographical location" (Currens, 2004, p. 19). As noted in the HCCC Plan, the PSTRT report stated that summer chum salmon in the Hood Canal and eastern Strait are probably "a single metapopulation held together historically by a stepping stone pattern of demographic exchange" (Currens, ibid.), created by straying between adjacent streams.

For planning purposes, the HCCC Plan assigned the 16 stocks to six geographic groupings called "conservation units." The HCCC Plan organizes descriptions of population status, limiting factors and threats, and recommended site-specific actions based on these conservation units.

Recovery Goals, Objectives and Criteria

The overall goal of the HCCC Plan is to achieve recovery and delisting of the summer-run chum salmon in Hood Canal and the eastern Strait of Juan de Fuca. The HCCC Plan's recovery strategy focuses on habitat protection and restoration throughout the geographic range of the ESU; the plan incorporates the co-managers' harvest management and hatchery supplementation programs that are ongoing as part of the SCSCI. The HCCC Plan also includes reintroduction of natural-origin summer chum salmon aggregations to several streams where they were historically present.

ESU Viability Criteria

Evaluating a species for potential delisting requires an explicit analysis of population or demographic parameters (biological recovery criteria) and also of threats under the five ESA listing factors in ESA section 4(a)(1). Together these make up the "objective, measurable criteria" required under section 4(f)(1)(B). While the ESU is the listed entity under the ESA, the ESU-level viability criteria are based on the collective viability of the individual populations that make up the ESU their characteristics and their distribution throughout the ESU's geographic range.

The Recovery Plan adopts both long-term viability criteria and short-term recovery goals or targets for the two populations of Hood Canal summer chum. The long-term viability criteria were identified by the PSTRT (Sands *et al.*, 2007) and describe characteristics predicted to result in a negligible risk of extinction for the ESU in 100 years. The short-term criteria are "interim" recovery goals for the next 10 years that were developed by the co-managers in the SCSCI (PNPTT and WDFW 2003). These two sets of criteria are based on different, but compatible, approaches. Both may be refined as new information becomes available.

The NMFS Supplement published in 2006 included viability criteria for each of the two independent populations of Hood Canal summer-run chum salmon identified by the PSTRT. In early 2007, the PSTRT completed additional viability modeling for both populations. That work was shared with state, tribal, and HCCC technical staff. NMFS updated the viability criteria for both populations based on the PSTRT's additional analysis and the input from technical staff. This ESA Recovery Plan includes viability criteria based on both methods of analysis.

NMFS has asked the PSTRT to continue to work with HCCC staff and the co-managers to integrate the interim recovery goals described in the HCCC Plan with the long-term criteria for the ESU. This will not necessitate a revision of the HCCC Plan, but will be considered part of the adaptive management and implementation phase of the Recovery Plan.

Adaptive Management

Adaptive management is the process of adjusting management actions and/or directions based on new information. It requires building an evaluation method into an implementation plan, so that selection and design of future recovery actions can be adjusted depending on the results of previous actions. Adaptive management is essential to salmon recovery planning. The HCCC Plan incorporates by reference the integrated program for monitoring, evaluation, and adaptive management included in the SCSCI (WDFW and PNPTT 2000, Part 4, Sections 4.2.5 and 4.2.5). In addition, the HCCC is developing a monitoring and adaptive management element in its overall implementation plan. NMFS will continue to work with the HCCC on its adaptive management program as appropriate during plan implementation.

Causes for Decline and Current Threats

Listing factors are those features that were evaluated under section 4(a)(1) when the initial determination was made to list the species for protection under the ESA. These factors are: (a) The present or threatened destruction, modification, or curtailment of a species' habitat or range; (b) overutilization for commercial, recreational, or educational purposes; (c) disease or predation; (d) the inadequacy of existing regulatory mechanisms; and (e) other natural or man made factors affecting the species' continued existence. These may or may not still be limiting recovery when in the future NMFS reevaluates the status of the species to determine whether the protections of the ESA are no longer warranted and the species could be delisted. In the Recovery Plan, NMFS provides specific criteria for each of the relevant listing/delisting factors to help ensure that underlying causes of decline have been addressed and mitigated prior to considering the species for delisting.

The HCCC Plan identifies the main causes for the decline of the Hood Canal summer chum as (1) climate-related changes in stream flow patterns, (2) past fishery exploitation, and (3) cumulative habitat loss.

Climate change: NMFS agrees that summer chum are particularly sensitive to variations in instream flows, which vary naturally between years and perhaps over decades. However, NMFS cautions that possible changes in climate over the past 30 years were reasoned from flow records and have not been investigated by a detailed study. NMFS expects that current, ongoing research on impacts of climate change on salmon habitat restoration (e.g., Battin *et al.*, 2007) will further clarify this question.

Harvest: The Recovery Plan draws upon data and conclusions from the SCSCI indicating that harvest (including in U.S. and Canada) was a factor in the decline of summer chum salmon prior to 1992. Exploitation rates ranging from 21 percent for the Salmon/Snow and Jimmycomelately populations to 90 percent for the Quilcene population were seen to correlate with declines in escapements. Beginning in 1992 and culminating in the implementation of the SCSCI in 2000, the co-managers designed harvest management regimes to limit mortality from fishing to a rate that allows the vast majority of summer chum salmon to return to their natal spawning grounds. Implementation of the harvest management strategy since 2000 has worked as expected. Escapements have increased to all components of the ESU, and observed exploitation rates are even lower than anticipated (below 3 percent and 1 percent for Hood Canal and Strait of Juan de Fuca populations, respectively).

Habitat: Chapter 6 of the HCCC Plan summarizes overall habitat issues for the ESU. More detail is included in the HCCC Plan's individual chapters on conservation units. NMFS' 2005 Report to Congress on the Pacific Coastal Salmon Recovery Fund (PCSRF) described habitat-related factors for decline as the following: (1) Degraded floodplain and mainstem river channel structure; (2) degraded estuarine conditions and loss of estuarine habitat; (3) riparian area degradation and loss of in-river large woody debris in mainstem; (4) excessive sediment in spawning gravels; (5) reduced stream flow in migration areas; (6) degraded nearshore conditions. These factors are all covered in detail in the HCCC Plan.

Site-Specific Actions

The HCCC Plan lists potential sources of funding, administrative paths, and target activities that could be undertaken for salmon recovery in the region (pp. 43–45), then makes site-specific recommendations based on conservation units (Chapters 7–12). A full range of policy options for acquiring, funneling, and allocating resources for salmon habitat conservation was developed and presented to the members of the HCCC Board for review and decision-making.

Habitat: The HCCC provided a summary table for the Supplement, linking limiting factors and recommended habitat actions by conservation unit and stock.

Harvest: The co-managers developed through the SCSCI a harvest management strategy called the Base Conservation Regime (BCR) (details in WDFW and PNPTT 2000, section 3.5.6.1). The intent of the BCR is to initiate rebuilding by fostering incremental increases in escapement over time, while providing a limited opportunity for fisheries conducted for the harvest of other salmon species. The BCR will pass through to spawning escapement, on average, in excess of 95 percent of the Hood Canal-Strait of Juan de Fuca summer chum salmon abundance in U.S. waters.

The harvest management component of the SCSCI was provided to NMFS in 2000 as the co-managers' proposed joint Resource Management Plan (RMP) for managing salmon fisheries to meet summer chum salmon ESA conservation needs. NMFS subsequently determined that the RMP adequately addressed all requirements specified under Limit 6 of the ESA 4(d) Rule for Hood Canal summer chum salmon (66 FR 31600, June 12, 2001). More information can be found at *www.nwr.noaa.gov/Salmon-Harvest-Hatcheries/State-Tribal-Management/HC-Chum-RMP.cfm.* NMFS and the co-managers will continue to evaluate the performance of the harvest management strategy as new information becomes available, consistent with the evaluation and adaptive management elements of the SCSCI and the Recovery Plan.

Hatcheries: The HCCC Plan incorporates the supplementation and reintroduction approach implemented by the co-managers under the SCSCI beginning in 1992 to conserve summer chum salmon in the action area. Under the SCSCI, artificial production directed at summer chum recovery is applied only to preserve stocks identified as at moderate or high risk of extinction, and to reintroduce naturally spawning aggregations in selected watersheds from which the indigenous stocks have been extirpated. Hatchery supplementation programs use native broodstock, allow hatchery-origin fish to spawn naturally, are carefully monitored and evaluated, and are scheduled to be terminated in a maximum of three salmon generations. Four such programs have met their goals and have been terminated. In addition, implementation of conservation hatchery actions was guided by these premises: "Commensurate, timely improvements in the condition of habitat critical for summer chum salmon survival are necessary to recover the listed populations to healthy levels. . . The intent of the supplementation efforts is to reduce the short-term

extinction risk to existing wild populations, and to increase the likelihood of their recovery" (HCCC Plan, p. 54).

NMFS agrees with the PSTRT's conclusion in its 2005 review of the HCCC Plan that the hatchery strategy to supplement summer chum in Hood Canal is very well designed and has been well implemented throughout its tenure. The monitoring information resulting from the hatchery program is exemplary, and the co-managers have used the data to adjust their supplementation strategies as needed.

Time and Cost Estimates

The ESA section 4(f)(1) requires that the recovery plan include "estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal" (16 U.S.C. 1533(f)(1)). Appendix D of the recovery plan (Costing of the Hood Canal Coordinating Council's Summer Chum Salmon Recovery Plan, August 2004) provides cost estimates to carry out specific recovery actions for the first 10 years of plan implementation. The cost estimates cover all capital projects judged to be feasible in the six conservation units, as well as non-capital work projected to occur over the 10–year period.

The HCCC Plan contains an extensive list of actions that need to be undertaken to recover Hood Canal summer chum salmon; however, there are many uncertainties involved in predicting the course of recovery and in estimating total costs. Such uncertainties include biological and ecosystem responses to recovery actions as well as long-term and future funding. NMFS supports the HCCC Plan's determination to focus on the first 10 years of implementation, provided that, before the end of this first implementation period, specific actions and costs will be estimated for subsequent years, to achieve long-term goals and to proceed until a determination is made that listing is no longer necessary.

NMFS estimates that recovery of the Hood Canal Summer Chum ESU, like recovery for most of the ESA-listed Pacific Northwest salmon, could take 50 to 100 years. The HCCC Plan provides a total estimated cost for the first ten years of approximately $136 million. This estimate includes approximately $2 million for continuing agency and organization costs, and it is conceivable that this level of effort will need to continue for the Plan's duration. Also, continued actions in the management of habitat, hatcheries, and harvest, including both capital and non-capital costs, will likely warrant additional expenditures beyond the first 10 years. Although it is not practicable to accurately estimate the total cost of recovery, it appears that most of the costs will occur in the first 10 years. The costs for the remaining years are expected to be lower, possibly ranging from a total of $15 million to $65 million.

Periodic Status Reviews

In accordance with its responsibilities under section 4(c)(2) of the Act, NMFS will conduct status reviews of Hood Canal summer chum salmon once every five years to evaluate the ESU's status and determine whether the ESU should be removed from the list or changed in status. Such evaluations will take into account the following:

- The biological recovery criteria (Sands *et al.*, 2007) and listing factor (threats) criteria described in the Supplement.
- Management programs in place to address the threats.
- Principles presented in the Viable Salmonid Populations paper (McElhany *et al.*, 2000).
- Co-managers' interim stock-level recovery goals.
- Best available information on population and ESU status and new advances in risk evaluation methodologies.
- Other considerations, including: the number and status of extant spawning groups; the status of the major spawning groups; linkages and connectivity among groups; diversity groups and the two populations; the diversity of life history and phenotypes expressed; and considerations regarding catastrophic risk.
- Principles laid out in NMFS' Hatchery Listing Policy (June 28, 2005, 70 FR 37204).

Conclusion

NMFS reviewed the HCCC Plan, the public comments, and the notes and conclusions of the PSTRT from its reviews of the HCCC Plan in May and July 2005. Based on that evaluation, NMFS concludes that the HCCC Plan, in combination with this NMFS Supplement, meets the requirements in section 4(f) of the ESA for developing a recovery plan.

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Authority: 16 U.S.C. 1531 *et seq.*

Dated: May 21, 2007.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–10074 Filed 5–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA48

Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

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

ACTION: Notice; receipt of an application for an exempted fishing permit.

SUMMARY: This notice announces receipt of an application for an exempted fishing permit (EFP) from Alaska Groundfish Data Bank. If granted, the EFP would allow the applicants to explore electronic monitoring (EM) as a tool for monitoring halibut discards and estimating amounts of halibut discarded. This project is intended to promote the objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) and National Standard 9 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Comments will be accepted at the June 4–12 North Pacific Fishery Management Council (Council) meeting in Sitka, AK.

DATES: Interested persons may comment on the EFP application during the Council's June 4–12, 2007, meeting in Sitka, AK.

ADDRESSES: The Council meeting will be held at Centennial Hall, 330 Harbor Drive, Sitka, AK.

Copies of the EFP application and the environmental assessment (EA) are available by writing to the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian. The application and EA also are available from the Alaska Region, NMFS website at *http://www.fakr.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907–586–7228 or *jason.anderson@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the Gulf of Alaska (GOA) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at §§ 679.6 and 600.745(b) authorize issuance of EFPs to allow fishing that would be otherwise prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

NMFS received an EFP application from Alaska Groundfish Data Bank on April 30, 2007. The primary objectives of the proposed EFP are to 1) test the feasibility of using video to monitor halibut discards at a single location on catcher vessels, 2) estimate the amount of halibut discarded at this location, and 3) assess the costs associated with collecting and reviewing EM data. The applicants developed the EFP in cooperation with NMFS scientists at the Alaska Fisheries Science Center (AFSC). The AFSC approved the EFP scientific design on May 2, 2007. The project is intended to provide information needed by the Council and NMFS to inform decisions on future management actions in the Gulf of Alaska rockfish fisheries. Specifically, the project would assess whether NMFS can relax recently increased observer coverage requirements implemented under the Central GOA rockfish pilot program (Program) on catcher vessels that employ EM.

Background

NMFS issued a final rule to implement the Program on November 20, 2006 (71 FR 67210). Program development was initiated by trawl industry representatives, primarily from Kodiak, Alaska, in conjunction with catcher/processor representatives. They sought to improve the economic efficiency of Central GOA rockfish fisheries by developing a program that establishes cooperatives that receive exclusive harvest privileges for a specific set of rockfish species, and for associated species harvested incidentally to those rockfish in the Central GOA. Participants in the program include the catcher vessel, onshore processing, and offshore catcher/processor sectors.

NMFS, Sustainable Fisheries Division, consulted with the Council, members of the industry, NMFS Office of Law Enforcement, NOAA General Counsel, and the U.S. Coast Guard to design a monitoring program to increase data quality for total catch reporting. As part of that monitoring program, observer coverage was increased on many catcher vessels to 100 percent (one observer at all times). Industry is concerned that costs associated with increased observer coverage are high relative to the increased revenue associated with the Program. To address these concerns, Alaska Groundfish Data Bank developed, in conjunction with staff at the AFSC and NMFS Alaska Region, an alternative approach to manage shoreside rockfish fisheries that could include the use of EM to replace increased observer coverage.

Rockfish fishing for the major target species in the Program (Pacific ocean perch, northern rockfish, and pelagic shelf rockfish) is relatively selective in terms of the percentage of catch that is rockfish. Additionally, retention rates are high relative to flatfish and other GOA target fisheries. Selective fisheries where a high fraction of the catch is retained are logical candidates for reliance on shoreside sampling as the primary fishery data collection point, and EM to monitor and account for at-sea discards.

Under the EFP, halibut are proposed to be the only species allowed to be discarded at sea. Further, discarding would only be allowed at a single, specially designed discard chute. The vessel would be fitted with several cameras designed to assess whether video can adequately detect all discard activities. The discard chute would be modified to retain all discarded halibut. Data on total halibut discarded would be compared against EM data to determine its effectiveness.

Additionally, the discard chute would be equipped with cameras to obtain individual halibut length data. The weight of each halibut would be estimated based on the International Pacific Halibut Commission length-to-weight table, and a total halibut removal weight would be calculated for each haul.

If successful and feasible, catch accounting data of all non-halibut species could thus be obtained during deliveries to shoreside plants, and at-sea halibut discards could be estimated through this specialized application of EM. Information gathered during this

project could assist the Council in developing future monitoring protocols for all North Pacific fisheries.

To support this EFP, an allocation of rockfish and associated bycatch species in addition to those allocated under the Program is proposed. Groundfish and halibut amounts required are listed in the table below:

Species	Amount (mt)
arrowtooth flounder	34
halibut	12
northern rockfish	88
Pacific cod	42
pelagic shelf rockfish	52
Pacific ocean perch	145
sablefish	26
shortraker/rougheye rockfish	1
thornyhead rockfish	4
other	8
total	412

The project would begin September 15, 2007, and continue until either the halibut mortality limit is reached or 30 hauls (5 to 7 individual trips) are completed. Additionally, NMFS may consider extending the EFP to allow additional testing in the following year, if needed. Fishing would occur in the Central GOA.

The EFP would exempt the applicant from Central GOA directed fishing closures implemented under §§ 679.20, 679.21, 679.23 or 679.25 for reasons other than overfishing. The EFP would allow for the harvest of up to 400 mt of groundfish species. The EFP would exempt the applicant from the requirements of the Program under §§ 679.4(n), 679.5(r) and 679.7(n).

Because the participating vessel would be carrying at-sea samplers, the EFP would exempt the applicant from regulations requiring observers to be onboard the vessel. Specifically, the permit would exempt the applicant from §§ 679.50, 679.7(a)(3), 679.7(g) while the experiment is being conducted.

Halibut mortality from this project would not be applied against the halibut prohibited species catch (PSC) limits allocated to the Central GOA trawl fishery or to the prohibited species quota limits in the Program. The proposed EFP would exempt a vessel from halibut PSC limits at § 679.21(d)(3) and allow up to 12 mt of halibut mortality associated with fishing under this project.

The vessel would be exempted from maximum retainable amount (MRA) regulations at § 679.20(e) and Table 10 to 50 CFR part 679. Additional discards occurring during the experiment would hamper the ability of reviewers to determine whether or not all halibut were retained. It is highly unlikely that discard above the MRA would be required.

These exemptions are necessary to allow the permit holder to 1) effectively test the feasibility of using video to monitor for halibut discards at a single location on the catcher vessel, 2) estimate the amount of halibut discarded at this location, and 3) assess the costs of collecting and reviewing EM data. Information gathered during this proposed EFP could be used by the Council to develop future monitoring protocols for all North Pacific fisheries

The applicant will present draft results of the project to members of the industry in Kodiak, Alaska. Additionally, the applicant, in conjunction with NMFS staff involved with the project, would present the draft findings to the Council and its advisory bodies at a meeting convenient to the Council. The applicant also would be responsible for providing the final report to the interested public once that report has been reviewed by the Council and its advisory bodies.

In accordance with § 600.745(b) and § 679.6, NMFS has determined that the proposal warrants consideration and has initiated consultation with the Council. The Council will consider the EFP application during its meeting in Sitka, AK, from June 4–12, 2007. The applicant has been invited to appear in support of the application.

Public Comments

Interested persons may comment on the application at the June 2007 Council meeting during public testimony. Information regarding the meeting is available at 72 FR 26606 (May 10, 2007) and on the Council's website at *http://www.fakr.noaa.gov/npfmc/council.htm.*

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 21, 2007.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–10020 Filed 5–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA37

Marine Mammals; File No. 978–1857

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Dr. Paul Nachtigall, Hawaii Institute of Marine Biology, University of Hawaii, P.O. Box 1106, Kailua, Hawaii 96734, has been issued a permit to conduct research on three captive bottlenose dolphins (*Tursiops truncatus*) and one false killer whale (*Pseudorca crassidens*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jaclyn Daly, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On October 2, 2006, notice was published in the **Federal Register** (71 FR 57926) that a request for a scientific research permit to take the species identified above had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The 5-year permit authorizes Dr. Nachtigall to conduct acoustic studies on captive marine mammals at the Hawaii Institute of Marine Biology. Research methods will employ the use of suction cup electrodes to measure auditory brainstem response, auditory evoked potentials, and temporary threshold shifts. Echolocation studies will also be conducted.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to

prepare an environmental assessment or environmental impact statement.

Dated: May 17, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–10071 Filed 5–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA38

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

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

ACTION: Notice; issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that a 1–year letter of authorization (LOA) has been issued to the Monterey Bay National Marine Sanctuary (MBNMS or the Sanctuary) to incidentally take, by Level B Harassment only, California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*) incidental to authorizing professional fireworks displays within the Sanctuary in California waters.

DATES: The LOA will be effective from July 4, 2007, through July 3, 2008.

ADDRESSES: The LOA and supporting documentation are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning one of the contacts listed here (**FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, or Monica DeAngelis, Southwest Regional Office, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers 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. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of California sea lions and Pacific harbor seals, by Level B harassment, incidental to the authorization of fireworks displays within the Sanctuary became effective on July 4, 2006, and remain in effect until July 3, 2011. For detailed information on this action, please refer to the original **Federal Register** notice at 71 FR 40928 (July 19, 2006). These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals during the fireworks displays within the Sanctuary boundaries. This will be the second LOA issued pursuant to these regulations.

Summary of Request

On February 27, 2007, NMFS received a request for an LOA pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals incidental to fireworks displays at the MBNMS. Justification for conducting fireworks displays within the MBNMS can be found in the proposed rule (71 FR 25544).

Summary of Activity and Monitoring Under the Current LOA

In compliance with the 2006 LOA, the MBNMS submitted an annual report on the fireworks displays at MBNMS. A summary of that report follows.

Four fireworks displays took place within the MBNMS in 2006. Observers conducted pre-event census to document abundance of marine mammals and protected species pre-event and post-event surveys to record any injured or dead wildlife species. Pre-event monitoring of the City of Monterey Bay Independence fireworks found 61 sea lions, nine harbor seals, and six sea otters (*Enhydra lutris*) in the vicinity of the event area. Post-monitoring revealed no dead or injured marine mammals and one dead cormorant; however, dead birds are commonly found on area beaches and this death could not be contributed directly to the fireworks display. Observers monitored the area around the location of Cambria Independence Day fireworks display and found no animals present at the site before the event and no dead or injured marine mammals or other animal species post-event. On July 30, 2006, Pacific Grove hosted The Feast of Lanterns Annual Fireworks display. On July 28, 2006, a pre-census count found seventeen harbor seals and three sea otters within the display area. A non-mandatory census was also conducted on July 29 with no marine mammals observed, possibly due to music, festivities, and increased human presence in the area. No dead or injured marine mammals were reported for this event. The Monte Foundation fireworks display was held on October 14, and a pre-event census was conducted on October 13. The census revealed four harbor seals and one sea otter in the area. No animals were reported dead or injured the day after the event.

In summary, the total number of potentially harassed sea lions (61) and harbor seals (13) for all fireworks displays, was well below the authorized limits as stated in the final rule (71 FR 40928). No dead or injured marine mammals were reported for all events. These monitoring results supports NMFS initial findings that fireworks display will result in no more than Level B harassment of small numbers of California sea lions and harbor seals and that effects will be limited to short term behavioral changes, including temporary abandonment of haulouts to avoid sights and sounds of commercial fireworks.

Authorization

Accordingly, NMFS has issued an LOA to MBNMS authorizing the Level B harassment of marine mammals incidental to the authorization of fireworks display within the Sanctuary. Issuance of this LOA is based on findings, described in the preamble to the final rule (71 FR 40928, July 19, 2006), that the activities described under this LOA will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses. No mortality or injury of affected species is anticipated.

Dated: May 17, 2007.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–9964 Filed 5–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[XRIN: 0648–XA55]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), its Research Set Aside (RSA) Committee, its Ecosystems Committee, its Law Enforcement/Vessel Safety Committee, its Squid, Mackerel, and Butterfish Committee, its Executive Committee, and its Bycatch/Limited Access Privilege Program Committee will hold public meetings. Prior to the Council's meeting there will be a meeting of the Joint Council New England and Mid-Atlantic Councils Standardized Bycatch Reporting Methodology (SBRM) Committee.

DATES: The meetings will be held on Monday, June 11, 2007 through Thursday, June 14, 2007. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: These meetings will be held at the Embassy Suites, 1700 Coliseum Drive, Hampton, VA 23666; telephone: (757) 827–8200.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Monday, June 11, 2007

2 p.m. until 5 p.m., the Joint Council SBRM Committee will meet.

Tuesday, June 12, 2007

9 a.m. until 12 noon, the RSA Committee with NMFS Cooperative Research Staff will meet.

10 a.m. until 11 a.m., the Ecosystems Committee will meet concurrently with the RSA Committee.

11 a.m. until 12 noon, the Law Enforcement/Vessel Safety Committee will also meet concurrently with the RSA Committee.

1 p.m. until 4 p.m., the Squid, Mackerel, and Butterfish Committee will meet with its advisors.

4 p.m. until 5:30 p.m., the Executive Committee will meet.

Wednesday, June 13, 2007

8 a.m. until 9 a.m., the Bycatch/Limited Access Privilege Program (LAPP) Committee will meet.

9 a.m. until 9:30 a.m., the Council will convene and receive a presentation on the Coral Reef Conservation Amendments Act of 2007.

9:30 a.m. until 12 noon, the Council will conduct its regular Council business session.

1 p.m. until 2:30 p.m., the Council will discuss and develop 2008, 2009, and 2010 quota specifications for the surfclam and ocean quahog fisheries.

2:30 p.m. until 5 p.m., the Council will discuss and develop 2008 quota specifications for the Atlantic mackerel, squid and butterfish fisheries.

Thursday, June 14, 2007

8 a.m., the Council will convene to receive a presentation by the NMFS on the Status of its Recreational Data Collection Initiative.

9 a.m. until 12 noon, the Council will discuss Amendment 1 to the Tilefish Fishery Management Plan (FMP).

1 p.m. until 2:30 p.m., the Council will review and take action on the Omnibus Amendment for Standardized Bycatch Reporting Methodology.

2:30 p.m. until 3:30 p.m., the Council will review and consider actions taken by the Atlantic States Marine Fisheries Commission (ASMFC) regarding Amendment 15 to the Summer Flounder, Scup, and Black Sea Bass FMP.

3:30 p.m. until adjournment, the Council will receive and discuss committee reports, and address any continuing and/or new business.

Agenda items for the Council's committees and the Council itself are: The Joint Council SBRM Committee will review revisions to the SBRM Amendment including the environmental assessment, select preferred alternatives, and develop the Council's final position for Secretarial submission. The RSA Committee will meet to review the Mid-Atlantic RSA program performance and discuss future directions; discuss ways to improve program effectiveness, dissemination of results, and coordination with other cooperative research efforts; initiate discussion of research priorities for the 2009 program year; and, develop comments as appropriate for Council consideration. The Ecosystems Committee will review "Taking the Bait" ... A Blueprint for Councils to Protect the Ocean Forage Base. The Law Enforcement/Vessel Safety Committee will address National Standard 10 in context of the recent Congressional Hearing on commercial fishing vessel safety, and review the Council's Fisheries Achievement Award process and timeline for 2007. The Squid, Mackerel, and Butterfish Committee will meet with its Advisors to review the Monitoring Committee's recommendations for 2008 quota levels and associated management measures and develop 2008 quota specifications and associated management measures for Council consideration and action; and, receive status updates on Amendments 9 and 10. The Executive Committee will review the Council Coordination Committee (CCC) meeting results and action items including: budget outcome from CCC meeting and its impact on the Council's 2007 operations; Council member training/mentoring; and, status of NMFS Regulatory Streamlining Program efforts. The Executive Committee will also review the Northeast Regional Coordinating Council meeting agenda and actions; discuss the role of the Scientific and Statistical Committee; discuss practicability and applicability of an interactive web site for the Council; and, review Commercial Fishing Vessel Safety issues. The Bycatch/LAPP Committee will review and evaluate public comments on the proposed SBRM Amendment, discuss and develop a Council position regarding Secretarial submission of the proposed Amendment; and, receive an update on the LAPP. The Council will receive a presentation on the Coral Reef Ecosystem Conservation Amendments Act of 2007; this will be followed by the

Council's regular business session. The Council will then review staff's recommendations for 2008, 2009, and 2010 surfclam and ocean quahog quota specifications and associated management measures, and then the Council will develop and adopt quota specifications and associated management measures for a multi-year surfclam and ocean quahog specification program. The Council will review the Atlantic Mackerel, Squid, and Butterfish Committee's recommendations for 2008 quota specifications and associated management measures, and will develop and adopt 2008 quota specifications and associated management measures for squid, mackerel, and butterfish. The Council will receive a presentation on the Status of NMFS' Recreational Data Collection Initiative. The Council will then review alternatives associated with various measures proposed in Amendment 1 to the Tilefish FMP, and select preferred alternatives for that Amendment, and then review and adopt the Public Hearing Document (PHD) and associated Draft Environmental Impact Statement (DEIS). The Council will review and take action on the Standardized Bycatch Reporting Methodology Omnibus Amendment for Secretarial submission. The Council will review and consider actions taken by the ASMFC regarding Amendment 15 to the Summer Flounder, Scup, and Black Sea Bass FMP. The Council will conclude its meeting by receiving various committee reports and by addressing any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at (302) 674–2331 ext: 18 at least 5 days prior to the meeting date.

Dated: May 21, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–10010 Filed 5–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[XRIN: 0648–XA52]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet June 9–15, 2007 . The Council meeting will begin on Monday, June 11, at 2 p.m., reconvening each day through Friday, June 15. All meetings are open to the public, except a closed session will be held from 2 p.m. until 3 p.m. on Monday, June 11 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Crowne Plaza Hotel, 1221 Chess Drive, Foster City, CA 94404; telephone: (650) 570–5700.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks and Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Administrative Matters

1. Future Council Meeting Agenda Planning
2. Council Operating Procedure for Providing Highly Migratory Species Management Recommendations to Regional Fishery Management Organizations
3. Recreational Fishery Information Network Data and Sampling Refinements
4. Council Operating Procedure for Reviewing Proposed Changes to Groundfish Essential Fish Habitat (EFH) and Establishing a Groundfish EFH Oversight Committee
5. Magnuson-Stevens Act Reauthorization Implementation
6. Legislative Matters
7. Fiscal Matters
8. Appointments to Advisory Bodies, Standing Committees, and Other Forums, and Changes to Council Operating Procedures as Needed
9. Approval of Council Meeting Minutes
10. Council Three-Meeting Outlook, Draft September 2007 Council Meeting Agenda, and Workload Priorities

C. Open Public Comment

Comments on Non-Agenda Items

D. Habitat

Current Habitat Issues

E. Groundfish Management

1. NMFS Report
2. Proposed Process and Schedule for Developing Biennial (2009–10) Harvest Specifications and Management Measures
3. Shore-Based Pacific Whiting Monitoring Program
4. Amendment 22: Limiting Entry in the Open Access Groundfish Fishery
5. Preliminary Review of Exempted Fishing Permits for 2008
6. Stock Assessments for 2009–10 Groundfish Fisheries
7. Consideration of Inseason Adjustments
8. Amendment 21: Intersector Allocation
9. Amendment 20: Trawl Rationalization Alternatives (Trawl Individual Quotas and Cooperatives)
10. Final Consideration of Inseason Adjustments (if needed)
11. Amendment 15: American Fisheries Act Issues

F. Coastal Pelagic Species Management

1. NMFS Report
2. Pacific Mackerel Stock Assessment and Harvest Guideline for 2007–08

SCHEDULE OF ANCILLARY MEETINGS

SATURDAY, June 9, 2007	
Scientific and Statistical Committee	
Groundfish Subcommittee	1 p.m..
SUNDAY, June 10, 2007	
Scientific and Statistical Committee	
Groundfish Subcommittee	9 a.m..
Groundfish Advisory Subpanel	1 p.m..
Groundfish Management Team	1 p.m..
MONDAY, June 11, 2007	
Council Secretariat	8 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Scientific and Statistical Committee	8 a.m..
Budget Committee	8:30 a.m..
Habitat Committee	9 a.m..
Legislative Committee	10 a.m..
Enforcement Consultants	4:30 p.m..
Groundfish Stock Assessment Question and Answer Session	7 p.m..
TUESDAY, June 12, 2007	
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Washington State Delegation	7 a.m..
Enforcement Consultants	8 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Scientific and Statistical Committee	8 a.m..
WEDNESDAY, June 13, 2007	
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Washington State Delegation	7 a.m..
Enforcement Consultants	8 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Scientific and Statistical Committee	8 a.m..
Trawl Individual Quota Committee	8:30 a.m..
Olympic National Marine Sanctuary Marine Habitat Research Report	7 p.m..
THURSDAY, June 14, 2007	
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Enforcement Consultants	As necessary.
Informal Vessel Monitoring Program Review with Industry	7 p.m..
FRIDAY, June 15, 2007	
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Washington State Delegation	7 a.m..
Enforcement Consultants	As necessary.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: May 21, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–10009 Filed 5–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[XRIN: 0648–XA53]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Model Evaluation Workgroup (MEW) will hold a work session to finalize documentation for the Chinook and Coho Fishery Regulation Assessments Models (FRAM), and to plan work projects for 2007 and beyond. The meeting is open to the public.

DATES: The work session will be held Wednesday, June 13, 2007, from 9 a.m. to 4 p.m.

ADDRESSES: The work session will be held at the Pacific Fishery Management Council Office, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to finalize documentation for the Chinook and Coho FRAM, plan work activities associated with the Council's 2007 salmon methodology review precess, and to consider a strategic work plan for the MEW.

Although non-emergency issues not contained in the meeting agendas may come before the MEW for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: May 21, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–10011 Filed 5–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA42

Endangered Species; File No. 1604

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the U.S. Fish and Wildlife Service (Dr. Chester Figiel, Principal Investigator), 5308 Spring Street, Warm Springs, GA 31830, has been issued a permit to take captive shortnose sturgeon (*Acipenser brevirostrum*) for purposes of enhancement and scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Protected Resources Division, Southeast Region, NMFS, 263 13th Avenue South,St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead, or Jennifer Skidmore (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 13, 2007, notice was published in the **Federal Register** (72 FR 18636) that a request for an enhancement and scientific research permit to take captive shortnose sturgeon had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The primary objective is to utilize the available captive brood stock population to provide information needed for implementation of recovery efforts, as described in the "Final Recovery Plan for the Shortnose Sturgeon (*Acipenser brevirostrum*)" (NMFS, 1998). Captive shortnose sturgeon will be maintained, conditioned, spawned and the gametes and progeny used for scientific studies, such as cryo-preservation, genetics, culture techniques, behavioral studies, nutrition, and tagging techniques. An additional study characterizing the genetic strains of sturgeon in rivers of the Southeast Atlantic coast will be accomplished using tissues samples archived at the NOAA/NOS Laboratory in Charleston, South Carolina. This project will not require any further takes from the wild or any release of captive sturgeon into the wild. The permit is authorized for five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 18, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–9961 Filed 5–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA41

Endangered Species; File No. 1526

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

ACTION: Notice; receipt of application for modification

SUMMARY: Notice is hereby given that Andre Landry, Sea Turtle and Fisheries Ecology Research Lab, Texas A&M University at Galveston, 5007 Avenue U, Galveston, TX 77553, has requested a modification to scientific research Permit No. 1526.

DATES: Written, telefaxed, or e-mail comments must be received on or before June 25, 2007.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701;

phone (727)824–5312; fax (727)824–5309.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1526.

FOR FURTHER INFORMATION CONTACT: Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1526, issued on August 1, 2005 (70 FR 44091) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1526 authorizes the permit holder to study Kemp's ridley, loggerhead, green, and hawksbill sea turtles in the Gulf of Mexico to identify their relative abundance over time; detect changes in sea turtle size composition; document movement and migration patterns; and determine the role of nearshore habitats in sea turtle survival. The permit holder is asking to extend his current annual authorization to take 50 juvenile and 50 sub-adult green sea turtles in Laguna Madre, Texas through year 2010 in order to generate more robust population estimates, yield a larger sample size for estimating growth rates and residency and fidelity in constituent habitats, and increase the potential to recapture turtles for additional information. The permit holder also requests authorization to attach satellite transmitters to 20 animals annually and to collect biopsy samples from 150 animals annually for stable isotope analysis through year 2010 to learn more about habitat preference and residency. All animals would be captured in Texas waters in the manner already authorized under Permit No. 1526.

Dated: May 17, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–9963 Filed 5–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Trademark Trial and Appeal Board (TTAB) Actions

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 23, 2007.

ADDRESSES: You may submit comments by any of the following methods:

- *E-mail: Susan.Fawcett@uspto.gov.* Include "0651–0040 comment" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Jyll Taylor, Administrative Trademark Judge, Trademark Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–4314; or by e-mail at *jyll.taylor@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by the Trademark Act Sections 13, 14, and 20, 15 U.S.C. 1063, 1064, and 1070, respectively. Under the Trademark Act, any individual or entity that adopts a trademark or service mark to identify its goods or services may apply to federally register its mark. Section 14 of the Trademark Act allows individuals and entities to file a petition to cancel a registration of a mark, while Section 13 allows individuals and entities who believe that they would be damaged by the registration of a mark to file an opposition, or an extension of time to file an opposition, to the registration of a mark. Section 20 of the Trademark Act allows individuals and entities to file an appeal from any final decision of the Trademark Examining Attorney assigned to review an application for registration of a mark.

The USPTO administers the Trademark Act pursuant to 37 CFR part 2, which contains the various rules that govern the filing of petitions to cancel the registrations of marks, notices of opposition to the registration of a mark, extensions of time to file an opposition, appeals, and other papers filed in connection with inter partes and ex partes proceedings. These petitions, notices, extensions, and additional papers are filed with the Trademark Trial and Appeal Board (TTAB).

The information in this collection can be submitted in paper format or electronically through the Electronic System for Trademark Trials and Appeals (ESTTA). There are no paper forms associated with this collection. However, the TTAB has suggested formats for the Petition to Cancel and the Notice of Opposition that individuals and entities can use when submitting these petitions and notices to the TTAB. These are not forms and, as such, do not have form numbers. If applicants or entities wish to submit the petitions, notices, extensions, and additional papers in inter partes and ex parte cases electronically, they must use the forms provided through ESTTA. Oppositions to extensions of protection under the Madrid Protocol (or requests for extensions to time to oppose) must be filed electronically through ESTTA. This collection contains two suggested formats and six electronic forms.

The additional papers filed in inter partes and ex parte proceedings can be filed in paper or electronically. Although the number of paper filings are decreasing in favor of electronic filings, there are still a substantial number of paper submissions. Therefore, the USPTO is taking this opportunity to add the paper submissions of the additional papers that are filed in inter partes and ex parte proceedings into the collection.

II. Method of Collection

By mail, hand delivery, or electronically through ESTTA when a party files a petition to cancel a

trademark registration, an opposition to the registration of a trademark, a request to extend the time to file an opposition, a notice of appeal, or additional papers for inter partes and ex parte proceedings with the USPTO. However, notices of opposition and extensions of time to file notices of opposition against the extensions of protection under the Madrid Protocol must be filed electronically through ESTTA. Only notices of appeal for ex parte appeals can be submitted by facsimile, in accordance with 37 CFR 2.195(d)(3).

III. Data

OMB Number: 0651–0040.

Form Number(s): PTO 2120, 2151, 2153, 2188, 2189, and 2190.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit; not-for-profit institutions.

Estimated Number of Respondents: 78,589 responses per year.

Estimated Time Per Response: The USPTO estimates that it takes the public approximately 10 to 45 minutes (0.17 to 0.75 hours) to complete this information, depending on the request. This includes the time to gather the necessary information, prepare the petitions, notices, extensions, or additional papers, and submit the completed request to the USPTO. The USPTO believes that it will take the same amount of time (and possibly less time) to gather the necessary information, prepare the submission, and submit it electronically to the TTAB as it does to submit it in paper form.

Estimated Total Annual Respondent Burden Hours: 18,566 hours.

Estimated Total Annual Respondent Cost Burden: $3,657,502. The USPTO estimates that it will take a 50/50 level of effort by associate attorneys and paraprofessionals/paralegals to complete the requirements in this collection. The professional hourly rate for associate attorneys in private firms is $304, while the hourly rate for paraprofessionals/paralegals in private firms is $90. After calculating the average of these rates, the USPTO believes that the hourly rate for completing the petitions, notices, requests, and other papers will be $197. Using this hourly rate, the USPTO estimates that the total respondent cost burden for this collection is $3,657,502 per year.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Petition to Cancel	45	476	357
Electronic Petition to Cancel	45	1,109	832
Notice of Opposition	45	2,015	1,511
Electronic Notice of Opposition	45	4,975	3,731
Extension of Time to File an Opposition	10	2,476	421
Electronic Request for Extension of Time to File an Opposition	10	22,284	3,788
Papers in Inter Partes Cases (file answers, amendments to pleadings, amendment of application or registration during proceeding, motions (such as consent motions, motions to extend, and motions to suspend), evidence, briefs, surrender of registration, abandonment of application, documents related to concurrent use applications, and appeals to court and civil actions in opposition and cancellation proceedings)	10	11,500	1,955
Electronic Papers in Inter Partes Cases (file answers, amendments to pleadings, amendment of application or registration during proceeding, motions (such as consent motions, motions to extend, and motions to suspend), evidence, briefs, surrender of registration, abandonment of application, documents related to concurrent use applications, and appeals to court and civil actions in opposition and cancellation proceedings)	10	25,000	4,250
Notice of Appeal	15	1,168	292
Electronic Notice of Appeal	15	1,752	438
Miscellaneous Ex Parte Papers	10	4,320	734
Electronic Miscellaneous Ex Parte Papers	10	1,514	257
Total	.....	78,589	18,566

Estimated Total Annual Non-hour Respondent Cost Burden: $2,915,634. There are postage and recordkeeping costs, as well as filing fees, associated with this information collection. This collection does not have any capital start-up or maintenance costs.

The petitions to cancel, the notices of opposition and appeal, the extensions of time to file an opposition, and the additional papers filed in inter partes and ex parte cases may be submitted to the USPTO or served on other parties by Express or first-class mail through the United States Postal Service. These papers can also be hand delivered to the TTAB. The USPTO estimates that 6% of the petitions, notices, extensions, and additional inter partes and ex parte papers that are filed in paper will be submitted using Express Mail. The USPTO estimates that the average submission will weigh 2 ounces and that the respondent will be mailing the original to the TTAB and serving copies on the other parties involved in the proceedings. The USPTO estimates that it costs $16.25 to send the petitions, notices, extensions, appeals, and additional papers by Express Mail to the TTAB. To account for the service of papers on other parties, the USPTO is adding an additional 20% of the postage rate for an estimated cost of $19.50. The USPTO estimates that up to 1,317 submissions per year may be mailed to the USPTO and other parties by Express Mail, for a postage cost of $25,682.

The USPTO believes that 89% of the petitions to cancel, the notices of opposition and appeal, the extensions of time to file an opposition, and the additional papers filed in inter partes and ex parte proceedings that are filed in paper will be sent by first-class mail. The USPTO estimates that the average submission will weigh 2 ounces and that the respondent will be mailing the original to the TTAB and serving copies on the other parties involved in the proceedings. The USPTO estimates that it costs 58 cents to mail the petitions, notices, extensions, appeals, and additional papers to the TTAB. To account for the service of papers on other parties, the USPTO is adding an additional 80% of the postage rate for an estimated cost of $1.04. The USPTO estimates that up to 19,540 submissions per year may be mailed to the USPTO and other parties by first-class mail, for a postage cost of $20,322.

Therefore, the USPTO estimates that the total postage cost for this collection is $46,004 per year.

In addition, the USPTO also strongly advises applicants who file their petitions to cancel, notices of opposition, appeals, extensions of time to file an opposition, and additional papers for ex parte and inter partes cases electronically to keep a copy of the acknowledgment receipt as clear evidence that the file was received by the USPTO on the date noted. The USPTO estimates that it will take 5 seconds (0.001 hours) to print the acknowledgment receipt and that 56,634 petitions, notices, extensions, and other papers will be submitted electronically. Using the paraprofessional rate of $90 per hour, the USPTO estimates that the total recordkeeping cost for this collection will be $5,130 per year.

There is also annual nonhour cost burden in the way of filing fees associated with this collection. The petitions to cancel and the notices of opposition and appeal have filing fees. There are no filing fees for the extensions of time to file an opposition. The additional papers that are filed in ex parte and inter partes proceedings do not have their own specific fees, so they do not add new fees to the collection. The filing fees for the petitions to cancel and notices of opposition are per class of goods and services in the subject application or registration; therefore the total filing fees can vary depending on the number of classes. The total filing fees of $2,864,500 shown here are the minimum fees associated with this information collection.

Item	Responses (yr) (a)	Filing fees (b)	Total non-hour cost burden (yr) (a) × (b)
Petition to Cancel	476	$300.00	$142,800.00
Electronic Petition to Cancel	1,109	300.00	332,700.00
Notice of Opposition	2,015	300.00	604,500.00
Electronic Notice of Opposition	4,975	300.00	1,492,500.00
Extension of Time to File an Opposition	2,476	0.00	0.00
Electronic Request for Extension of Time to File an Opposition	22,284	0.00	0.00
Papers in Inter Partes Cases (file answers, amendments to pleadings, amendment of application or registration during proceeding, motions (such as consent motions, motions to extend, and motions to suspend), evidence, briefs, surrender of registration, abandonment of application, documents related to concurrent use applications, and appeals to court and civil actions in opposition and cancellation proceedings)	11,500	0.00	0.00
Electronic Papers in Inter Partes Cases (file answers, amendments to pleadings, amendment of application or registration during proceeding, motions (such as consent motions, motions to extend, and motions to suspend), evidence, briefs, surrender of registration, abandonment of application, documents related to concurrent use applications, and appeals to court and civil actions in opposition and cancellation proceedings)	25,000	0.00	0.00
Notice of Appeal	1,168	100.00	116,800.00
Electronic Notice of Appeal	1,752	100.00	175,200.00
Miscellaneous Ex Parte Papers	4,320	0.00	0.00
Electronic Miscellaneous Ex Parte Papers	1,514	0.00	0.00
Totals	78,589	.....	2,864,500.00

The USPTO estimates that the total non-hour respondent cost burden for this collection, in the form of postage and recordkeeping costs, in addition to the filing fees, is $2,915,634 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 18, 2007.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E7–10041 Filed 5–23–07; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Patent Public Advisory Strategic Planning Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Patent and Trademark Office, Patent Public Advisory Committee, invites the general public and other Federal agencies to take this opportunity to comment on this new information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 23, 2007.

ADDRESSES: You may submit comments by any of the following methods:

- *E-mail: Susan.Fawcett@uspto.gov.* Include "0651–00xx PPAC Strategic Planning Survey" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria. VA 22313–1450.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of 0651–00xx Patent Public Advisory Strategic Planning Survey c/o Andrew I.

Faile, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by facsimile at 571–273–6950, or by e-mail at *Andrew.faile@uspto.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Patent Public Advisory Committee (PPAC) was established under 35 U.S.C. 5 as a nine member committee appointed by the Secretary of Commerce and serving at the pleasure of the Secretary of Commerce, with the duty to review the policies, goals, performance, budget, and user fees of the United States Patent and Trademark Office with respect to patents. In order to obtain data for a review of the policies, goals, and performance, the PPAC will conduct a survey, gather and analyze issues pertaining to potential problems and improvements to the U.S. Patent systems. Through this survey the PPAC will assist the USPTO in meeting its strategic goals, including efforts to optimize the patent process, in a clearly and concisely articulated and documented format.

The outreach survey project will be designed to query from a representative diversity of business and industry sectors, as well as academia and others involved in developing innovation from conception to commercialization.

The PPAC intends to use the data to measure how well the agency is meeting established programmatic expectations, to identify any disjoints between industry expectations and USPTO performance, and to develop improvement strategies that are inline with the agency strategic plan.

To obtain data, the PPAC proposes to use data gathering mechanisms to include but not be limited to: Focus groups, online surveys and one-on-one interviews. Focus groups will include individuals representing a cross section of the external Intellectual Property community and analysis of survey results will obtain both quantitative and qualitative responses.

This is a voluntary survey. The collected data will not be linked to the respondent and contact information that is used for sampling purposes will be maintained in a separate file from the quantitative data. Respondents are not required to provide any identifying information such as their name, address, or Social Security Number. In order to access and complete the online survey, respondents will need to use the username and password provided by the USPTO.

II. Method of Collection

In person, by mail, and/or electronically over the Internet.

III. Data

OMB Number: 0651–00xx.

Form Number(s): N/A.

Type of Review: New information collection.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; Federal Government; and state, local, or tribal Government.

Estimated Number of Respondents: 2,665 responses per year. It is estimated that the PPAC will conduct 6 focus groups of 20 respondents, 6 virtual focus groups of 20 attendees, 4 online surveys of up to 600 participants, and up to 25 one-on-one interviews.

The respondent group will include industry leadership throughout the United States. Due to the nature of the survey, which is being conducted as an outreach support project, the respondent group is expected to be higher than a random sampling survey audience. The PPAC expects to conduct these surveys once. The PPAC estimates that 70% of online surveys will be completed, 60% of all focus group invitees will attend, 60% of online surveys will be submitted, and 50% of the one-on-one interviews will be attended.

Estimated Time per Response: The USPTO estimates that it will take approximately 10 minutes (0.17 hours) to complete the online version of this survey. This includes the time to gather the necessary information, complete the request, and submit it to the USPTO. The expectation is that it will take approximately 30 minutes (0.5 hours) to complete a focus group session; and 20 minutes (0.33 hours) to complete a one-on-one interview.

Estimated Total Annual Respondent Burden Hours: 536 hours.

Estimated Total Annual Respondent Cost Burden: $162,944. The USPTO believes that a variety of professionals and industry leaders will be responding to these surveys, and as such the basis used for cost burden is that of the professional hourly rate of $304 for associate attorneys in private firms.

Item	Estimated time for response (in minutes)	Estimated annual responses	Estimated annual burden hours
PPAC Focus Group Session	30	120	60
PPAC Virtual Focus Groups	30	120	60
PPAC Online Strategic Planning Survey	10	2,400	408
PPAC One-On-One Interview Survey	20	25	8
Total	.....	2,665	536

Estimated Total Annual Non-hour Respondent Cost Burden: $0. There are no capital start-up, maintenance, operation, or recordkeeping costs, nor are there any filing fees associated with this information collection.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper planning of strategic initiatives, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 18, 2007.

Susan K. Fawcett,

Records Officer, U.S. Patent and Trademark Office, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E7–10042 Filed 5–23–07; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2007–0021]

Grant of Interim Extension of the Term of U.S. Patent No. 4,927,855; NUVIGIL™ (armodafinil)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued an order granting interim extension under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 4,927,855.

FOR FURTHER INFORMATION CONTACT: Mary C. Till by telephone at (571) 272–7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE., P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7755, or by e-mail to *Mary.Till@uspto.gov*.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On May 7, 2007, Cephalon, Inc., an agent of Laboratoire L. Lafon, the owner of record in the United States Patent and Trademark Office of U.S. Patent No. 4,927,855, timely filed an application under 35 U.S.C. 156(d)(5) for an interim extension of the term of U.S. Patent No. 4,927,855. The patent claims the human drug product NUVIGIL™ (armodafinil) and a method of said product. The application indicates, and the Food and Drug Administration has confirmed, that a new drug application (NDA 21–875) for the human drug product NUVIGIL™ (armodafinil) has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Because it is apparent that the regulatory review period will continue beyond the original expiration date of the patent (May 22, 2007), interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,927,855 is granted for a period of one year from the expiration date of the patent, i.e., until May 22, 2008.

Dated: May 18, 2007.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E7–10084 Filed 5–23–07; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Sub Committee Meeting of the President's Commission on Care for America's Returning Wounded Warriors

AGENCY: Department of Defense.

ACTION: Federal Advisory Committee Sub Committee Meeting Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) and 41 Code of Federal Regulations (CFR) 102–3.140 thorough 160, the Department of Defense announces the forthcoming sub committee meeting:

Subcommittees of the Commission will conduct preparatory work meetings at Ft. Bragg and Camp Lejeune, North Caroline June 19th to gather information, conduct research and analyze relevant issues and facts in preparation for a meeting of the Commission. Pursuant to section 102–3.160(a) of 41 Code of Federal Regulations (CFR), these subcommittee meetings are not open to the public, and the subcommittees are required to report their findings to the Commission for further deliberation.

Dated: May 18, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–2596 Filed 5–22–07; 10:59 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Sub Committee Meeting of the President's Commission on Care for America's Returning Wounded Warriors

AGENCY: Department of Defense.

ACTION: Federal Advisory Committee Sub Committee Meeting Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) and 41 Code of Federal Regulations (CFR) 102–3.140 through 160, the Department of Defense announces the forthcoming sub committee meeting:

Subcommittees of the Commission will conduct preparatory work meetings in the New Jersey area June 15th to gather information, conduct research and analyze relevant issues and facts in preparation for a meeting of the Commission. Pursuant to section 102–3.160(a) of 41 Code of Federal Regulations (CFR), these subcommittee meetings are not open to the public, and the subcommittees are required to report their findings to the Commission for further deliberation. Locations include the East Orange VA Health Center. Additionally, the Sub Committees may visit public and private hospitals in the area for investigation of Centers of Excellence that apply to the Commission's Charter.

Dated: May 18, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–2597 Filed 5–22–07; 8:45 am]

BILLING CODE 5001–06–M

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of Public Teleconference Meetings for the Working Subcommittees of the Technical Guidelines Development Committee.

DATES AND TIMES:

Tuesday, May 29, 2007 at 10:30 a.m. ET.
Thursday, May 31, 2007 at 11 a.m. ET.
Friday, June 1, 2007 at 11 a.m. ET.
Tuesday, June 5, 2007 at 10:30 a.m. ET.
Thursday, June 7, 2007 at 11 a.m. ET.
Friday, June 8, 2007 at 11 a.m. ET.
Tuesday, June 12, 2007 at 10:30 a.m. ET.
Thursday, June 14, 2007 at 11 a.m. ET.
Friday, June 15, 2007 at 11 a.m. ET.
Tuesday, June 19, 2007 at 10:30 a.m. ET.
Thursday, June 21, 2007 at 11 a.m. ET.
Friday, June 22, 2007 at 11 a.m. ET.
Tuesday, June 26, 2007 at 10:30 a.m. ET.
Thursday, June 28, 2007 at 11 a.m. ET.
Friday, June 29, 2007 at 11 a.m. ET.

STATUS: Audio recordings of working subcommittee teleconferences are available upon conclusion of each meeting at: *http://vote.nist.gov/subcomm_mtgs.htm.* Agendas for each teleconference will be posted approximately one week in advance of each meeting at the above Web site.

SUMMARY: The Technical Guidelines Development Committee (the "Development Committee") was established to act in the public interest to assist the Executive Director of the U.S. Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. The Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather and analyze information on relevant issues. These working subcommittees propose resolutions to the TGDC on best practices, specifications and standards. Specifically, NIST staff and Committee members will meet via the above scheduled teleconferences to review and discuss progress on tasks defined in resolutions passed at Development Committee plenary meetings. The resolutions define technical work tasks for NIST that will assist the Committee in developing recommendations for voluntary voting system guidelines. The Committee met in its eighth plenary session on March 22–23, 2007. Documents and transcriptions of Committee proceedings are available at *http://vote.nist.gov/PublicHearingsandMeetings.html.*

SUPPLEMENTARY INFORMATION: The Technical Guidelines Development Committee (the "Development Committee") was established pursuant to 42 U.S.C. 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The information gathered and analyzed by the working subcommittees during their teleconference meetings will be reviewed at future Development Committee plenary meetings.

CONTACT INFORMATION: Alan Eustis 301–975–5099. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before or after subcommittee teleconference meetings, written comments should be addressed to the contact person indicated above, or to *voting@nist.gov.*

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 07–2627 Filed 5–22–07; 3:17 pm]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF07–60–000]

Food Lion 2616—Benson, NC; Notice of Filing of Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

May 18, 2007.

Take notice that on December 27, 2006, Food Lion LLC, 2110 Executive Drive, Salisbury, NC 28145 (Headquarters), filed with the Federal Energy Regulatory Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

This qualifying cogeneration facility consists of a 365 kW packaged diesel engine generator set operating on #2 fuel oil. The package is set on a concrete pad. The unit is self-contained, including all necessary switchgear and controls. The electricity is generated at 208 V, 3 phase, 60 Hz. The facility is located at 700 E. Parrish Drive, Benson, NC 27504.

This qualifying facility interconnects with the Town of Benson's electric distribution system. The facility will provide standby power and occasionally supplementary power to Food Lion.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9983 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA07–24–000]

Alcoa Power Generating Inc. Long Sault Division; Notice of Filing

May 18, 2007.

Take notice that on May 14, 2007, the Long Sault Division of Alcoa Power Generating Inc. filed a request for partial waiver of Order No. 890, III FERC Statutes and Regulations ¶ 31,131.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 13, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9973 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA07–23–000]

Alcoa Power Generating Inc., Tapoco Division; Notice of Filing

May 18, 2007.

Take notice that on May 14, 2007, the Tapoco Division of Alcoa Power Generating, Inc. filed a request for waiver of Order No. 889 Oasis requirements and for partial waiver for Order No. 890, III FERC Statue & Regulations, ¶ 31,035 (1996) and ¶ 31,131 (2007).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 13, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9986 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–2197–073]

Alcoa Power Generating Inc.; Notice of Settlement Agreement and Soliciting Comments

May 17, 2007.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project Nos.:* P–2197–073.

c. *Date Filed:* May 7, 2007.

d. *Applicant:* Alcoa Power Generating Inc. (Alcoa Generating).

e. *Name of Project:* Yadkin Hydroelectric Project.

f. *Location:* On the Yadkin River in Stanly, Davidson, Montgomery, and Rowan Counties, North Carolina. The project does not occupy federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Gene Ellis, Licensing and Property Manager, Alcoa Power Generating, Inc., Yadkin Division, NC Highway 740, P.O. Box 576, Badin, North Carolina 28009–0576, Phone: (909) 394–8667.

i. *FERC Contact:* Lee Emery, 888 First St, NE., Washington, DC 20426, (202) 502–8379.

j. *Deadline for filing comments:* June 6, 2007. Reply comments due June 18, 2007.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. Alcoa Generating filed a settlement on behalf of itself and 24 other entities that signed the settlement. Other parties signing the settlement included state agencies, county governments, an Indian tribe, and various other stakeholders involved in the relicense proceeding. The purpose of the settlement agreement is to resolve most of the issues that have or could have been raised by the settling parties in connection with the Commission's issuance of a new license for the project and to establish Alcoa Generating's obligations for the protection, mitigation, and enhancement of resources affected by the project. Major issues covered in the settlement include: (1) Revising the operating rule curve for High Rock Lake, (2) stabilizing water levels at all four project reservoirs to enhance fish spawning, (3) increasing minimum flow releases from the project, (4) implementing a dissolved oxygen monitoring plan, (5) improving recreational facilities, and (6) developing a flow and reservoir monitoring and compliance plan.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects.

For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9999 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP07–436–000]

ANR Pipeline Company; Notice of Tariff Filing

May 17, 2007.

Take notice that on May 1, 2007, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Forty-Seventh Revised Sheet No. 17, to be effective June 1, 2007.

ANR states that the filing is being filed to implement its annual cashout surcharge pursuant to the provisions contained in Sections 15.5 and 15.8 of the General Terms & Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

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 Practices and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time May 18, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–10002 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–12755–000]

Bost2 Hydroelectric LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests and Comments

May 17, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12755–000.

c. *Date filed:* December 12, 2006.

d. *Applicant:* Bost2 Hydroelectric LLC.

e. *Name of Project:* Red River Lock & Dam #2 Hydroelectric Project.

f. *Location:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Red River Lock & Dam #2 and would be located on the Red River, in Rapides Parish, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Robert Larson, Bost2 Hydroelectric LLC, c/o Gray, Plant, Mooty, Mooty, & Bennett, 80 South 8th Street, Suite 500, Minneapolis, MN 55402, (612) 632–3355.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

k. *All documents (original and eight copies) should be filed with:* The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12755–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

l. *Description of Project:* The proposed project would use the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 2 and consist of: (1) Five proposed penstocks; (2) a proposed powerhouse containing 5 generating units with a total installed capacity of 23-megawatts; (3) a proposed 500-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 141-gigawatt hours. The applicant plans to sell the generated energy.

m. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent

allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

p. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

q. *Notice of Intent*—a notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

r. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

s. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

t. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT", or "COMPETING APPLICATION", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

u. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

v. 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 at *http://www.ferc.gov* under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9995 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–5302–000]

Bryant, Robert W.; Notice of Filing

May 17, 2007.

Take notice that on May 11, 2007, Robert W. Bryant filed an Application for Authorization to Hold Interlocking Positions, pursuant to section 305(b) of the Federal Power Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 11, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9990 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–615–000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

May 17, 2007.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on May 23–25, 2007 members of its staff will attend the California Independent System Operator's (CAISO) training program entitled, "Market Redesign and Technology Upgrade (MRTU) Bid-to-Bill Training." This training covers the MRTU market process timeline, bids, settlements, and billing, and will be held at the CAISO, 151 Blue Ravine Road, Folsom, CA. The agenda and other documents for the training are available on the CAISO's Web site, *http://www.caiso.com.*

This training is sponsored by the CAISO and is open to interested parties and market participants. Commission staff attendance is part of its ongoing training activities. The training may discuss matters at issue in the above captioned docket.

For further information, contact Steven Michals at *steven.michals@ferc.gov*; (202) 502–6373.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9989 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–033]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Negotiated Rates

May 18, 2007.

Take notice that on April 27, 2007, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing an amended negotiated rate agreement for Rate Schedule PALS service between MRT and Laclede Energy Resources, Inc. MRT requests that the Commission accept and approve the transaction to be effective May 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9975 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–640–000]

Citadel Energy Investments Ltd.; Notice of Issuance of Order

May 18, 2007.

Citadel Energy Investments Ltd. (CEI), filed a request for authorization to engage in the resale of financially-settled financial transmission rights with an accompanying rate schedule. CEI also requested waivers of various Commission regulations. In particular, CEI requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by CEI.

On May 17, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by CEI should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is June 18, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, CEI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of CEI, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of CEI's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9978 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF07–11–000]

EnviroDyne Inc.; Notice of Filing of Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

May 18, 2007.

Take notice that on October 13, 2006, EnviroDyne Inc., 10400 Overland Road #226, Boise, ID 83709 filed with the Federal Energy Regulatory Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

This cogeneration facility will be located at 3349 S. 1800 E., Wendell, Gooding County, Idaho.

Initially the primary energy input will be from Natural Gas fuel with approximately one percent (1%) of the fuel source from Diesel Fuel (pilot fuel for ignition of the natural gas).

It is anticipated that over time, after development of a gasification unit, this plant could be run on the output of a gasification process with animal waste being the input to the energy conversion units. This fuel source would be in addition to operation on Bio-diesel fuel. In the event of lack of this fuel, the units would run on or be supplemented by Natural Gas.

The principle components of the plant will consist of six (6) model 38ETDD81/8 Enviro-Design Engines, each rated at 3030 BHP and each capable of producing 2165 KW power at 4160 volt, 3 phase 60 Hz Alternating Current. In addition to each engine-generator unit, each plant will consist of heat exchangers and radiators as necessary to cool the units and to recover heat from the units in the form of hot water, possible including exhaust waste heat boilers/heat exchangers. Units would also each include lube oil filtration equipment. Switch gear necessary to monitor and control power output would be included, with each unit having a brushless exciter system controlled by a voltage regulation system.

The plant will also be provided with a step up transformer to convert the generator output (at 4160 VAC) to 35 KV power for connection to Idaho Power's nearby transmission line.

It is expected that EnviroDyne will interconnect with and sell electricity to IDAHO POWER.

EnviroDyne Inc. will not receive supplementary power, backup power, maintenance power, and/or interruptible power from any utility. EnviroDyne Inc. will be a self-sustaining power generation facility.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9972 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF07–90–000]

Food Lion 1218 Hertford, NC; Notice of Filing of Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

May 17, 2007.

Take notice that on February 7, 2007, Food Lion LLC 1218 Hertford, NC filed a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

This qualifying cogeneration facility consists of a 400 kW packaged diesel engine generator set operating on #2 fuel oil. The package is set on a concrete pad. The unit is self-contained, including all necessary switchgear and controls. The electricity is generated at 208 V, 3 phase, 60 Hz. The facility is located at #2 Perquimans Center Hwy 17, Hertford, NC 27944.

This qualifying facility interconnects with the Town of Hertford's electric distribution system. The facility will provide standby power and occasionally supplementary power to Food Lion.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–10003 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF07–123–000]

Food Lion 575 Elizabeth City, NC; Notice of Filing of Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

May 17, 2007.

Take notice that on April 2, 2007, Food Lion 575 Elizabeth City, NC filed with the Federal Energy Regulatory Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

This qualifying cogeneration facility consists of a 400 kW packaged diesel engine generator set operating on #2 fuel oil. The package is set on a concrete pad. The unit is self-contained, including all necessary switchgear and controls. The electricity is generated at 208 V, 3 phase, 60 Hz. The facility is located at 1903 Weeksville Road, Elizabeth City, NC 27909.

This qualifying facility interconnects with the City of Elizabeth City's electric distribution system. The facility will provide standby power and occasionally supplementary power to Food Lion.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–10005 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF07–89–000]

Food Lion 817 New Bern, NC; Notice of Filing of Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

May 17, 2007.

Take notice that on February 7, 2007, Food Lion 817 New Bern, NC filed a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

This qualifying cogeneration facility consists of a 400 kW packaged diesel engine generator set operating on #2 fuel oil. The package is set on a concrete pad. The unit is self-contained, including all necessary switchgear and controls. The electricity is generated at 208 V, 3 phase, 60 Hz. The facility is located at 935 Hwy 70 East, New Bern, NC 28560.

This qualifying facility interconnects with the City of New Bern's electric distribution system. The facility will provide standby power and occasionally supplementary power to Food Lion.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–10004 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF07–87–000]

Food Lion 149—Clayton, NC; Notice of Filing of Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

May 18, 2007.

Take notice that on February 7, 2007, Food Lion LLC, 2110 Executive Drive, Salisbury, NC 28145 (Headquarters), filed with the Federal Energy Regulatory Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

This qualifying cogeneration facility consists of a 400 kW packaged diesel engine generator set operating on #2 fuel oil. The package is set on a concrete pad. The unit is self-contained, including all necessary switchgear and controls. The electricity is generated at 208 V, 3 phase, 60 Hz. The facility is located at 1125 Clayton Village Center, Clayton, NC 27520.

This qualifying facility interconnects with the Town of Clayton's electric distribution system. The facility will provide standby power and occasionally supplementary power to Food Lion.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9982 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF07–88–000]

Food Lion 575—Elizabeth City, NC; Notice of Filing of Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

May 18, 2007.

Take notice that on February 7, 2007, Food Lion LLC, 2110 Executive Drive, Salisbury, NC 28145 (Headquarters), filed with the Federal Energy Regulatory Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

This qualifying cogeneration facility consists of a 400 kW packaged diesel engine generator set operating on #2 fuel oil. The package is set on a concrete pad. The unit is self-contained, including all necessary switchgear and controls. The electricity is generated at 208 V, 3 phase, 60 Hz. The facility is located at 1313 N. Road St., Elizabeth City, NC 27909.

This qualifying facility interconnects with the City of Elizabeth City's electric distribution system. The facility will provide standby power and occasionally supplementary power to Food Lion.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9984 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–608–000, ER07–608–001, and ER07–608–002]

Gerdau Ameristeel Energy, Inc.; Notice of Issuance of Order

May 18, 2007.

Gerdau Ameristeel Energy, Inc. (Gerdau) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Gerdau also requested waivers of various Commission regulations. In particular, Gerdau requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Gerdau.

On May 17, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Gerdau should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is June 18, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Gerdau is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Gerdau compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Gerdau's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9977 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–3102–000]

Harbin, Billy C.; Notice of Filing

May 17, 2007.

Take notice that on May 11, 2007, Billy C. Harbin filed an Application for Authorization to Hold Interlocking Positions, pursuant to section 305(b) of the Federal Power Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 11, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9991 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–758–000]

Inland Empire Energy Center, LLC; Notice of Issuance of Order

May 18, 2007.

Inland Empire Energy Center, LLC (Inland Empire) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Inland Empire also requested waivers of various Commission regulations. In particular, Inland Empire requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Inland Empire.

On May 17, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Inland Empire should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is June 18, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Inland Empire is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Inland Empire, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Inland Empire's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9979 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA07–22–000]

Lockhart Power Company; Notice of Filing

May 18, 2007.

Take notice that on May 14, 2007, Lockhart Power Company filed a request for waiver of certain requirements of Order No. 890, III FERC Statues & Regulations, ¶ 31,131 (2007).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 13, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9981 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12794–000]

Natural Currents Energy Services, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 17, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12794–000.

c. *Date Filed:* April 18, 2007.

d. *Applicant:* Natural Currents Energy Services, LLC.

e. *Name of Project:* Cape Cod Tidal Energy Plant.

f. *Location:* The project would be located in the Cape Cod Canal, between Cape Cod Bay and Buzzards Bay, in Barnstable County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Roger Bason, Natural Currents Energy Services, LLC, 24 Roxanne Boulevard, Highland, NY 12561, phone (845)–691–4008.

i. *FERC Contact:* Chris Yeakel, (202) 502–8132.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) One or several devices using the Tidal In-Stream Energy Conversion (TISEC), Lunar Energy, Gorlov Helical Turbine, Marine Current Turbine, or Natural Currents Red Hawk TISEC technology, (2) anchoring systems, (3) mooring lines, and (4) interconnection transmission lines. The project is estimated to have an annual generation of 3 gigawatt-hours per-year, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing

application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", "COMPETING APPLICATION" OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–10006 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS07–5–000]

Neptune Regional Transmission System; Notice of Request for Exemption

May 17, 2007.

Take notice that on May 10, 2007, Neptune Regional Transmission System filed a request for exemption from standards of conduct, pursuant to Part 358 of the Commission's regulations and Order No. 2004.

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 comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 11, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9992 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF06–346–000]

Newark America; Notice of Filing of Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

May 18, 2007.

Take notice that on September 19, 2006, Newark America, 100 Newark Way, Fitchburg, MA 01420 filed with the Federal Energy Regulatory Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR. 292.207(a) of the Commission's regulations.

The Facility is a recycled paperboard manufacturing plant. The facility is installing a topping cycle steam turbine to convert its current steam production facilities to a Cogeneration Facility. The primary energy source used by the facility is and will continue to be natural gas with No.2 distillate fuel oil as the backup fuel. The nameplate capacity of non-fired General Electric Steam Turbine Generator being installed is 6.25MW. The facility is located in Worcester county of Massachusetts at 100 Newark Way, Fitchburg, MA 01420.

The facility will interconnect to Unitil (Fitchburg Gas and Electric). The Newark America manufacturing facility currently receives delivery service for electrical energy under current applicable Fitchburg Gas and Electric industrial electric rate tariffs on file with the Massachusetts Department of Telecommunications and Energy (DTE) and expects to continue to receive service under the these tariffs.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9980 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–799–000 and EL07–61–000]

Norwalk Power LLC; Notice of Filing

May 17, 2007.

Take notice that on April 26, 2007, Norwalk Power LLC filed an unexecuted cost-of-service agreement, designated as Original Volume No. 3, between NRG Power Marketing Inc., ISO New England Inc. and itself, pursuant to sections 205, 206, and Part 35 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 24, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9993 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. P–2281–011, P–4851–005]

Pacific Gas and Electric Company; Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

May 17, 2007.

Take notice that the following two hydroelectric applications have been filed with Commission and are available for public inspection:

a. *Type of Application:* New Major Licenses.

b. *Project Nos:* P–2281–011, P–4851–005.

c. *Date Filed:* March 30, 2007.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Woodleaf-Kanaka Junction Transmission Line Project (P–2281–011) Sly Creek Transmission Line Project (P–4851–005).

f. *Location:* The two projects are located in Butte County California, within the South Fork Feather River watershed. The projects are not located within any designated cities, towns, subdivisions or Indian Tribe reservations. The projects are located about 15 miles east of Oroville, California. The Woodleaf-Kanaka Junction Transmission Line Project affects 31.79 acres of federal lands that is administered by the Plumas National Forest. The Sly Creek Transmission Line Project affects less than 2 acres of federal lands administered by the Plumas National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Forrest Sullivan, Senior Project Manger, Pacific Gas & Electric Company, 5555 Florin-Perkins Road, Building 500, Sacramento, CA, 95826. Tel: (916) 386–5580.

i. *FERC Contact:* John Mudre, (202) 502–8902, or *john.mudre@ferc.gov*.

j. *Deadline for filing scoping comments:* July 16, 2007.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners

filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. The applications are not ready for environmental analysis at this time.

l. The *Woodleaf-Kanaka Junction Transmission Line Project* is a transmission line only project that transmits electricity 6.2 miles from the Woodleaf Powerhouse (owned and operated by the South Feather Water and Power Agency under FERC Project No. 2088) to the Kanaka Junction. The Project also includes a 0.02-mile long tap line extending to Forbestown Powerhouse (also under FERC Project No. 2088). The Woodleaf-Kanaka Junction Transmission Line is composed of a single-circuit, 115-kV transmission line, supported primarily on wood-pole, H-frame towers within a 75-foot wide right-of-way. The project is linked to the Licensee's Sly Creek Transmission Line (FERC License No. 4851), via the Woodleaf Powerhouse Switchyard, a component of FERC Project No. 2088.

The *Sly Creek Transmission Line Project* is a transmission line only project that transmits electricity 5.4 miles from the Sly Creek Powerhouse (owned and operated by the South Feather Water and Power Agency under FERC Project No. 2088) to Pacific Gas and Electric Company's Woodleaf-Kanaka Junction Transmission Line Project (FERC Project No. 2281). The transmission line Project consists of an existing single-circuit, 115 kV transmission line, supported primarily on wood-pole, H-frame structures within a 75-foot-wide right-of-way, and appurtenant facilities.

m. Copies of both applications are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Copies are also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:*

The Commission intends to prepare a joint Environmental assessment (EA) for the projects in accordance with the National Environmental Policy Act. The multi-project EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed actions.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting, in conjunction with scoping for the South Feather Power Project. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Agency Scoping Meeting

Date: June 14, 2007.
Time: 10 a.m. (PST).
Place: VFW Post #1747.
Address: 1901 Elgin St., Oroville, CA.

Public Scoping Meeting

Date: June 13, 2007.
Time: 7 p.m. (PST).
Place: VFW Post #1747.
Address: 1901 Elgin St., Oroville, CA.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA are being distributed to the parties on the Commission's mailing list under separate cover. Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link (see item m above).

Site Visit

We also will conduct a two-day site visit to the project facilities on Tuesday, June 12, 2007, and Wednesday June 13, 2007, in conjunction with a site visit of the South Feather Power Project. On both days we will meet at the South Feather Water and Power Agency's Forbestown Office, 5494 Forbestown Rd, Forbestown, CA at 7:30 a.m. All participants are responsible for their own transportation on the site visits and will need to provide their own lunch.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–10001 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 17, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–66–000; ES07–26–000; EL07–45–000.

Applicants: Entergy Gulf States, Inc.; Entergy Gulf States Louisiana, L.L.C.; Entergy Texas, Inc.

Description: Entergy Services, Inc submits additional information as a supplement to their original application filed on March 13, 2007.

Filed Date: 5/4/2007.

Accession Number: 20070511–0106.

Comment Date: 5 p.m. Eastern Time on Thursday, May 24, 2007.

Docket Numbers: EC07–89–000; ER07–887–000.

Applicants: ITC Holdings Corp.; ITC Midwest LLC; Interstate Power and Light Company; Midwest Independent Transmission System Operator, Inc.

Description: ITC Holdings Corp (ITC) et al requests authorizations and approvals necessary for the sale by Interstate Power & Light Company and the purchase by ITC Midwest of all of IPL's jurisdictional transmission facilities.l.

Filed Date: 5/11/2007.

Accession Number: 20070516–0001.

Comment Date: 5 p.m. Eastern Time on Friday, June 1, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER04–1003–007.

Applicants: American Electric Power Service Corp.

Description: American Electric Power Service Corp submits an amendment to its filing in compliance with FERC's 4/18/07 Order.

Filed Date: 5/11/2007.

Accession Number: 20070515–0332.

Comment Date: 5 p.m. Eastern Time on Friday, June 1, 2007.

Docket Numbers: ER07–445–001.

Applicants: Duke Energy Indiana, Inc.

Description: Duke Energy Corp reports that on 4/26/07 Duke Energy Indiana, Inc and Indiana Municipal Power Agency executed a new power agreement to replace the Power Coordination Agreement, effective 6/1/07.

Filed Date: 5/14/2007.

Accession Number: 20070516–0184.

Comment Date: 5 p.m. Eastern Time on Monday, June 4, 2007.

Docket Numbers: ER07–614–001.

Applicants: American Transmission Systems, Inc.

Description: American Transmission Systems, Inc's response to FERC's deficiency letter dated 4/12/07.

Filed Date: 5/11/2007.

Accession Number: 20070515–0337.

Comment Date: 5 p.m. Eastern Time on Friday, June 1, 2007.

Docket Numbers: ER07–626–001.

Applicants: American Electric Power Service Corp.

Description: American Electric Power Service Corp submits a revised tariff sheet to the Open Access Transmission Tariff, FERC Electric Tariff, Third Revised Volume 6 in compliance with FERC's 4/13/07 Order.

Filed Date: 5/14/2007.

Accession Number: 20070516–0179.

Comment Date: 5 p.m. Eastern Time on Monday, June 4, 2007.

Docket Numbers: ER07–671–001.

Applicants: Trigen-St. Louis Energy Corporation.

Description: Trigen-St Louis Energy Corp submits its revised FERC Electric Tariff, Original Volume 1.

Filed Date: 05/14/2007.

Accession Number: 20070516–0183.

Comment Date: 5 p.m. Eastern Time on Monday, June 4, 2007.

Docket Numbers: ER07–892–000.

Applicants: Louis Dreyfus Energy Services L.P.

Description: Louis Dreyfus Energy Services, LP submits its Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authorization.

Filed Date: 5/14/2007.

Accession Number: 20070516–0178.

Comment Date: 5 p.m. Eastern Time on Monday, June 4, 2007.

Docket Numbers: ER07–894–000.

Applicants: Mid-Continent Energy Marketers Assoc.

Description: Mid-Continent Energy Marketers Association's filing to modify its Capacity and Energy Tariff to comply with Order 890.

Filed Date: 5/14/2007.

Accession Number: 20070516–0180.

Comment Date: 5 p.m. Eastern Time on Monday, June 4, 2007.

Docket Numbers: ER07–895–000.

Applicants: Louis Dreyfus Energy LLC.

Description: Louis Dreyfus Energy LLC submits a Notice of Cancellation of Rate Schedule FERC 1.

Filed Date: 5/14/2007.

Accession Number: 20070516–0181.

Comment Date: 5 p.m. Eastern Time on Monday, June 4, 2007.

Docket Numbers: ER07–896–000.

Applicants: Vermont Yankee Nuclear Power Corporation.

Description: Vermont Yankee Nuclear Power Corp submits an application to reduce its wholesale electric rates—the accrual for post-retirement benefits other than pensions.

Filed Date: 5/14/2007.

Accession Number: 20070516–0182.

Comment Date: 5 p.m. Eastern Time on Monday, June 4, 2007.

Docket Numbers: ER07–897–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc on behalf of Alabama Power Company et al submits an initial transmission service agreement for network integrated transmission service.

Filed Date: 5/14/2007.

Accession Number: 20070516–0186.

Comment Date: 5 p.m. Eastern Time on Monday, June 4, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–38–000.

Applicants: El Paso Electric Company.

Description: Application of El Paso Electric Company for Authorization under Section 204 of Federal Power Act Regarding a Revolving Credit Facility.

Filed Date: 5/16/2007.

Accession Number: 20070516–5021.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 6, 2007.

Docket Numbers: ES07–39–000.

Applicants: El Paso Electric Company.

Description: Application of El Paso Electric Company for Authorization under Section 204 of the Federal Power Act to Issue Stock under its 2007 Long-Term Incentive Plan.

Filed Date: 5/16/2007.

Accession Number: 20070516–5028.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 6, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the

Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9987 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 16, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–90–000.

Applicants: Orange and Rockland Utilities, Inc.

Description: Orange and Rockland Utilities submit an application under section 203 for order authorizing the purchase or acquisition of short-term debt of Rockland Electric Co not in excess of $30 million at any one time outstanding.

Filed Date: 5/14/2007.

Accession Number: 20070514–5017.

Comment Date: 5 p.m. Eastern Time on Monday, June 4, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–2187–002.

Applicants: CMS Distributed Power, L.L.C.

Description: CMS Distributed Power LLC submits a Notice of Non-Material Change in Status.

Filed Date: 5/11/2007.

Accession Number: 20070515–0330.

Comment Date: 5 p.m. Eastern Time on Friday, June 1, 2007.

Docket Numbers: ER01–2159–000.

Applicants: Hermiston Generating Company, L.P.

Description: Hermiston Generating Company, LP advises FERC that it had no purchasers (as defined under 18 CFR, Section 46.3) for power in 2006.

Filed Date: 5/8/2007.

Accession Number: 20070514–0088.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 29, 2007.

Docket Numbers: ER04–157–020; ER04–714–010.

Applicants: Central Maine Power Company; Bangor Hydro-Electric Company.

Description: Central Maine Power Company submits a regional Refund Report.

Filed Date: 5/8/2007.

Accession Number: 20070507–5107.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 29, 2007.

Docket Numbers: ER04–708–003.

Applicants: Horsehead Corp.

Description: Notification of Change in Status.

Filed Date: 5/14/2007.

Accession Number: 20070514–5113.

Comment Date: 5 p.m. Eastern Time on Monday, June 4, 2007.

Docket Numbers: ER04–1003–007; ER04–1007–007.

Applicants: American Electric Power Service Corp.

Description: American Electric Power Service Corp submits an amendment to its filing in compliance with FERC's 4/18/07 Order.

Filed Date: 5/11/2007.

Accession Number: 20070515–0332.

Comment Date: 5 p.m. Eastern Time on Friday, June 1, 2007.

Docket Numbers: ER05–522–004; ER06–1382–004.

Applicants: Bluegrass Generation Company, L.L.C.

Description: Electric Refund Compliance Report.

Filed Date: 5/15/2007.

Accession Number: 20070515–5051.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 5, 2007.

Docket Numbers: ER06–278–006.

Applicants: Nevada Hydro Company, Inc.

Description: Comments of California Independent System Operator Corp in Response to Nov. 17, 2006 Order on rate Request.

Filed Date: 5/1/2007.

Accession Number: 20070501–5066.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–614–001.

Applicants: American Transmission Systems, Inc.

Description: American Transmission Systems, Inc's response to FERC's deficiency letter dated 4/12/07.

Filed Date: 5/11/2007.

Accession Number: 20070515–0337.

Comment Date: 5 p.m. Eastern Time on Friday, June 1, 2007.

Docket Numbers: ER07–888–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits amendments to Schedule 12 of Amended and Restated Operating Agreement etc.

Filed Date: 5/11/2007.

Accession Number: 20070515–0336.

Comment Date: 5 p.m. Eastern Time on Friday, June 1, 2007.

Docket Numbers: ER07–889–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits the Wholesale Electric Energy and Capacity Agreement with the City of Alma, Kansas and request for waiver.

Filed Date: 5/11/2007.

Accession Number: 20070515–0335.

Comment Date: 5 p.m. Eastern Time on Friday, June 1, 2007.

Docket Numbers: ER07–890–000.

Applicants: Waterbury Generation LLC.

Description: Waterbury Generation LLC request for Expedited Consideration and Temporary Waiver of Qualification Process Reimbursement Deposit Due Date under Market Rule 1.

Filed Date: 5/14/2007.

Accession Number: 20070515–0334.

Comment Date: 5 p.m. Eastern Time on Monday, June 4, 2007.

Docket Numbers: ER07–891–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits revisions to the chart in Schedule 2 to adjust downward the zonal revenue requirements of Reliant Energy Electric Solutions, LLC.

Filed Date: 5/14/2007.

Accession Number: 20070515–0333.

Comment Date: 5 p.m. Eastern Time on Monday, June 4, 2007.

Docket Numbers: ER07–893–000.

Applicants: Cleco Power LLC.

Description: Cleco Power LLC submits amendment to its Open Access Transmission Tariff to reflect the current list of point-to-point transmission customers.

Filed Date: 5/10/2007.

Accession Number: 20070514–0093.

Comment Date: 5 p.m. Eastern Time on Thursday, May 31, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding,

interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Kimberly D. Bose,

Secretary.

[FR Doc. E7–9988 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2100–134]

California Department of Water Resources; Notice of Availability of the Final Environmental Impact Statement for the Oroville Facilities

May 18, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Oroville Facilities (FERC No. 2100), located on the Feather River in the foothills of the Sierra Nevada in Butte County, California, and has prepared a Final Environmental Impact Statement (final EIS) for the project. The existing project occupies 1,620 acres of Federal lands managed by the U.S. Department of Agriculture, Forest Service within the Plumas and Lassen National Forests and 4,620 acres managed by the U.S. Bureau of Land Management.

In the final EIS, staff evaluates the applicant's proposal and alternatives for relicensing the Oroville Facilities. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

The final EIS will be part of the record from which the Commission will make its decision.

Copies of the final EIS are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The final EIS also may be viewed on the Internet at *http://www.ferc.gov* under the eLibrary link. Enter the docket number (P–2100) to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

CD versions of the draft EIS have been mailed to everyone on the mailing list for the project. Copies of the CD, as well as a limited number of paper copies, are available from the Public Reference Room identified above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact James Fargo at (202) 502–6095 or at *james.fargo@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9974 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–2088–068]

South Feather Water and Power Agency; Notice of Intent To Prepare an Environmental Impact Statement and Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

May 17, 2007.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* P–2088–068.

c. *Date Filed:* March 26, 2007.

d. *Applicant:* South Feather Water and Power Agency.

e. *Name of Project:* South Feather Power Project.

f. *Location:* On the South Fork Feather River (SFFR), Lost Creek and Slate Creek in Butte, Yuba and Plumas counties, California. The project affects 1,977.12 acres of federal lands administered by the Plumas National Forest and 10.57 acres of federal land administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael Glaze, General Manager, South Feather Water and Power Agency, 2310 Oro-Quincy Highway, Oroville, CA, 95966, (530) 533–4578.

i. *FERC Contact:* John Mudre, (202) 502–8902, or *john.mudre@ferc.gov*.

j. *Deadline for filing scoping comments:* July 16, 2007.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. The South Feather Power Project is a water supply/power project constructed in the late 1950s/early 1960s. The Project is composed of four developments: Sly Creek, Woodleaf, Forbestown and Kelly Ridge, each of which is described below. The Project can store about 172,000 acre-feet (af) of water (gross storage) and has generated an average of about 514.1 gigawatt hours (gWh) of power annually for the past 20 years, since the addition of Sly Creek Powerhouse.

The Sly Creek Development includes: (1) *Little Grass Valley Dam*—a 210-foot-high, 840-foot-long, rock filled dam on the SFFR with a crest elevation of 5,052 feet (all elevations are in National Geodetic Vertical Datum, or NGVD, unless otherwise specified) and with a 180-foot-long spillway controlled by two 14-feet-high by 40-feet-long steel radial gates that forms a 89,804 acre-foot (af) storage reservoir covering 1,650 acres at a maximum water surface (flood level) elevation of 5,047 feet with the spill gates closed; (2) *South Fork Diversion Dam*—a 60-foot-high, 167-foot-long, concrete overflow arch dam on the SFFR with a crest elevation of 3,557 to 3,559 feet and with four uncontrolled overflow spillway sections that forms an 87 af diversion impoundment covering about 9 acres at a normal maximum water surface elevation of 3,557 feet; (3) *South Fork Diversion Tunnel*—a 14,256-foot-long, 11-foot-diameter concrete lined and unlined horseshoe un-pressurized tunnel controlled by two 6-foot-high by 4-foot-long electric hoist slide gates that diverts up to 600 cubic feet per second (cfs) of water from the South Fork Diversion Dam to Sly Creek Reservoir; (4) *Slate Creek Diversion Dam*—a 62-foot-high, 223.5-foot-long, concrete overflow arch dam on Slate Creek with a crest elevation of 3,552 to 3,554 feet and with three uncontrolled overflow spillway sections that forms a negligible diversion impoundment due to sediment accumulation; (5) *Slate Creek Diversion Tunnel*—a 13,200-foot-long, 11-foot-diameter, concrete lined and unlined horseshoe un-pressurized tunnel controlled by two 8-foot-high by 6-foot-long manual slide gates that diverts up to a maximum flow capacity of 848 cfs of water (though water rights limit flows to 600 cfs and at times flows are limited to 500 cfs due to high storage volume in the receiving reservoir) from the Slate Creek Diversion Dam to Sly Creek Reservoir; (6) *Sly Creek Dam*—a 289-foot-high, 1,200-foot-long, zoned earth-filled dam on Lost Creek with a crest elevation of 3,536 feet and with a 649-foot-long spillway controlled by one 16-foot-high by 54-foot-long steel radial gate that forms a 64,338 af storage reservoir covering 619 acres at a maximum water surface (flood level) elevation of 3,531 feet with the spill gates closed; (7) *Sly Creek Penstock*—a 1,100-foot-long, 90-inch-inside-diameter, steel penstock enclosed in the former outlet tunnel that delivers water to Sly Creek Powerhouse; (8) *Sly Creek Powerhouse*—a semi-outdoor, reinforced concrete, above ground powerhouse that releases water to Lost Creek Reservoir and that contains one reaction turbine rated at 17,690 horsepower (hp) directly connected to a 13,500-kilovolt-amperes (kVA) generator; (9) *Sly Creek Powerhouse Switchyard*—a switchyard adjacent to the Sly Creek Powerhouse that contains one 16,000 kVA transformer. Power generated at Sly Creek Powerhouse is delivered from the switchyard to the grid via Pacific Gas and Electric Company's 115 kilovolt (kV) Sly Creek Tap and Woodleaf-Kanaka Junction transmission line; (10) *Little Grass Valley Reservoir Recreation Facility*—the Little Grass Valley Reservoir Recreation Facility includes Little Beaver, Red Feather, Running Deer, Horse Camp, Wyandotte, Peninsula Tent, Black Rock Tent, Black Rock RV, and Tooms RV campgrounds; Black Rock, Tooms and Maidu Boat Launch areas; Pancake Beach and Blue Water Beach day use areas, Maidu Amphitheater and Little Grass Valley Dam ADA Accessible Fishing trail at Little Grass Valley Reservoir; and (11) *Sly Creek Reservoir Recreation Facility*—the Sly Creek Recreation Facility includes two campgrounds (Strawberry and Sly Creek), Strawberry Car-Top Boat Launch, Mooreville Boat Ramp and Mooreville Day Use Area on Sly Creek Reservoir. The Sly Creek Development does not include any roads except for the portions of the roads within the FERC Project Boundary that cross Little Grass Valley Dam (USFS Road 22N94) and Sly Creek Dam (USFS Road 21N16).

The Woodleaf Development includes: (1) *Lost Creek Dam*—a 122-foot-high, 486-foot-long, concrete overflow arch dam on the Lost Creek with a crest elevation of 3,279.05 feet and with a 251-foot-wide spillway controlled by 4-foot-high by 8-foot-long flashboards that forms a 5,361 af storage reservoir covering 137 acres at a normal maximum water surface elevation of 3,283 feet with the flashboards installed; (2) *Woodleaf Power Tunnel*—an 18,385-foot-long, 12-foot-diameter, concrete lined and unlined horseshoe pressurized tunnel controlled by one 6-foot-high by 12-foot-long electric hoist slide gate that diverts up to 620 cfs of water from Lost Creek Reservoir to the Woodleaf Penstock; (3) *Woodleaf Penstock*—a 3,519-foot-long, 97-inch reducing to 78-inch-inside-diameter, exposed steel penstock that delivers water to Woodleaf Powerhouse; (4) *Woodleaf Powerhouse*—a semi-outdoor, reinforced concrete, above ground powerhouse that releases water to the Forbestown Diversion Dam impoundment on the SFFR and that contains one 6-jet vertical shaft impulse Pelton turbine rated at 80,000 hp directly connected to a 65,500 kVA generator; and (5) *Woodleaf Powerhouse Switchyard*—a switchyard adjacent to the Woodleaf Powerhouse that contains one 70,000 kVA transformer. Power generated at Woodleaf Powerhouse is delivered from the switchyard to the grid via Pacific Gas and Electric Company's 115 kV Woodleaf-Kanaka Junction transmission line. The Woodleaf Development does not include any recreation facilities or roads.

The Forbestown Development includes: (1) *Forbestown Diversion Dam*—a 80-foot-high, 256-foot-long, concrete overflow arch dam on the SFFR with a crest elevation of 1,783 feet and with five 46-foot-wide uncontrolled overflow spillway sections with a combined width of approximately 240 feet that forms a 352 af diversion impoundment covering about 12 acres at a normal maximum water surface elevation of 1,783 feet; (2) *Forbestown Power Tunnel*—a 18,388-foot-long, 12.5-foot by 11-foot-diameter, concrete lined and unlined horseshoe pressurized tunnel that diverts up to 660 cfs of water from the Forbestown Diversion impoundment to the Forbestown Penstock; (3) *Forbestown Penstock*—a 1,487-foot-long, 97-inch reducing to 83-inch-inside-diameter exposed steel penstock that delivers water to Forbestown Powerhouse; (4) *Forbestown Powerhouse*—a semi-outdoor reinforced concrete above ground powerhouse that releases water to Ponderosa Reservoir on the SFFR and that contains one vertical reaction Francis turbine rated at 54,500 hp directly connected to a 40,500 kVA generator; and (5) *Forbestown Powerhouse Switchyard*—a switchyard adjacent to the Forbestown Powerhouse that contains one 35,200 kVA transformer. Power generated at Forbestown Powerhouse is delivered from the switchyard to the grid via Pacific Gas and Electric Company's 115 kV Woodleaf-Kanaka Junction transmission line. The Forbestown

Development does not include any recreation facilities or roads.

The Kelly Ridge Development includes: (1) *Ponderosa Dam*—a 160-foot-high, 650-foot-long, earth-filled dam that releases water into the 3.6 million af Lake Oroville (part of the California Department of Water Resources' Feather River Project, FERC Project No. 2100) with a crest elevation of 985 feet and with a 352-foot-long spillway controlled by two 7 foot 7.5-inch-high by 51 feet-long steel gates that forms a 4,178 af storage reservoir covering 103 acres at a normal maximum water surface elevation of 960 feet; (2) *Ponderosa Diversion Tunnel*—a 516-foot-long, 10-foot by 9-foot-diameter concrete lined and unlined horseshoe unpressurized tunnel controlled by one 6-foot-high by 8-foot-long hydraulic gate that diverts up to 300 cfs of water from Ponderosa Reservoir to Miners Ranch Conduit; (3) *Miners Ranch Conduit*—a 32,254-foot-long, 10-foot-wide concrete or gunite-lined canal and concrete or bench flume that includes two siphon sections across the McCabe and Powell creek sections of Lake Oroville and that diverts water from the Ponderosa Diversion Tunnel to the Miners Ranch Tunnel; (4) *Miners Ranch Tunnel*—a 23,946-foot-long, 10-foot by 9-foot-diameter, concrete lined horseshoe unpressurized tunnel that diverts up to 300 cfs of water from the Miners Ranch Conduit to Miners Ranch Reservoir; (5) *Miners Ranch Dam*—a 55-foot-high, 1,650-foot-long, earth-filled off-stream dam with a crest elevation of 895 feet and with an 1,175-foot-long uncontrolled spillway that forms a 896 af storage reservoir covering 48 acres at a normal maximum water surface elevation of 890 feet; (6) *Kelly Ridge Power Tunnel*—a 6,736-foot-long, 9-foot by 8-foot-diameter, pressurized tunnel controlled by one 4-foot-high by 8-foot-long fixed wheel gate that diverts up to 260 cfs of water from Miners Ranch Reservoir to Kelly Ridge Penstock: (7) *Kelly Ridge Penstock*—a 6,064-foot-long 69-inch reducing to 57-inch-inside-diameter, exposed steel penstock that delivers water to Kelly Ridge Powerhouse; (8) *Kelly Ridge Powerhouse*—a semi-outdoor reinforced concrete above ground powerhouse that releases water to CDWR Feather River Project's Thermalito Diversion Pool downstream of Oroville Dam and that contains one vertical reaction Francis turbine rated at 13,000 hp directly connected to a 11,000 kVA generator; and (9) *Kelly Ridge Powerhouse Switchyard*—a switchyard adjacent to the Kelly Ridge Powerhouse that contains one 11,000 kVA transformer. Power generated at the Kelly Ridge Powerhouse is delivered from the switchyard to the grid via Pacific Gas and Electric Company's 60 kV Kelly Ridge-Elgin Junction transmission line. The Kelly Ridge Development does not include any recreation facilities or roads.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process.*

The Commission intends to prepare an Environmental Impact Statement (EIS) on the project in accordance with the National Environmental Policy Act. The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EIS. The times and locations of these meetings are as follows:

Agency Scoping Meeting

Date: June 14, 2007.
Time: 10 a.m.
Place: VFW Post #1747.
Address: 1901 Elgin St., Oroville, CA.

Public Scoping Meeting

Date: June 13, 2007.
Time: 7 p.m.
Place: VFW Post #1747.
Address: 1901 Elgin St., Oroville, CA.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EIS are being distributed to the parties on the Commission's mailing list under separate cover. Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link (see item m above).

Site Visit

We also will conduct a two-day site visit to the project facilities on Tuesday, June 12, 2007, and Wednesday June 13, 2007. On both days we will meet at the South Feather Water and Power Agency's Forbestown Office, 5494 Forbestown Rd., Forbestown, CA at 7:30 a.m. All participants are responsible for their own transportation on the site visits and will need to provide their own lunch.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–10000 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12658–001]

E.ON U.S. Hydro 1 LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

May 18, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 12658–001.

c. *Date Filed:* October 10, 2006.

d. *Applicant:* E.ON U.S. Hydro 1 LLC.

e. *Name of Project:* Meldahl Hydroelectric Project.

f. *Location:* On the Ohio River, near the City of Augusta, Bracken County, Kentucky. The existing dam is owned and operated by the U.S. Army Corps of Engineers (Corps). The project would occupy approximately 16 acres of United States lands administered by the Corps.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael S. Beer, E.ON U.S. Hydro 1 LLC, 220 West Main Street, Louisville, KY 40202, (502) 627–3547; e-mail—*mike.beer@eon-us.com.*

i. *FERC Contact:* Peter Leitzke at (202) 502–6059; or e-mail at *peter.leitzke@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The proposed project would utilize the existing U.S. Army Corps of Engineers' Captain Anthony Meldahl Locks and Dam, and would consist of: (1) An intake channel; (2) a combined 225-foot-long by 205-foot-wide powerhouse and intake section containing three generating units having a total installed capacity of 99 megawatts; (3) a tailrace channel; (4) a substation; (5) a 1.7-mile-long, 138-kilovolt transmission line; and (6) appurtenant facilities. The project would have an annual generation of 500 gigawatt-hours, which would be sold to a local utility.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Competing development applications, notices of intent to file such an application, and applications for preliminary permits will not be accepted in response to this notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Scoping Document for comments.	July 2007.
Notice of application is ready for environmental analysis.	Aug. 2007.
Notice of the availability of the draft EA.	Feb. 2008.
Notice of the availability of the final EA.	June 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9976 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–12754–000]

Bost1 Hydroelectric LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests and Comments

May 17, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12754–000.

c. *Date Filed:* December 12, 2006.

d. *Applicant:* Bost1 Hydroelectric LLC.

e. *Name of Project:* Red River Lock & Dam #1 Hydroelectric Project.

f. *Location:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Red River Lock & Dam #1 and would be located on the Red River, in Catahoula Parish, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Robert Larson, Bost1 Hydroelectric LLC, c/o Gray, Plant, Mooty, Mooty, & Bennett, 80 South 8th Street, Suite 500, Minneapolis, MN 55402, (612) 632–3355.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

k. *All documents (original and eight copies) should be filed with:* The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12754–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

l. *Description of Project:* The proposed project would use the existing U. S. Army Corps of Engineer's Red River Lock and Dam No. 1 and consist of: (1) Eight proposed penstocks; (2) a proposed powerhouse containing eight generating units with a total installed capacity of 16.2-megawatts; (3) a proposed 500-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 99-gigawatt-hours. The applicant plans to sell the generated energy to a local utility.

m. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

p. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

q. *Notice of Intent*—a notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

r. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

s. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

t. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT", or "COMPETING APPLICATION", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

u. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

v. 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 at *http://www.ferc.gov* under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9994 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–12756–000]

Bost3 Hydroelectric LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests and Comments

May 17, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12756–000.

c. *Date filed:* December 12, 2006.

d. *Applicant:* Bost3 Hydroelectric LLC.

e. *Name of Project:* Red River Lock & Dam No. 3 Hydroelectric Project.

f. *Location:* The proposed project would utilize the existing U.S. Army Corps of Engineers Red River Lock & Dam #3 and would be located on the Red River in Natchitoches and Grant Parishes, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Larson, Bost3 Hydroelectric LLC, c/o Gray, Plant, Mooty, Mooty, & Bennett, 80 South 8th Street, Suite 500, Minneapolis, MN 55402, (612) 632–3355.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

k. All documents (original and eight copies) should be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12756–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

l. Description of Project: The proposed project would use the existing U. S. Army Corps of Engineers's Red River Lock and Dam No. 3 and consist of: (1) Six proposed penstocks; (2) a proposed powerhouse containing six generating units with a total installed capacity of 49-megawatts; (3) a proposed 500-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 300-gigawatt-hours. The applicant plans to sell the generated energy to a local utility.

m. Location of Application: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

p. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

q. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

r. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

s. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

t. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT", or "COMPETING APPLICATION", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

u. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application.

A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

v. 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 at *http://www.ferc.gov* under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9996 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12757–000]

Bost4 Hydroelectric LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests and Comments

May 17, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12757–000.

c. *Date Filed:* December 12, 2006.

d. *Applicant:* Bost4 Hydroelectric LLC.

e. *Name of Project:* Red River Lock & Dam No. 4 Hydroelectric Project.

f. *Location:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Red River Lock & Dam #4 and would be located on the Red River in Red River Parish, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Larson, Bost4 Hydroelectric LLC, c/o Gray, Plant, Mooty, Mooty, & Bennett, 80 South 8th Street, Suite 500, Minneapolis, MN 55402, (612) 632–3355.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

k. All documents (original and eight copies) should be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12757–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

l. *Description of Project:* The proposed project would use the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 4 and consist of: (1) Five proposed penstocks; (2) a proposed powerhouse containing five generating units with a total installed capacity of 27-megawatts; (3) a proposed 500-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 166-gigawatt-hours. The applicant plans to sell the generated energy to a local utility.

m. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

p. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

q. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

r. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

s. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

t. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT", or "COMPETING APPLICATION", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

u. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

v. 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 at *http://www.ferc.gov* under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9997 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–12758–000]

Bost5 Hydroelectric LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests and Comments

May 17, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12758–000.

c. *Date Filed:* December 12, 2006.

d. *Applicant:* Bost5 Hydroelectric LLC.

e. *Name of Project:* Red River Lock & Dam No. 5 Hydroelectric Project.

f. *Location:* The proposed project would utilize the existing U.S. Army Corps of Engineers Red River Lock & Dam #5 and would be located on the Red River in Bossier Parish, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Larson, Bost5 Hydroelectric LLC, c/o Gray, Plant, Mooty, Mooty, & Bennett, 80 South 8th Street, Suite 500, Minneapolis, MN 55402, (612) 632–3355.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

k. *All documents (original and eight copies) should be filed with:* The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12758–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

l. *Description of Project:* The proposed project would use the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 5 and consist of: (1) Five proposed penstocks; (2) a proposed powerhouse containing five generating units with a total installed capacity of 19.8-megawatts; (3) a proposed 300-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 121-gigawatt-hours. The applicant plans to sell the generated energy to a local utility.

m. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

p. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

q. *Notice of Intent*—a notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

r. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis,

preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

s. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

t. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT", or "COMPETING APPLICATION", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

u. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

v. 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 at *http://www.ferc.gov* under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9998 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filing Deadline Extension for the FERC Form 714 "Annual Electric Balancing Authority Area and Planning Area Report" and Availability of Electronic Submission Software

May 18, 2007.

Take notice that the filing deadline for the FERC Form 714, reporting 2006 data, is extended to July 16, 2007, for all respondents. The extension is granted to allow the respondents additional time to prepare their initial electronic filing of the form. Electronic filing of Form 714 became mandatory on April 19, 2007, through Commission Order No. 695 (*http://www.ferc.gov/whats-new/comm-meet/2007/041907/E-14.pdf*).

Software, necessary for the submission of the form, is available for download free from the Commission's Web site at *http://www.ferc.gov/docs-filing/eforms/form-714/elec-subm-soft.asp*. A Personal Identification Number (PIN) is necessary to download the respondent's initial database and to use as an electronic signature in submitting Form 714 filings to the Commission. PINs will be e-mailed to each 2005 Form 714 contact person of record. Those who do not receive their PIN by close of business on May 23, 2007, should e-mail the legal name of the respondent and a contact person's name and E-mail address to *form714@ferc.gov*.

More information on the Form 714 filing requirements can be found on the Commission's Web site at *http://www.ferc.gov/docs-filing/eforms.asp#714* and questions about the form can be e-mailed to *form714@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9985 Filed 5–23–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0947, FRL 8317–4]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request; NO_x Budget Trading Program to Reduce the Regional Transport of Ozone, EPA ICR Number 1857.04, OMB Control Number 2060–0445

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments must be submitted on or before June 25, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0947, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenon Smith,, Clean Air Markets Division, Office of Air and Radiation, (6204J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9164; fax number: 202–343–2361; e-mail address: *smith.kenon@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 6, 2006 (71 FR 70756), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2006–0947, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the

Reading Rom is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NO_X Budget Trading Program to Reduce the Regional Transport of Ozone.

ICR Numbers: EPA ICR no. 1857.04, OMB Program Control No. 2060–0445.

ICR status: This ICR is currently scheduled to expire on May 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the**Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulation is consolidated in 40 CFR part 9.

Abstract: The NO_X Budget Trading Program is a market-based cap and trade program created to reduce emissions of nitrogen oxides (NO_X) from power plants and other large combustion sources in the eastern United States. NO_X is a prime ingredient in the formation of ground-level ozone (smog), a pervasive air pollution problem in many areas of the eastern United States. The NO_X Budget Trading program was designed to reduce NO_X emissions during the warm summer months, referred to as the ozone season, when ground-level ozone concentration are highest. This information collection is necessary to implement the NO_X Budget Trading Program. While States were not required to adopt an emissions trading program, every State adopted the basic Federal model trading program for fossil fuel-fired NO_X sources. This trading program burden includes the paper work burden related to; transferring and tracking allowances, the allocation of allowances to affected units, permitting, annual year end compliance certification, and meeting the monitoring and reporting requirements of the program. This information collection is mandatory under 40 CFR part 96. All data received by EPA will be treated as public information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 41 hours per response. 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 tie needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Electric Utilities, Industrial Sources, and other persons.

Estimated Number of Respondents: 700.

Frequency of Response: On occasion, quarterly, and annually.

Estimated Total Annual Hour Burden: 471,734.

Estimated Total Annual Cost: $57,069,211, includes $28,278,800 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 11,335 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is due to adjustments, including changes to the number of responses and the time it takes to respond to a particular activity.

Dated: May 17, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. 07–2586 Filed 5–23–07; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R10–OAR–2007–0411; FRL–8317–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington; EPA ICR No. 2020.03, OMB Control No. 2060–0558

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on November 30, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 23, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2007–0411, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments;
- *E-mail: suzuki.debra@epa.gov*;
- *Fax:* (206) 553–0110;
- *Mail:* Debra Suzuki, Environmental Protection Agency Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, WA 98101;
- *Hand Delivery:* Environmental Protection Agency, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, WA, 98101. Attention: Debra Suzuki, Office of Air, Waste and Toxics (AWT–107). Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2007–0411. EPA's policy is that all comments received will be included in the public docket without change and may be

made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Debra Suzuki, Office of Air, Waste and Toxics (AWT–107), Environmental Protection Agency Region 10, 1200 Sixth Avenue, Seattle, WA 98101; telephone number: (206) 553–0985; fax number: (206) 553–0110; e-mail address: *suzuki.debra@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–R10–OAR–2007–0411, which is available for online viewing at *www.regulations.gov*, or in person viewing during normal business hours at Environmental Protection Agency Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, WA.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

[Docket ID No. EPA–R10–OAR–2007–0411]

Affected entities: Entities potentially affected by this action include owners and operators of emission sources in all industry groups and tribal governments, located in the identified Indian reservations. Categories and entities potentially affected by this action are expected to include:

Category	NAICS [a]	Examples of regulated entities
Industry	4471	Gasoline station storage tanks and refueling.
	5614	Lumber manufacturer support.
	21211	Coal mining.
	31332	Surface coating operation.
	33712	Furniture manufacture.
	56221	Medical waste incinerator.
	115112	Repellent and fertilizer applications.
	211111	Natural gas plant.
	211111	Oil and gas production.
	211112	Fractionation of natural gas liquids.
	212234	Copper mining and processing.
	212312	Stone quarrying and processing.
	212313	Stone quarrying and processing.
	212321	Sand and gravel production.
	221112	Power plant-coal-fired.
	221119	Power plant-biomass fueled.
	221119	Power plant-landfill gas fired.
	221210	Natural gas collection.
	221210	Natural gas pipeline.

Category	NAICS[a]	Examples of regulated entities
	321113	Sawmill.
	321911	Window and door molding manufacturer.
	323110	Printing operations.
	323113	Surface coating operations.
	324121	Asphalt hot mix plants.
	325188	Elemental phosphorus plant.
	325188	Sulfuric acid plant.
	331314	Secondary aluminum production and extrusion.
	331492	Cobalt and tungsten recycling.
	332431	Surface coating operations.
	332812	Surface coating operations.
	421320	Concrete batching plant.
	422510	Grain elevator.
	422710	Crude oil storage and distribution.
	422710	Gasoline bulk plant.
	486110	Crude oil storage and distribution.
	486210	Natural gas compressor station.
	562212	Solid waste landfill.
	811121	Automobile refinishing shop.
	812320	Dry cleaner.
	111140	Wheat farming.
	111998	All other miscellaneous crop farming.
	115310	Support activities for forestry.
Federal government	924110	Administration of Air and Water Resources and Solid Waste Management Programs.
State/local/tribal Government	924110	Administration of Air and Water Resources and Solid Waste Management Programs.

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially affected by this action.

Title: Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington.

ICR number: EPA ICR No. 2020.03, OMB Control No. 2060–0558.

ICR status: This ICR is currently scheduled to expire on November 30, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA promulgated Federal Implementation Plans (FIPs) under the Clean Air Act for Indian reservations located in Idaho, Oregon, and Washington in 40 CFR part 49 (70 FR 18074, April 8, 2005). The FIPs in the final rule, also referred to as the Federal Air Rules for Indian Reservations in Idaho, Oregon, and Washington (FARR), include information collection requirements associated with the fugitive particulate matter rule in § 49.126, the woodwaste burner rule in § 49.127; the rule for limiting sulfur in fuels in § 49.130; the rule for open burning in § 49.131; the rules for general open burning permits, agricultural burning permits, and forestry and silvicultural burning permits in §§ 49.132, 49.133, and 49.134; the registration rule in § 49.138; and the rule for non-Title V operating permits in § 49.139. EPA uses this information to manage the activities and sources of air pollution on the Indian reservations in Idaho, Oregon, and Washington. EPA believes these information collection requirements are appropriate because they will enable EPA to develop and maintain accurate records of air pollution sources and their emissions, track emissions trends and changes, identify potential air quality problems, allow EPA to issue permits or approvals, and ensure appropriate records are available to verify compliance with these FIPs. The information collection requirements listed above are all mandatory. Regulated entities can assert claims of business confidentiality and EPA would treat these claims in accordance with the provisions of 40 CFR part 2, subpart B.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to be 2,156 hours, or an average of approximately 2.43 hours per affected source. EPA estimates that the owners or operators of facilities affected by this final rule will incur a total, for all affected facilities, of $90,552 in annualized labor costs to comply with the information collection requirements of this rule over the next three years. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 889.

Frequency of response: Annual and on occasion.

Estimated total annual burden hours: 2,156.

Estimated total annual costs: $90,552. This includes an estimated labor cost of $90,552, and capital investment and operation and maintenance costs are assumed to be zero.

Are There Changes in the Estimates From the Last Approval?

There is a decrease of 621 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. EPA's original estimate included many "one-time" costs (e.g., time spent gaining familiarity with the applicable rules) that are not expected to be recurring. The burden estimate for the next three years does not include these "one-time" costs, and therefore the burden estimate has decreased.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: May 17, 2007.

Richard Albright,

Director, Office of Air, Waste and Toxics.

[FR Doc. E7–10065 Filed 5–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–0430; FRL–8318–2]

Request for Nominations to the EPA Human Studies Review Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Office of the Science Advisor (OSA) is soliciting nominations of qualified individuals in the area of human health risk assessment to serve on the Human Studies Review Board (HSRB). The HSRB is a Federal advisory committee, operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. App. 2 Section 9, providing advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research.

DATES: Nominations should be submitted to EPA no later than June 25, 2007.

ADDRESSES: Submit your nominations ("comments"), identified by Docket ID No. EPA–HQ–ORD–2007–0430, by one of the following methods:

Internet: http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: ORD.Docket@epa.gov.

Mail: ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand Delivery: EPA Docket Center (EPA/DC), Room 3304, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2007–0430. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your nominations to Docket ID No. EPA–HQ–ORD–2007–0430. EPA's policy is that all nominations received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the nomination 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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your nomination. If you send an e-mail nomination directly to EPA, without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the nomination that is placed in the public docket and made available on the Internet. If you submit a nomination electronically, EPA recommends that you include your name and other contact information in the body of your nomination and with any disk or CD–ROM you submit. If EPA cannot read your nomination due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider it. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Room 3334, EPA West, 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 ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Paul I. Lewis, Office of the Science Advisor, Mail Code 8105R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–8381, fax number: (202) 564–2070, e-mail: *lewis.paul@epa.gov.*

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA or to persons who are or may be required to conduct testing of substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of This Document and Other Related Information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

C. What Should I Consider as I Prepare My Nomination for EPA?

You may find the following suggestions helpful for preparing your nomination:

1. Providing as much supporting information as possible about the nominee, including contact information.

2. Make sure to submit your nomination by the deadline in this document.

3. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2005, the President signed into law the Department of Interior, Environment, and Related Agencies Appropriations Act, 2006, Pub. L. 109–54 (Appropriations Act), which provided appropriated funds for the Environmental Protection Agency and other Federal departments and agencies. The Appropriations Act, among other points, addressed intentional dosing human toxicity studies for pesticides and directed the Agency to establish an independent Human Subjects Review Board to review such studies. On February 6, 2006 the Agency published a final rule for protections for subjects in human research (71 FR 6138) that called for creating a new, independent Human Studies Review Board and described its responsibilities in the following language:

> The Human Studies Review Board shall comment on the scientific and ethical aspects of research proposals and reports of completed research with human subjects submitted by EPA for its review and on request, advise EPA on ways to strengthen its programs for protection of human subjects of research. 40 CFR 26.1603(b)

A charter for the Human Studies Review Board dated February 21, 2006 was issued in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 Section 9(c) stating that the HSRB will:

> Provide advice, information and recommendations on issues related to scientific and ethical aspects of human subjects research. The major objectives are to provide advice and recommendations on: (a) Research proposals and protocols; (b) reports of completed research with human subjects; and (c) how to strengthen EPA's programs for protection of human subjects.

This notice requests nominations of candidates to serve as a member of the HSRB in the area of Human Health Risk Assessment. General information concerning the HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/*.

Process and Deadline for Submitting Nominations

Any interested person or organization may nominate individuals to be considered as prospective candidates for the HSRB. Additional avenues and resources may be utilized in the solicitation of nominees to encourage a broad pool of expertise. Nominees should be experts who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the ethical and/or scientific issues that may be considered by the HSRB. EPA is seeking nominees who are nationally recognized experts in human health risk assessment, specifically expertise in epidemiology, exposure analysis, public health and/or human subject research regulations. All nominations should include: (1) A current curriculum vitae (C.V.) which provides the nominee's educational background, qualifications, leadership positions in national associations or professional publications, relevant research experience and publications; and (2) a summary of the above in a biographical sketch ("biosketch") of no more than one page.

The qualifications of nominees received in reply to this notice will be assessed in terms of the specific expertise sought for the HSRB. Qualified nominees who agree to be considered further will be included in a smaller subset (known as the "Short List"). This Short List consisting of nominee's name and biosketch will be posted for public comment on the OSA Web site *http://www.epa.gov/osa/index.htm*. The public will be requested to provide relevant information or other documentation on nominees that OSA should consider in evaluating the candidates. Public comments will be accepted for 14 calendar days on the Short List. Board members will be selected from the Short List. Short List candidates not selected for HSRB membership may be considered for future HSRB membership as vacancies become available or as HSRB consultants for future HSRB meetings. The Agency estimates posting the names of Short List candidates sometime in late July. However, please be advised that this is an approximate time frame and the date could change. Thus, if you have any questions concerning posting of Short List candidates on the OSA Web site, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

For the HSRB, a balanced panel is characterized by inclusion of members who possess the necessary domains of knowledge, the relevant technical perspectives, and the collective breadth of experience to adequately address the Agency's charge. Interested candidates who are employees of a federal department or agency (other than EPA) or are members of another federal advisory committee are eligible to serve on the HSRB, and their nominations are welcome. Other factors that will be considered include: Availability to participate in the Board's scheduled meetings, absence of any conflicts of interest and absence of an appearance of a lack of impartiality, independence with respect to the matters under review, and public comments in response to the Short List. Though financial conflicts of interest or the appearance of a lack of impartiality, lack of independence, or bias may lead to nonselection, the absence of such concerns does not ensure that a candidate will be selected to serve on the HSRB. Numerous qualified candidates are likely to be identified. Selection decisions will involve careful weighing of a number of factors including, but not limited to, the candidates' areas of expertise and professional qualifications, and responses to the Short List in achieving an overall balance of different perspectives on the Board.

People who are hired to serve on the Board are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, each nominee will be asked to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48 [5–02]). This form seeks information regarding the candidate's financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. However, this form is confidential and will not be disclosed to the public. The EPA will evaluate the candidate's financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality, or any prior involvement with the development of the documents under consideration, including previous scientific peer review, before the candidate is considered further for service on the HSRB.

Candidates selected from the Short List will be appointed to the HSRB. HSRB members are to perform several activities including reviewing extensive background materials between meetings of the Board, preparing draft responses to Agency charge questions, attending Board meetings, participating in the discussion and deliberations at these meetings, drafting assigned sections of meeting reports, and reviewing and helping to finalize Board reports.

Nominations should be submitted by one of the methods listed under **ADDRESSES**.

The Agency will consider all nominations for HSRB membership that are received on or before June 25, 2007. However, final selection of members is a discretionary function of the Agency and will be announced on the OSA Web site *http://www.epa.gov/osa/index.htm* soon after comments are received on the Short List.

Dated: May 18, 2007.

George M. Gray,

Science Advisor.

[FR Doc. E7–10066 Filed 5–23–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E7–9649) published on page 28490 of the issue for Monday, May 21, 2007.

Under the Federal Reserve Bank of Chicago heading, the entry for Audrey G. Savage, Monticello, Iowa, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Audrey G. Savage, Monticello, Iowa, indivudually and as trustee of the Audrey G. Savage Revocable Inter Vivos Trust; to acquire control of Family Merchants Bancorporation, Cedar Rapids, Iowa, and thereby indirectly acquire control of Family Merchants Bank, Cedar Rapids, Iowa.

Comments on this application must be received by June 4, 2007.

Board of Governors of the Federal Reserve System, May 21, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–10068 Filed 5–23–07; 8:45 am]

BILLING CODE 6210–01–S

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 June 18, 2007.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Sauk Centre Financial Services Inc., and First National Bank of Sauk Centre Retirement Savings & Employee Stock Ownership Plan and Trust, both of Sauk Centre, Minnesota; to acquire 100 percent of the voting shares of Lake Country State Bank, Long Prairie, Minnesota.

Board of Governors of the Federal Reserve System, May 21, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–10069 Filed 5–23–07; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Institute Vendor Meeting

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of meeting.

SUMMARY: The Federal Acquisition Institute (FAI) will hold a vendor meeting to provide information on the recently announced Federal Acquisition Certification in Program/Project Management (FAC–P/PM) to include program details, target timeline, and opportunities for vendors to support the training of federal program and project managers.

The purpose of this certification program is to establish the competencies, training, and experience requirements for program and project managers in civilian agencies. The FAC–P/PM focuses on essential competencies needed for program and project managers; the program does not include functional or technical competencies, such as those for information technology, or agency-specific competencies. The certification requirements will be accepted by, at minimum, all civilian agencies as evidence that an employee meets the core competencies, training and experience requirements.

The FAC–P/PM is a new program announced by the Office of Federal Procurement Policy (OFPP) on April 25, 2007. At this vendor meeting, FAI will present its approach for partnering with vendors on this initiative.

DATES: The meeting will be held June 13, 2007, from 2:30 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at OPM's Auditorium located at 1900 E Street, NW., Washington, DC 20415. Register by email at *maria_hernandez@sra.com*, or call (703) 284–6988.

WHO SHOULD ATTEND? Training developers, vendors with Commercial-Off-The- Shelf (COTS) training products, vendors with capabilities related to the full Instructional System. Design (ISD) methodologies, professional associations, educational institutions and acquisition training experts.

FOR FUTHER INFORMATION CONTACT: Ms. Maria Hernandez, by phone at 703–284–6988 or by e-mail at *maria_hernandez@sra.com*

Dated: May 17, 2007.

Otis Langford,

Program Manager, FAI.

[FR Doc. E7–10083 Filed 5–23–07; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0275; 30–Day Notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the

Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision.

Title of Information Collection: Development of an Evaluation Protocol for Assessing Impacts of OMH State Initiatives.

Form/OMB No.: 0990–0275.

Use: This request for clearance involves modification of the OMB approved Office of Minority Health (OMH) Uniform Data Set (UDS) (OMB No. 0990–0275). The UDS is the regular system for reporting program management and performance data for all OMH-funded activities. The modifications to the UDS requested in this application are intended to: (1) Accommodate grant programs that were not required to use the UDS at the time the system was developed; and (2) continue the development of the UDS as a reporting system that will capture the types of data needed to identify best practices and assess the progress of OMH-funded activities. The UDS has been implemented with 8 sets of grantees and cooperative agreement partners from 5 OMH funding programs. The recommended modifications will allow reporting by OMH partners receiving funding through the State Initiative and Umbrella Cooperative Agreement programs. These changes will improve OMH evaluation and planning capacities and support program accountability.

Frequency: Reporting Semi-annually.

Affected Public: Not-for-profit institutions.

Annual Number of Respondents: 150.

Total Annual Responses: 2.

Average Burden per Response: 4.5 hours.

Total Annual Hours: 1350.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov* , or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–0275), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 15, 2007.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E7–10049 Filed 5–23–07; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Planning and Evaluation; Request for Comments on the Departmental FY 2007–2012 Strategic Plan

AGENCY: Office of the Secretary, Health and Human Services.

ACTION: Request for comments on the Draft Strategic Plan FY 2007–2012.

SUMMARY: The Department of Health and Human Services (HHS) is seeking public comment on its draft Strategic Plan for fiscal years 2007–2012.

DATES: Submit comments on or before June 15.

ADDRESSES: Written comments can be provided by e-mail, fax or U.S. mail.

E-mail: HHSStrategicPlan@hhs.gov.

Fax: (202) 690–8252.

Mail: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Office of Planning and Policy Support, *Attn:* Strategic Plan Comments, 200 Independence Avenue, SW., Room 408B, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Audrey Mirsky-Ashby, (202) 401–6640.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services Draft FY 2007–2012 Strategic Plan is provided as part of the strategic planning process under the Government Performance and Results Act (GPRA) to ensure that Agency stakeholders are given an opportunity to comment on this plan.

This document integrates the Department's mission into a presentation of performance goals under four strategic goals. These four strategic goals are (1) *Health Care:* Improve the safety, quality, affordability and accessibility of health care, including behavioral health care and long-term care; (2) *Public Health Promotion and Protection, Disease Prevention and Emergency Preparedness:* Prevent and control disease, injury, illness and disability across the lifespan, and protect the public from infectious, occupational, environmental and terrorist threats; (3) *Human Services:* Promote the economic and social well-being of individuals, families and communities, and (4) *Scientific Research and Development:* Advance scientific and biomedical research and development related to health and human services. The strategic planning process is an opportunity for the Department to further refine and strengthen the strategic goal structure currently in place. For comparison purposes, the current HHS Strategic Plan FY 2004–2009 can be viewed at *http://aspe.hhs.gov/hhsplan/.*

The Department has made significant progress in its strategic and performance planning efforts. As we build on this progress we look forward to receiving your comments by June 15. The text of the draft strategic plan is available in a "pdf" downloadable format through the Department of Health and Human Services Web site: *http://www.hhs.gov.*

For those who may not have Internet access, a hard copy can be requested from the contact point, Audrey Mirsky-Ashby, 202–401–6640.

Dated: May 16, 2007.

Jerry Regier,

Principal Deputy/Assistant Secretary for Planning and Evaluation.

[FR Doc. E7–10076 Filed 5–23–07; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension of Supplemental Form to the Financial Status Report for All AoA Title III Grantees

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction

Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the Supplemental Form to the Financial Status Report for all AoA Title III Grantees.

DATES: Submit written or electronic comments on the collection of information by July 23, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *Stephen.Daniels@aoa.hhs.gov.*

Submit written comments on the collection of information to Administration on Aging, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Stephen Daniels, Director of Grants Management, Administration on Aging, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology. The Supplemental form to the Financial Status Report for all AoA Title III Grantees provides an understanding of how projects funded by the Older Americans Act are being administered by grantees, in conformance with legislative requirements, pertinent Federal regulations and other applicable instructions and guidelines issued by Administration on Aging (AoA). This information will be used for Federal oversight of Title III Projects. AoA estimates the burden of this collection of information as follows: 56 State Agencies on Aging respond semiannually which should be an average burden of 1 hour per State agency per submission.

Dated: May 21, 2007.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E7–10075 Filed 5–23–07; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–07BB]

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 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting 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

Testing of Sexual Violence Definitions and Recommended Data Elements in Three Different Racial/Ethnic Minority Communities -New-National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC). The data collection methodology will be conducted in two phases. The first phase consists of 36 in-person cognitive interviews conducted with women of African American, Hispanic, or American Indian descent. To assess the effectiveness and appropriateness of questions in the sexual violence survey instrument, we will conduct a series of 12 cognitive interviews with adult women from each of these minority groups (for a total of 36 interviews). Cognitive interviewing offers a structured methodology for ascertaining whether the respondent has understood the questions in the way the researchers intend them to be understood, and to assess the ability of the respondents to provide meaningful, accurate, and honest information. A secondary purpose is to make sure that issues pertinent to the research goals are covered adequately.

The second phase of data collection ("main data collection") will entail 200 in-person interviews with women in each of the minority groups to develop an estimate of sexual violence prevalence within these three communities and describe the characteristics of sexual violence within each community.

Background and Brief Description

This study examines the definitions of sexual violence in three racial/ethnic minority communities: African-American, American Indian, and Hispanic. The purpose of this project is to develop an understanding of sexual violence in these communities. The developed survey will include the following: Projecting estimates of sexual violence; describing the type of sexual violence; and developing a strategy that will increase awareness of sexual violence in minority communities. In addition, this project will establish the groundwork for similar future research.

This research builds on findings from the National Violence against Women Survey (NVAW) (OMB No. 1121–0188; expiration 5/1998), a joint research effort funded by the (CDC) and National Institute of Justice (NIJ) that explored

the occurrence of violence against women through a survey administered to a national sample of adult females and males. The proposed study will expand on this work by clarifying definitions, expanding the categories of sexual violence, and examining the sexual violence event.

This study will focus on women and will occur in two phases: Cognitive and in-person interviews. In each of the three communities, in-depth cognitive interviews will be conducted with 12 adult women, for a total of 36 cognitive interviews. However, a total of 66 individuals will be screened. Respondents will be identified through agencies working with victims of sexual violence. Participants will be interviewed (in either English or Spanish) at the referral agency. The primary purpose of this interview is to assess the questions for the next phase of the study.

In the next phase, researchers will conduct face-to-face interviews with approximately 200 women in each of the three minority communities for a total of 600 women. However, a total of 701 individuals will be screened. Female respondents who are 18 years old will be selected randomly from the communities. Letters will be mailed to each household in the sample. These households will be contacted at a later date in order to collect eligibility information and to randomly select an individual. Participants will complete a 45 minute interview.

There are no costs to respondents except for their time to participate in the interview.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Phase One: Screening for Cognitive Interview	66	1	3/60	3
Phase One: Cognitive Interview	36	1	2	72
Phase Two: Screening for Main Survey	701	1	5/60	58
Phase Two: Main Survey	600	1	45/60	450
Total				583

Dated: May 18, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–10027 Filed 5–23–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–0199]

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 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting 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

Importation of Etiologic Agents, Hosts, and Vectors of Human Disease (42 CFR 71.54)—(OMB Control No. 0920–0199)—Extension—Office of the Director (OD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Foreign Quarantine Regulations (42 CFR part 71) set forth provisions to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. Subpart F—Importations—contains provisions for importation of etiologic agents, hosts, and vectors (42 CFR 71.54), requiring persons that import or distribute after importation these materials to obtain a permit issued by the CDC. This request is for the information collection requirements contained in 42 CFR 71.54 for issuance of permits by CDC to importers or distributors after importation of etiologic agents, hosts, or vectors of human disease.

CDC is requesting continued OMB approval to collect this information through the use of two separate forms. *These forms are:* (1) Application for Permit to Import or Transport Etiologic Agents, Hosts, or Vectors of Human Disease and (2) Application for Permit to Import or Transport Live Bats.

The Application for Permit to Import or Transport Etiologic Agents, Hosts, or Vectors of Human Disease will be used by laboratory facilities, such as those operated by government agencies, universities, research institutions, and zoologic exhibitions, and also by importers of nonhuman primate trophy materials, such as hunters or taxidermists, to request permits for the importation and subsequent distribution after importation of etiologic agents, hosts, or vectors of human disease. The Application for Permit to Import or Transport Etiologic Agents, Hosts, or Vectors of Human Disease requests applicant and sender contact information; description of material for importation; facility isolation and containment information; and personnel qualifications. Estimated average time to complete this form is 20 minutes.

The Application for Permit to Import or Transport Live Bats will be used by laboratory facilities such as those operated by government agencies, universities, research institutions, and zoologic exhibitions entities to request importation and subsequent distribution after importation of live bats. The

Application for Permit to Import or Transport Live Bats requests applicant and sender contact information; a description and intended use of bats to be imported; facility isolation and containment information; and personnel qualifications. Estimated average time to complete this form is 20 minutes.

There is no cost to the respondents other than their time to complete the form.

ESTIMATED ANNUALIZED BURDEN HOURS

CFR section	Number of respondents	Responses per respondent	Average hourly burden	Total annual burden (in hours)
71.54 Application for Permit	2,300	1	0.333	766

Dated: May 18, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–10029 Filed 5–23–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–0566]

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 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting 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

Use of a Reader Response Postcard for Workers Notified of Results of Epidemiologic Studies Conducted by the National Institute for Occupational Safety and Health (NIOSH)—Reinstatement—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH, under Section 20(a)(1), (a)(4), (a)(7)(c), and Section 22 (d), (e)(5)(7) of the Occupational Safety and Health Act (29 U.S.C. 669), has the responsibility to "conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems." NIOSH also has the responsibility to "conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health [*e.g.*, worker notification], which may require ameliorative action beyond that which is otherwise provided for in the operating provisions of the Act".

Since 1977, the National Institute for Occupational Safety and Health (NIOSH) has been developing methods and materials for the notification of subjects of its epidemiological studies. NIOSH involvement in notifying workers of past exposures relates primarily to informing surviving cohort members of the findings of retrospective cohort studies conducted by NIOSH. Current policy within NIOSH is to notify subjects of the results of its epidemiologic studies. The extent of the notification effort depends upon the level of excess mortality or the extent of the disease or illness found in the cohort. Current notification efforts range from posting results at the facilities studied to mailing individual letter notifications to surviving cohort members and other stakeholders. The Industry wide Studies Branch (IWSB) of NIOSH, Division of Surveillance, Hazard Evaluation, and Field Studies (DSHEFS), usually conducts about two or three notifications per year, which typically require individual letters mailed to cohorts ranging in size from 200–20,000 workers each. In order to assess the effectiveness of the notification materials received by the recipients and to improve future communication of risk information, the evaluation instrument proposed was developed.

The NIOSH Institute-wide Worker Notification Program routinely notifies subjects about the results of epidemiologic studies and the implications of the results. The overall purpose of the proposed project is to gain insight into the effectiveness of NIOSH worker notification in order to improve the quality and usefulness of the Institute's worker notification activities. Researchers from the NIOSH Division of Surveillance, Hazard Evaluations and Field Studies (DSHEFS) propose to provide notified workers with a Reader Response postcard for routinely assessing notified study subjects' responses to individual letter notification materials sent to them by NIOSH. We are requesting approval for three years. Participation is voluntary and there is no cost to respondents except for their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden response (in hours)	Total burden (in hours)
Reader Response Card	8,000	1	10/60	1,333

Dated: May 18, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–10030 Filed 5–23–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–0658]

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 404–639–5960 and send comments to Maryam Daneshvar, CDC Acting 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

Capacity Building Assistance (CBA) Information, Collection, Reporting, and Monitoring (OMB# 0920–0658)—three year extension of the currently approved collection—National Center for HIV and AIDS, Viral Hepatitis, Sexually Transmitted Disease, Tuberculosis Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this request is to obtain OMB clearance to extend the 3-year clearance for information collection to monitor the HIV prevention activities of CBA provider grantees funded by CDC to provide HIV prevention CBA from April, 1 2004 through March 31, 2009. Capacity building is a key strategy for the promotion and sustainability of health prevention programs. Capacity building generally refers to the skills, infrastructure, and resources of organizations and communities that are necessary to effect and maintain behavior change, thus reducing the level of risk for disease, disability, and injury. CDC is responsible for monitoring and evaluating HIV prevention activities conducted under these cooperative agreement numbers 04019, 05015, and 06608. Reporting and monitoring forms have been used to collect information that assists in enhancing and assuring quality programming. CDC requires current information regarding CBA activities and services supported through these cooperative agreements. Therefore, forms such as the Trimester Interim Progress Report, CBA Notification Form, CBA Completion Form, and the CBA Training Events Report are considered a critical component of the monitoring/evaluation process. Because this program encompasses approximately 32 CBA provider organizations, there is a continued need for a standardized system for reporting individual episodes of CBA delivered by all CBA provider grantees. The information collected from the Trimester Progress Report, CBA Notification, CBA Completion Form, and the CBA Training Events Report, will allow CDC to further identify problems and technical assistance needs of community-based organization CBO, or CBA grantees in a timely fashion and subsequently improve the effectiveness of CBA program activities and to ensure that they are aligned with national goals. The data collected using the CBA Notification and Completion Forms, and the Training Events Report are now being collected via a Web portal (*http://www.cdc.gov/hiv/cba*) that has gone through a Certification and Accreditation process. Continued collection of this data in addition to the Trimester Progress Report will assist CDC, to aggregate data, and to discern and refine national goals and objectives for HIV prevention capacity building. This information collection process is also valuable for grantees as a management tool to routinely examining CBA program performance by assessing strengths and weaknesses in line with the CBA program, performance indicators, and national objectives.

It is estimated that form A (will require 4 hours of preparation by the respondent, form B will require 15 minutes of preparation by the respondent, and form C will require 30 minutes of preparation by the respondent, and Form D will require 2 hours of preparation by the respondent. In aggregate, report preparation requires approximately 1952 burden hours by each respondent. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden hours per response	Response burden (in hours)
Form A: CBA Trimester Report	32 Grantees	3	4	384
Form B: CBA Notification Form	32 CBA Provider Grantees	50	15/60	400
Form C: CBA Completion Form	32 CBA Provider Grantees	25	30/60	400

ESTIMATE OF ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Average burden hours per response	Response burden (in hours)
Form D: CBA Training Events Report	32 CBA Provider Grantees	12	2	768
Total				1952

Dated: May 18, 2007.

Maryam Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–10031 Filed 5–23–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0457]

Determination of Regulatory Review Period for Purposes of Patent Extension; SOMAVERT

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SOMAVERT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SOMAVERT (pegvisomant). SOMAVERT is indicated for the treatment of acromegaly in patients who have had an inadequate response to surgery and/or radiation therapy and/or other medical therapies, or for whom these therapies are not appropriate. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for SOMAVERT (U.S. Patent No. 5,849,535) from Genentech, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 6, 2004, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of SOMAVERT represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SOMAVERT is 2,169 days. Of this time, 1,349 days occurred during the testing phase of the regulatory review period, while 820 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: April 18, 1997. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 18, 1997.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 26, 2000. The applicant claims December 22, 2000, as the date the new drug application (NDA) for SOMAVERT (NDA 21–106) was initially submitted. However, FDA records indicate that NDA 21–106 was submitted on December 26, 2000.

3. *The date the application was approved*: March 25, 2003. FDA has verified the applicant's claim that NDA 21–106 was approved on March 25, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 466 days of patent term extension. Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by July 23, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 20, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 7, 2007.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E7–10052 Filed 5–23–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT933–07–4310–DP]

Notice of Intent To Prepare Supplemental Draft Resource Management Plans and Environmental Impact Statements for the Vernal and Price Field Offices, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Vernal and Price Field Offices, Utah, are preparing Supplemental Draft Resource Management Plans/Environmental Impact Statements (Draft RMP/EIS) to include additional information and analyses of wilderness characteristics on lands outside existing Wilderness Study Areas (WSAs). This information and analysis includes multiple areas in both the Vernal and Price Field Office planning areas.

DATES: Because the BLM has previously requested (**Federal Register**, Volume 66, Number 48, March 12, 2001, pages 14415–14417, and **Federal Register**, Volume 66, No. 216, November 7, 2001, pages 56343–56344) and received extensive information from the public on issues to be addressed in these RMPs, and because the Council on Environmental Quality (CEQ) regulations for implementing the National Environmental Policy Act (NEPA) do not require additional scoping for this supplemental draft RMP/EIS process (40 CFR 1502.9(c)(4), the BLM is not asking for further public information and comment at this time. This issue has been defined in earlier scoping efforts. A 90-day public comment period will be provided upon release of the supplemental draft document EISs.

FOR FURTHER INFORMATION CONTACT: Shelley Smith, Project Manager, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155; telephone: (801) 539–4053; e-mail: *shelley_smith@blm.gov*. The public may also contact Howard Cleavinger, Assistant Field Manager, BLM Vernal Field Office, 170 South 500 East, Vernal, Utah 84078; telephone: (435) 781–4480; e-mail: *howard_cleavinger@blm.gov* or Floyd Johnson, Assistant Field Manager, BLM Price Field Office, 125 South 600 West, Price, Utah 84501; telephone: (435) 636–3650; e-mail: *floyd_johnson@blm.gov*. Or, the public may visit the Price RMP Web site at *http://www.blm.gov/rmp/ut/price* and the Vernal RMP Web site at *http://www.blm.gov/rmp/ut/vernal*.

SUPPLEMENTARY INFORMATION: There are multiple areas in the Price and Vernal Field Offices, outside of existing wilderness study areas (WSAs), found to have wilderness characteristics in previous inventories. The BLM's Land Use Planning Handbook (H–1601–1) provides guidance for consideration of non-WSA lands with wilderness characteristics in land use planning. The handbook provides that the BLM consider these lands and resource values in planning, and prescribe measures to protect wilderness characteristics. These characteristics include appearance of naturalness, outstanding opportunities for solitude, or outstanding opportunities for primitive and unconfined recreation.

To ensure compliance with the ruling in the court case, *Southern Utah Wilderness Alliance et al.* v. *Gale Norton*, in her official capacity as Secretary of the Interior *et al.* (Utah District Court, Case No. 2:04CV574DAK), regarding the sale and issuance of oil and gas leases on lands outside of existing WSAs with wilderness characteristics, the BLM is supplementing its consideration of non-WSA lands with wilderness characteristics in land use planning. BLM shall ensure that (1) adequate consideration is given to wilderness characteristics in ongoing RMPs, (2) a range of alternatives is analyzed for management of these lands, and (3) an adequate analysis is prepared from which to base decisions for future oil and gas leasing.

Dated: April 4, 2007.

Jeff Rawson,

Associate State Director.

[FR Doc. E7–10032 Filed 5–23–07; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Bernice Pauahi Bishop Museum, Honolulu, HI; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of a revision to an inventory of human remains in the possession of the Bernice Pauahi Bishop Museum (Bishop Museum), Honolulu, HI.

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.

This notice corrects information reported in a Notice of Inventory Completion for the Bishop Museum published in the **Federal Register** on August 27, 1997 (FR Doc 97–22736, pages 45437–45438). Officials of the Bishop Museum have determined that 24 of the 34 cultural items published in the original notice do not meet the definition of human remains at 43 CFR 10.2 (d)(1) because while these items contain human remains, the items themselves are not considered human remains under NAGPRA definitions. The 24 cultural items that are being removed from the inventory are listed below.

In 1889, Joseph S. Emerson sold a wood image from Waimea, O'ahu, to the Bishop Museum. Human hair is incorporated in this object. No known individual was identified.

In 1889, a helmet (or wig) incorporating human hair and a refuse container incorporating human teeth and bone were bequeathed to the Bishop Museum by Queen Emma. No known individual was identified.

In 1889, a kahili incorporating human bone became part of the original collections of the Bishop Museum. This kahili was given to Bernice Pauahi by Ke'elikolani. No known individual was identified.

In 1891, a refuse container incorporating human teeth and a kahili incorporating human bone were acquired with the collections of the Hawaiian National Museum which were

transferred to the Bishop Museum. No further documentation is available. No known individual was identified.

In 1892 or before, an image from Kaua'i with human hair was purchased by Bishop Museum Director William T. Brigham on behalf of the Bishop Museum. No known individual was identified.

Prior to 1892, an image incorporating human hair was received as a gift by the Bishop Museum from the Trustees of O'ahu College. No known individual was identified.

Prior to 1892, two bracelets incorporating human bone were received from an unknown source as part of the original Bishop Museum collections. No known individual was identified.

In 1893, a sash with human teeth, a pahu (drum) incorporating human teeth, and a refuse container with human teeth were removed from 'Iolani Palace by the Provisional Government and sent into the collections of the Bishop Museum. No known individual was identified.

In 1895, an image incorporating human hair was purchased by the Bishop Museum from the American Board of Commissioners for Foreign Missions. No further documentation is available. No known individual was identified.

In 1908, an ipu with human teeth from Kohala, HI, was purchased by the Bishop Museum from the estate of William E.H. Deverill. No further information is available. No known individual was identified.

In 1910, a sash incorporating human teeth was received by the Bishop Museum as a gift from Queen Lili'uokalani. No further information is available. No known individual was identified.

In 1916, a piece of fishhook made of human bone and a tool made of human bone were donated to the Bishop Museum by Mr. Albert F. Judd, Jr. No further documentation is available. No known individual was identified.

In 1920, a kahili incorporating human bone was received by the Bishop Museum as a gift from Elizabeth Keka'ani'auokalani Pratt and Ewa K. Cartwright Styne. No further documentation is available. No known individual was identified.

In 1923, three kahili incorporating human bone were received by the Bishop Museum as a gift from Elizabeth Kahanu Kalaniana'ole Woods. No further documentation is available. No known individual was identified.

In 1932, a kahili handle incorporating human bone was received by the Bishop Museum as a bequest from Lucy K. Peabody. No known individual was identified.

In 1944, a refuse container incorporating human teeth was donated to the Bishop Museum by Catherine Goodale. This container had been on loan to the Bishop Museum since 1928. No known individual was identified.

After review, officials of the Bishop Museum determined that while these cultural items contain human remains, the cultural items themselves are not considered human remains pursuant to 43 CFR 10.2 (d)(1) and are not eligible for repatriation. In addition, the cultural items that are part of the founding collection or that have been given to Bishop Museum by members of the royal family are not eligible for repatriation as the ali'i had right of possession of these items and thus were given with clear title to the Bishop Museum. This notice does not recall the cultural items from the original notice that have since been repatriated and only applies to the 24 cultural items described above.

Representatives of any Native Hawaiian organizations that wish to comment on this notice should address their comments to Betty Lou Kam, Vice-President, Cultural Resources, Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817, telephone (808) 848–4144, before June 25, 2007.

The Bishop Museum is responsible for notifying the Friends of 'Iolani Palace, Hui Malama I Na Kupuna 'O Hawaii Nei, Office of Hawaiian Affairs, and Princess Nahoa Olelo 'O Kamehameha Society that this notice has been published.

Dated: March 20, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–10019 Filed 5–23–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the control the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

Between the 1950s and 2002, a cultural item was removed from an unspecified location in the Columbia River area in Washington. The cultural item was collected by Ms. Rosemary Horwood through purchase and donated to the Burke Museum in 2004 (Burke Accn. #2004–72). No human remains are present. The one unassociated funerary object is a necklace of copper beads.

Exact provenience is unknown; however, the cultural item is consistent with cultural items typically found in the context with burials in eastern Washington.

In 1959–1960, 15 cultural items were removed from the north bank of the Snake River, approximately five to six miles down river from the mouth of the Palouse River in Franklin County, WA, by Dr. Harold Bergen and Mrs. Marjory Bergen. The Bergens designated this site #14 or the "Pipe Site." The cultural items were donated to the Burke Museum in 1989 (Burke Accn. #1989–57). The 15 unassociated funerary objects are 1 groundstone tool, 1 core, 1 stone pendant, 1 hammer stone, 1 modified stone, 1 stone paint pot, 1 pipe, 4 points, 3 scrapers, and 1 bag containing over 200 seeds.

The burial pattern and unassociated funerary objects are consistent with Native American Plateau customs. The 1963 Indian Claims Commission decision indicates that this area is within the Palouse aboriginal territory. Early and late ethnographic documentation indicates that the present–day location of the Snake River in Franklin County, WA is within an overlapping aboriginal territory of the Cayuse, Palouse, Yakama, and Walla Walla (Daugherty 1973, Hale 1841, Mooney 1896, Ray 1936, Spier 1936, Sprague 1998, Stern 1998) whose descendants are members of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum

Band, a non–federally recognized Indian group. Information provided by the tribes listed above indicates that the aboriginal ancestors occupying this area were highly mobile and traveled the landscape for gathering resources as well as trade, and are all part of the more broadly defined Plateau cultural community.

Between the 1890s and early 1900s, 18 cultural items were removed from the "Plateau area" by Dr. Robert E. Stewart and purchased by the Burke Museum in 1905 (Burke Accn. #40). The "Plateau area" is a broadly defined cultural area. No human remains are present. The 18 unassociated funerary objects are 4 metal pendants, 7 metal bells, 1 bunch of thimbles and beads strung together, 5 metal bracelets, and 1 brass ornament.

Between 1889 and 1902, 118 cultural items were removed from Celilo Island, Klickitat County, WA, by Dr. Stewart and purchased by the Burke Museum in 1905 (Burke Accn. #40). No human remains are present. The 118 unassociated funerary objects are 3 atlatl weights, 2 axe heads, 1 groundstone ball, 8 stone beads, 6 stone carvings, 1 metal club, 6 grooved abraders, 19 groundstone tools, 2 knives, 1 maul, 1 metal spear point, 1 mortars, 1 net weight, 17 paint dishes or mortars, 19 stone pendants, 3 pestles, 6 pipes, 2 pistol barrels, 2 points, 1 stone sculpture, 1 metal spear, 2 metal spikes,12 stone war club heads, and 1 metal chisel.

Between 1890 and 1895, four cultural items were removed near Goldendale in Klickitat County, WA, by Dr. Stewart and donated to the Burke Museum in 1905 (Burke Accn. #40). No human remains are present. The four unassociated funerary objects are one stone sculpture, one metal axe head, one pistol barrel, and one gaming piece.

Between 1896 and 1902, eight cultural items were removed from Memaloose Island, Klickitat County, WA. The objects were removed from a grave and purchased by Dr. Stewart. The Burke Museum purchased the unassociated funerary objects from Dr. Stewart in 1905 (Burke Accn. #40). No human remains are present. The eight unassociated funerary objects are two metal axe heads, one knife, one metal point, one metal tool, one metal spear, one metal spike, and one metal war club.

Between 1896 and 1902, 60 cultural items were removed from an unspecified location in the Chamberlain Flats area in Klickitat County, WA, by Dr. Stewart and purchased by the Burke Museum in 1905 (Burke Accn. #40). No human remains are present. The 60 unassociated funerary objects are 1 metal axe head, 4 chipped stone tools, 1 carved stone effigy figure, 9 mauls, 2 bone tools with stone fragment, 1 antler tool with stone fragment, 4 groundstone tools, 1 moccasin last, 10 mortars, 4 paint dishes/mortars, 9 pestles, 4 pipes, 1 pistol barrel, 1 metal point, 1 stone sculpture, 6 stone sinkers, and 1 metal spear.

Museum documentation indicates that Dr. Stewart collected from Native American graves at the five sites described above. Exact provenience of each cultural item is unknown, however, Dr. Stewart primarily collected in Klickitat County, WA. The cultural items have been determined to be unassociated funerary objects based on the fact that these sites were described by Dr. Stewart as "burial ground." The cultural items are also consistent with funerary objects typically found in the context with burials in eastern Washington.

In 1925, one cultural item was removed from a cremation pit by an unknown individual on an island in the Columbia River in Klickitat or Skamania County, WA. The cultural item is a metal lid, which was donated by Mrs. Irene A. Walker to the Burke Museum in 1963 (Burke Accn. #1963–139). A note found with the lid indicates that the island was located near the Bridge of Gods. No human remains are present.

Between 1950 and 1960, 57 cultural items were removed from the "Klickitat Cremation Pit" east of Little and Big Klickitat Rivers in Klickitat County, WA, by Dr. Bergen. Dr. Bergen designated the location as Site #22 and donated the cultural items to the Burke Museum in 1989 (Burke Accn. #1989–57). No human remains are present. The 57 unassociated funerary objects are 15 glass beads, 3 chipped stone tools, 3 groundstone club fragments, 1 stone drill, 1 grooved abrader, 1 groundstone tool, 1 modified bone, 1 paint mortar, 4 fragments of a paint mortar, 2 turquoise pendants, 1 pestle fragment, 3 pipe fragments, 11 chipped stone points, 1 petrified wood point, 7 pieces of red ochre, 1 scraper, and 1 unmodified dentalium shell.

Between 1950 and 1960, 11 cultural items were removed from Spedis Valley, designated as Site #19, in Klickitat County, WA, by Dr. Bergen and donated to the Burke Museum in 1989 (Burke Accn. #1989–57). No human remains are present. The 11 unassociated funerary objects are 2 basketry fragments, 1 decorated lead piece, 1 decorated metal fragment, 1 pipe bowl, 1 point, 2 unmodified dentalium shells, 1 perforated olivella shell, 1 strung abalone shell, and 1 strung copper ore fragment.

Between 1950 and 1960, 8,157 cultural items were removed from the Klickitat Ridge, designated as Site #26, Klickitat County, WA, by Dr. Bergen and donated to the Burke Museum in 1989 (Burke Accn. #1989–57). No human remains are present. The 8,157 unassociated funerary objects are 1 awl; 3 bells (2 with fabric attached); 8,094 beads (shell, dentalium, glass, and copper ore); 10 copper bracelets; 2 coin pendants; 2 flakes; 1 gorget; 3 iron spikes; 1 modified shell fragment; 2 net weights; 2 metal pendants; 13 copper pendants, gorgets or armor fragments; 1 shell pendant; 1 carved bone ring fragment; 4 copper ring fragments; 5 clay buttons; 2 shell buttons; 4 leather strips with copper tacks attached; and 6 thimbles.

Between 1950 and 1960, 25 cultural items were removed from the Spedis Valley Cremation Pit Site, designated as Site #21, Klickitat County, WA, by Dr. Bergen and donated to the Burke Museum in 1989 (Burke Accn. #1989–57). No human remains are present. The 25 unassociated funerary objects are 4 abraders, 1 adze blade, 2 antler tools, 1 copper ore fragment, 2 stone discoids, 1 bone tool fragment, 2 groundstone tool fragments (possibly adze fragments), 3 groundstone tool fragments (possibly club fragments), 1 net weight, 2 bone pendants, 1 pipe stem, 4 points, and 1 red ochre piece.

In 1953, three cultural items were removed from the cliffs above Wakemap Mound in Klickitat County, WA, by Mr. Warren Caldwell and donated to the Burke Museum in 1953 (Burke Accn. #3877). No human remains are present. The three unassociated funerary objects are cradle boards.

Between 1955 and 1958, 1,626 cultural items were removed from an eroded campsite along the river banks from the Fountain Bar Site, designated as Site #15, Klickitat County, WA, by Dr. Bergen and donated to the Burke Museum in 1989 (Burke Accn. #1989–57). No human remains are present. The 1,626 unassociated funerary objects are 1,609 shell beads and shell fragments (dentalium, oyster, and shell disc beads); 5 mammal bone fragments; 11 chipped stone points; and 1 unmodified stone.

Between 1956 and 1958, 66 cultural items were removed from south of Alderdale, designated as Site #1, Klickitat County, WA, by Dr. Bergen and donated to the Burke Museum in 1989 (Burke Accn. #1989–57). No human remains are present. The 66 unassociated funerary objects are 56 glass beads, 5 copper tubes, 3 dentalium

(plus small fragments), 1 stone pendant, and 1 modified ground stone.

In 1956, four cultural items were removed from the cliffs above Wakemap Mound, Klickitat County, WA, by Mr. Robert Ferris and donated to the Burke Museum in 1956 (Burke Accn. #4112). No human remains are present. The four unassociated funerary objects are one cradle board and three cradle poles.

In 1957, 25 cultural items were removed from the Maybe Site, designated as Site #11, near the Dalles Dam, Klickitat County, WA, by Dr. Bergen and donated to the Burke Museum in 1989 (Burke Accn. #1989–57). No human remains are present. The 25 unassociated funerary objects are 1 abrader, 2 atlatl weights, 3 groundstone tools, 3 mauls, 1 mortar, 1 pile driver, 13 points, and 1 net weight.

In 1964, 169 cultural items were removed from the Obie Site #2, also designated as Site #45, near the Dalles Dam, Klickitat County, WA, by Dr. Bergen and donated to the Burke Museum in 1989 (Burke Accn. #1989–57). No human remains are present. The 169 unassociated funerary objects are 3 abraders, 4 antler wedges, 11 atlatl weights, 1 awl, 9 stone beads, 2 pieces of graphite, 15 chipped stone tools, 7 choppers, 2 discoids, 6 drills, 1 glass fragment, 1 graver, 13 groundstone tools, 2 hammerstones, 1 leather fragment, 4 mauls, 1 mortar, 2 nails, 2 copper ore fragments, 1 iron tube, 65 points, 1 piece of red ochre, 1 piece of yellow ochre, 9 scrapers, 1 large stone bead, and 4 utilized flakes.

Between 1955 and 1957, 361 cultural items were removed from the Colwash Valley and Lois/Over Sites (45–KL–27) in Klickitat County, WA, by a University of Washington Field Party led by Mr. Robert B. Butler. The cultural items were transferred to the Burke Museum by Mr. Butler and formerly accessioned in 1966 (Burke Accn. #1966–100). No human remains are present. The 361 unassociated funerary objects are 3 incised beads, 1 pottery bead, 119 lots of bone clubs and club fragments (includes refitted fragments), 2 pieces of copper ore, 1 bone harpoon, 1 maul, 1 piece of ochre, 4 lots of modified tooth or bone fragments, 3 mortars, 1 net weight, 45 pipes, 10 stone points, 164 lots of worked bone fragments, 2 pottery fragments, 1 ground shell fragment, and 3 utilized flakes.

Museum documentation indicates that the cultural items from the twelve sites described above were found in connection with burials. The objects are consistent with cultural items typically found in the context with burials in eastern Washington. Early and late published ethnographic documentation indicates that this was the aboriginal territory of the Western Columbia River Sahaptins, Wasco, Wishram, Yakima, Walla Walla, Umatilla, Tenino, and Skin (Daugherty 1973, Hale 1841, Hunn and French 1998, Stern 1998, French and French 1998, Mooney 1896, Murdock 1938, Ray 1936 and 1974, Spier 1936) whose descendants are members of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and Confederated Tribes of the Warm Springs Reservation of Oregon. Information provided by the representatives the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum Band, a non–federally recognized Indian group, during consultation indicates the aboriginal ancestors occupying the area where all the above mentioned sites are located were highly mobile and traveled the landscape for gathering resources as well as trade, and are all part of the more broadly defined Plateau cultural community.

In 1955, 10 cultural items were removed from an island in the Snake River in Walla Walla County, WA, by Mrs. Stanley Randolph and donated to the Burke Museum in 1955 (Burke Accn. #4010). No human remains are present. The 10 unassociated funerary objects are 1 lot of trade beads, 2 pieces of hammered copper ornaments, 6 copper tube beads, and 1 piece of iron.

In 1958, 97 cultural items were removed from the "Palouse Site," also designated as Site #9, on the east side of the Palouse River where it empties into the Snake River in Whitman County, WA. The cultural items were donated to the Burke Museum in 1989 (Burke Accn. #1989–57). The 97 unassociated funerary objects are 53 olivella shell beads, 8 dentalium shell beads, 6 shell beads, 2 teeth, 11 copper beads, 2 mauls, 1 lot of organic matter, 4 copper pendants, 2 copper pendant fragments, 2 pestles, 4 points, and 2 scrapers.

The burial pattern and cultural items are consistent with Native American plateau customs. The 1963 Indian Claims Commission decision indicates that this area was within the Palouse aboriginal territory. Early and late ethnographic documentation indicates that the present–day location of the Snake River is located within an overlapping aboriginal territory of the Cayuse, Palouse, Yakama, and Walla Walla (Daugherty 1973, Hale 1841, Mooney 1896, Ray 1936, Spier 1936, Sprague 1998, Stern 1998,) whose descendants are members of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum Band, a non–federally recognized Indian group.

Between 1955 and 1957, 21 cultural items were removed from the B. Stewart Site in Wasco County, OR, by a University of Washington Field Party led by Mr. Robert B. Butler. The cultural items were received by the Burke Museum in 1957 and accessioned in 1966 (Burke Accn. #1966–100). Human remains were not removed from the site. The 21 unassociated funerary objects are 1 adze blade, 2 bone clubs, 3 copper fragments, 1 ground stone tool, 2 mortars, 6 pipes, 2 point fragments, 1 point, and 3 pieces of worked bone.

The site included a series of cremations overlooking Celilo Falls. Museum documentation indicates that the cultural items were removed from graves. The objects are consistent with cultural items typically found along the Columbia River in Eastern Washington and Oregon.

The 1963 Indian Claims Commission decision indicates that this area was within the aboriginal territory of the Warm Springs. Information provided by the representatives the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum Band, a non–federally recognized Indian group, during consultation indicates the aboriginal ancestors occupying the area where all the above mentioned sites are located were highly mobile and traveled the landscape for gathering resources as well as trade, and are all part of the more broadly defined Plateau cultural community.

The descendants of these Plateau communities of Eastern Washington and Eastern Oregon are now widely dispersed and are members of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon;

Nez Perce Tribe of Idaho; and Wanapum Band, a non–federally recognized Indian group.

Officials of the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 10,857 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Burke Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; and Nez Perce Tribe of Idaho. Furthermore, officials of the Burke Museum have determined that there is a cultural relationship between the unassociated funerary objects and the Wanapum Band, a non–federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195–3010, telephone (206) 685–2282, before June 25, 2007. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Confederated Tribes and Bands of the Yakama Nation, Washington, for themselves and on behalf of the Wanapum Band, a non-federally recognized Indian group, may proceed after that date if no additional claimants come forward. The Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Confederated Tribes and Bands of the Yakama Nation, Washington; and Wanapum Band, non–federally recognized Indian group, are claiming jointly all cultural items from the Columbia River area in eastern Washington and Oregón.

The Burke Museum is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum Band, a non–federally recognized Indian group that this notice has been published.

Dated: May 14, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–9970 Filed 5–23–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA and Central Washington University, Department of Anthropology, Ellensburg, WA

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 control of the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA and Central Washington University, Department of Anthropology, Ellensburg, WA. The human remains and associated funerary objects were removed from Klickitat County, WA.

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 Burke Museum and Central Washington University professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum Band, a non–federally recognized Indian group.

Between 1955 and 1957, human remains representing a minimum of 91 individuals were removed from the Congdon site (45–KL–41) in Klickitat County, WA, by a University of Washington Field Party led by Mr. Robert B. Butler. The human remains were transferred to the Burke Museum and formally accessioned in 1966 (Burke Accn.# 1966–100). In 1974, the Burke Museum legally transferred portions of the human remains to Central Washington University. No known individuals were identified. The 1,049 associated funerary objects are 39 abraders, 4 anvils, 5 atlatl weights, 1 bone bi-point, 3 bone tools, 2 bowls, 44 chipped stone tools, 204 stone choppers, 2 fragments of metal ore (copper and iron), 1 stone core, 201 stone discoid, 1 stone drill, 2 stone flakes, 6 stone gravers, 24 grooved mauls, 82 groundstone tools, 20 hammerstones, 87 stone mauls, 60 mortars, 58 net weights, 1 stone pendant, 38 pestles, 21 piledrivers, 26 stone points, 47 scrapers, 2 spherical stones, and 68 utilized flakes.

The Congdon site was first discovered in the 1930s. In 1955, amateur archeologists continued to disturb the site and began locating human remains. Mr. Butler also began working at this site at this time. The site was simultaneously further disturbed by bulldozing in preparation for the relocation of a railroad. The site was considered a mass burial with complicated stratigraphy, and human remains commingled and scattered throughout making identification of individual burials impossible. Mr. Butler's excavations focused on salvaging human remains; however, no provenience was recorded for the human remains and the excavations have limited field documentation.

Early and late published ethnographic documentation indicates that this was the aboriginal territory of the Western Columbia River Sahaptins, Wasco, Wishram, Yakima, Walla Walla, Umatilla, Tenino, and Skin (Daugherty 1973, Hale 1841, Hunn and French 1998, Stern 1998, French and French 1998, Mooney 1896, Murdock 1938, Ray 1936 and 1974, Spier 1936). The descendants of the Western Columbia River Sahaptins, Wasco, Wishram, Yakima, Walla Walla, Umatilla, Tenino, and Skin are members of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla

Reservation, Oregon; and Confederated Tribes of the Warm Springs Reservation of Oregon.

Information provided by representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum Band, a non–federally recognized Indian group, during consultation indicates that the aboriginal ancestors occupying the site area were highly mobile and traveled widely across the landscape for gathering resources as well as trade, and are all part of the more broadly defined Plateau cultural community. The descendants of these Plateau communities are members of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum Band, a non–federally recognized Indian group.

Officials of the Burke Museum and Central Washington University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 91 individuals of Native American ancestry. Officials of the Burke Museum and Central Washington University also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 1,049 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 Burke Museum and Central Washington University 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 Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; and Nez Perce Tribe of Idaho. Furthermore, officials of the Burke Museum and Central Washington University have determined that there is a cultural relationship between the human remains and associated funerary objects and the Wanapum Band, a non–federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195–3010, telephone (206) 685–2282 or Lourdes Henebry-DeLeon, NAGPRA Program Director, Central Washington University, Department of Anthropology, Mailstop 7544, Ellensburg, WA 98926, telephone (509) 963–2671, before June 25, 2007. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Confederated Tribes and Bands of the Yakama Nation, Washington, for themselves and on behalf of the Wanapum Band, a non–federally recognized Indian group, may proceed after that date if no additional claimants come forward. The Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Confederated Tribes and Bands of the Yakama Nation, Washington; and Wanapum Band, non–federally recognized Indian group, are claiming jointly all cultural items from the Columbia River area in eastern Washington and Oregon.

The Burke Museum is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum Band, a non–federally recognized Indian group that this notice has been published.

Dated: May 14, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–9971 Filed 5–23–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF JUSTICE

Notice of Proposed Settlement Agreement Under the Park System Resource Protection Act

Notice is hereby given that the United States Department of Justice, on behalf of the U.S. Department of the Interior, National Park Service ("DOI") has reached a settlement with Robert D. McDougal, III, his wife, Anne McDougal, and the vessel Happy Days (*in rem*) regarding claims for response costs and damages under the Park System Resource Protection Act ("PSRPA"), 16 U.S.C. 19jj *et seq.*

The United States' claim arises from the grounding of the vessel "Happy Days V" in Biscayne National Park on January 29, 1999. The grounding damaged a shoal, sediment, and the associated seagrass community. Pursuant to the Agreement, the United States will recover $189,963.00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the Settlement Agreement between the United States and the McDougals, D.J. Ref. 90–5–1–1–07746.

The proposed Settlement Agreement may be examined at Biscayne National Park, 9700 SW., 328th St., Homestead, FL 33033, and at the Department of the Interior, Office of the Solicitor, Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that

amount to the Consent Decree Library at the stated address.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–2573 Filed 5–23–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,270]

CNH America LLC, Belleville Manufacturing Plant Including On-Site Leased Workers From Armstrong's, CNH Meridian, FBG Service Corporation, Industrial Distribution Group, Jim Buch's Repair Services, Jon Industrial Lube, Kelly Services, UTI Integrated Logistics, and Anixter Fasteners, Belleville, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 2, 2007, applicable to workers of CNH America LLC, Belleville Manufacturing Plant, including on-site leased workers from Armstrong's, CNH Meridian, FBG Service Corporation, Industrial Distribution Group, Jim Buch's Repair Services, Jon Industrial Lube, Kelly Services, and UTI Integrated Logistics, Belleville, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of agricultural machinery, specifically front-end loaders, hay and forage equipment (conditioners, rakes, forage harvesters, headers, and windrowers), bale wagons, and spreaders).

New information shows that leased workers of Anixter Fasteners were employed on-site at the Belleville, Pennsylvania location of CNH America LLC, Belleville Manufacturing Plant.

Based on these findings, the Department is amending this certification to include leased workers of Anixter Fasteners working on-site at CNH America LLC, Belleville Manufacturing Plant, Belleville, Pennsylvania.

The intent of the Department's certification is to include all workers employed at CNH America LLC, Belleville Manufacturing Plant, Belleville, Pennsylvania who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–61,270 is hereby issued as follows:

All workers of CNH America LLC, Belleville Manufacturing Plant, including on-site leased workers of Armstrong's, CNH Meridian, FBG Service Corporation, Industrial Distribution Group, Jim Buch's Repair Services, Jon Industrial Lube, Kelly Services, UTI Integrated Logistics, and Anixter Fasteners, Belleville, Pennsylvania, who became totally or partially separated from employment on or after April 9, 2006, through May 2 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of May 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–10018 Filed 5–23–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,388]

Hartz & Company, HL Hartz & Sons, New York, NY; Notice of Revised Determination on Reopening

On May 14, 2007, the Department, on its own motion, reopened its investigation for the former workers of the subject firm.

The initial investigation resulted in a negative determination issued on December 1, 2006 because the workers provided a service that was not in support of the firm's production of apparel. Since the workers were denied eligibility to apply for trade adjustment assistance (TAA) they were also denied eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

The Department has determined that the information provided by a former employee of the firm shows that the duties performed by workers of Hartz & Company in New York, New York, including design and marketing, supported the production of men's and women's suits and bottoms at a Hartz & Company facility located domestically. The production workers were certified eligible to apply for adjustment assistance based on increased aggregate U.S. imports of men's and women's suits and bottoms.

All workers of Hartz & Company, New York, New York, were separated when the production facility closed in October 2006.

In order for the Department to issue a certification of eligibility to apply for alternative trade adjustment assistance ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions in the apparel industry are adverse.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with men's and women's suits and bottoms produced by Hartz & Company, contributed importantly to the total or partial separation of workers and to the decline in sales or production sales at that firm or subdivision.

In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Hartz & Company, HL Hartz & Sons, New York, New York, who became totally or partially separated from employment on or after November 6, 2005, through two years from the date of certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 16th day of May 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–10016 Filed 5–23–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 4, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 4, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 15th day of May 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 5/7/07 and 5/11/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61450	Kentucky Derby Hosiery, Inc./Gildan Plant 3 (Comp)	Mt Airy, NC	05/07/07	05/03/07
61451	Irving Forest Products (Wkrs)	Strong, ME	05/07/07	05/14/07
61452	Commonwealth Home Fashions (Wkrs)	Willsboro, NY	05/07/07	05/04/07
61453	Deckerville Metal Systems LLC (Comp)	Deckerville, MI	05/07/07	04/30/07
61454	Leader Manufacturing (Wkrs)	St. Louis, MO	05/07/07	05/04/07
61455	Ogihara America Corportion (Comp)	Howell, MI	05/07/07	05/04/07
61456	Brillcast Inc. (Comp)	Grand Rapids, MI	05/07/07	05/04/07
61457	Featherlite Steel Division (Comp)	Shenandoah, IA	05/07/07	05/03/07
61458	S&S Plastics (Wkrs)	Hillside, NJ	05/07/07	05/02/07
61459	Honeywell Aerospace-Engines System Services (State)	Tucson, AZ	05/07/07	05/01/07
61460	Lozier Corporation (Comp)	Pittsburgh, PA	05/07/07	05/04/07
61461	The Troxel Company (Comp)	West Point, MS	05/07/07	05/04/07
61462	Tecumseh Products Company (Comp)	Tecumseh, MI	05/07/07	05/04/07
61463	Leick Furniture (Wkrs)	Sheboygan, WI	05/07/07	05/04/07
61464	Saint Gobain Performance Plastics (Comp)	Mundelein, IL	05/08/07	05/07/07
61465	IIG DSS Technologies (Comp)	Fair Haven, MI	05/08/07	05/07/07
61466	Twiss Associates (Wkrs)	Opelika, AL	05/08/07	05/02/07
61467	Federal Mogul (Wkrs)	Frankfort, IN	05/08/07	05/07/07
61468	Duracell (Gillette) (Comp)	Lexington, nc	05/08/07	05/07/07
61469	Southern Tool Mfg. Co. (Comp)	Winston-Salem, NC	05/08/07	05/07/07
61470	General Motors Springhill Mfg. (UAW)	Springhill, TN	05/08/07	05/04/07
61471	Bond Cote Corp (Wkrs)	Dublin, VA	05/08/07	05/01/07
61472	Strategic Distribution, Inc. (Wkrs)	Bristol, PA	05/08/07	05/04/07
61473	ICT Group, Inc. (Wkrs)	Dubois, PA	05/08/07	05/07/07
61474	Interface Fabrics, Inc. (Wkrs)	Elkin, NC	05/08/07	05/04/07
61475	Plastiflex (State)	Santa Ana, CA	05/09/07	05/08/07
61476	Eureka Manufacturing Company (Comp)	Norton, MA	05/09/07	05/08/07
61477	Gibraltar Industries (UAW)	Buffalo, NY	05/09/07	05/08/07
61478	Royal Home Fashions (Comp)	Oxford, NC	05/09/07	05/07/07
61479	Maui Pineapple Company, Ltd (ILWU)	Kahului, HI	05/09/07	05/08/07
61480	Elston-Richards Inc. (Union)	Anderson, IN	05/09/07	05/01/07
61481	Continental Structural Plastics (Wkrs)	Carey, OH	05/09/07	04/30/07
61482	Avon Products, Inc. (Wkrs)	Cincinnati, OH	05/09/07	04/24/07
61483	GE Consumer Finance (Wkrs)	Kettering, OH	05/09/07	05/07/07
61484	Intermet-Archer Creek (USWA)	Lynchburg, VA	05/09/07	05/03/07
61485	QRS Music Technologies, Inc. (Comp)	Seneca, PA	05/09/07	05/01/07
61486	Thompson Steel Company, Inc. (USWA)	Franklin Park, IL	05/10/07	05/09/07
61487	Pennsylvania House Showroom (Wkrs)	Hickory, NC	05/10/07	05/09/07
61488	Webb Furniture (Comp)	Galax, VA	05/10/07	05/09/07
61489	Lake Region Manufacturing (State)	Chaska, MN	05/10/07	05/09/07
61490	Cooper Manufacturing Company (State)	Searcy, AR	05/10/07	05/09/07
61491	Decor Originals, Inc. (Comp)	Conover, NC	05/10/07	05/09/07
61492	Woodward Controls, Inc. (Comp)	Niles, IL	05/10/07	05/09/07
61493	Alsco Ind. Inc. (Comp)	Sturbridge, MA	05/10/07	05/09/07
61494	Vanity Fair Brands, LP (Comp)	Monroeville, AL	05/11/07	05/07/07
61495	Irvin Automotive Products, Inc. (Wkrs)	Pontiac, MI	05/11/07	05/07/07
61496	M&K Textiles, Inc. (Comp)	Moultrie, GA	05/11/07	05/10/07

APPENDIX—Continued

[TAA petitions instituted between 5/7/07 and 5/11/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61497	Sentinel Consumer Products, Inc. (Comp)	Mentor, OH	05/11/07	05/10/07
61498	Sentinel Consumer Products, Inc. (Comp)	Anniston, AL	05/11/07	05/10/07
61499	Sentinel Consumer Products, Inc. (Comp)	Clearfield, UT	05/11/07	05/10/07
61500	Lancaster Glass Corporation (USW)	Lancaster, OH	05/11/07	04/17/07
61501	Visteon Regional Assembly and Mfg., LLC (Union)	Chesapeake, VA	05/11/07	05/10/07

[FR Doc. E7–10014 Filed 5–23–07; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *May 7 through May 11, 2007.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A), all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B), both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–61, 241; Navisa, Inc., Brenham, TX: April 2, 2006.

TA–W–61, 254; American and Efird, Inc., dba Robison Anton Textile Company, Fairview Division, Fairview, NJ: April 5, 2006.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–61, 162; Hoffman LaRoche, Inc., Quality Management—Analytical Development Division, Nutley, NJ: March 20, 2006.

TA–W–61, 230; Transwitch Corporation, Reference Systems Development Department, Shelton, CT: March 27, 2006.

The following certifications have been issued. The requirements of Section

222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,381; Distel Tool and Machine Company, Warren, MI: April 24, 2006.

TA–W–61,403; WestPoint Home, Inc., Formerly know as Westport Stevens, Bed Products Div. Finishing Plant, Opelika, AL: April 24, 2006.

TA–W–60,857; Asec Manufacturing, A Subsidiary of Delphi Corp., Catoosa, OK: January 22, 2006.

TA–W–61,075; Emerald Kalama Chemical, LLC, Kalama, WA: March 6, 2006.

TA–W–61,184; Diversified Precision Products, Spring Arbor, MI: March 21, 2006.

TA–W–61,244; IAC Sheboygan, LLC, Formerly Known as Lear, Sheboygan, WI: March 9, 2006.

TA–W–61,432; Deluxe Media Services LLC, Distribution Facility, Pleasant Prairie, WI: May 2, 2006.

TA–W–61,245; Addison Shoe Company, A Division and of Munro and Co., Inc., Wynne, AR: May 13, 2007.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,252; Wetherill Associates, Transpo Division, Orlando, FL: March 27, 2006.

TA–W–61,330; Valeo Electrical Systems, Inc., North American Wipers Division, Rochester, NY: March 17, 2007.

TA–W–61,391; B. Braun of Puerto Rico, Inc., B. Braun Medical Division, Leased Workers of Addeco, Sabana Grande, PR: April 23, 2006.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–61,254; American and Efird, Inc., dba Robison Anton Textile Company, Fairview Division, Fairview, NJ.

TA–W–61,230; Transwitch Corporation, Reference Systems Development Department, Shelton, CT.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–61,241; Navisa, Inc., Brenham, TX.

TA–W–61,162; Hoffman LaRoche, Inc., Quality Management—Analytical Development Division, Nutley, NJ.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–61,136; Electric Mills Kentucky, Division of EMF Corporation, Burkesville, KY.

TA–W–61,149; Johnson Controls Battery Group, Inc., Fullerton Distribution Center, Fullerton, CA.

TA–W–61,185; Loparex, Inc., Dixon, IL.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,949; National Apparel, LLC, San Francisco, CA.

TA–W–61,214; Llink Technologies, LLC, Brown City, MI.

TA–W–61,281; Form Tech Industries LLC, Canal Fulton, OH.

TA–W–61,293; Georgia Pacific Corrugated Number 1 LLC, aka Great Northern Nekoosa Corp., Ridgeway, VA.

TA–W–61,324; Ford Motor Company, Vehicle Operation Division, Wixom Assembly, Leased Workers of G–Tech, MSX, Wixom, MI.

TA–W–61,416; Golden Manufacturing Company, Inc., Marietta, MS.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

None.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–61,199; Emerson Network Power, Energy Systems, North America, Lorain, OH.

TA–W–61,299; Isaco International Corp., Miami Lakes, FL.

TA–W–61,369; Wood Tech Enterprises, Inc., Fairview, NC.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *May 7*

through May 11, 2007. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 16, 2007.

Ralph Dibattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–10015 Filed 5–23–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,265]

O'Bryan Brothers, Inc., Leon, IA; Notice of Revised Determination on Reconsideration

By application of April 27, 2007, petitioners requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on April 13, 2007, was based on the finding that the petitioning workers did not produce an article within the meaning of Section 222 of the Act. The denial notice was published in the **Federal Register** on April 26, 2007 (72 FR 20873).

To support the request for reconsideration, petitioners supplied additional information regarding production at the subject facility and a shift in production to Mexico.

Upon further contact with the subject firm's company official, it was revealed that the workers also produced marker patterns in 2006 and January through April of 2007.

During a detailed investigation on reconsideration, it was revealed that the subject firm shifted sewing functions and production of marker patterns to Mexico during the relevant period and that this shift contributed importantly to layoffs at the subject firm.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the investigation, I determine that there was a shift in production from the workers' firm or subdivision to Mexico of articles that are like or directly competitive with those produced by the subject firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of O'Bryan Brothers, Inc., Leon, Iowa, who became totally or partially separated from employment on or after April 6, 2006 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 16th day of May 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–10013 Filed 5–23–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,201; TA–W–61,201A]

Photronics, Incorporated; Brookfield, CT Including an Employee of Photronics, Incorporated, Brookfield, CT, Who Received Wages Paid by PLI Management Corp., Located in Palm Bay, FL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 19, 2007, applicable to workers of Photronics, Inc., Brookfield, Connecticut. The notice was published in the **Federal Register** on May 9, 2007 (72 FR 26424).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation occurred involving an employee of the Brookfield, Connecticut facility of Photronics, Incorporated located in Palm Bay, Florida. Information also shows that PLI Management Corp. was contracted by the subject firm to provide payroll function services to workers employed on-site at the Palm Bay, Florida location of the subject firm.

Ms. Bonnie Mitchell provided sales function services for the production of photomasks produced by the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Brookfield, Connecticut facility of Photronics, Incorporated, located in Palm Bay, Florida whose wages were reported under a separate unemployment insurance (UI) tax account for by PLI Management Corp.

The intent of the Department's certification is to include all workers of Photronics, Incorporated, Brookfield, Connecticut who were adversely affected by increased imports.

The amended notice applicable to TA–W–61,201 is hereby issued as follows:

All workers of Photronics, Inc., Brookfield, Connecticut (TA–W–61,201), and including an employee of Photronics, Inc., Brookfield, Connecticut located in Palm Bay, Florida, who's wages were reported by PLI Management Corp. (TA–W–61,201A), who became totally or partially separated from employment on or after March 23, 2006, through April 19, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 15th day of May 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–10017 Filed 5–23–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Notice of Affirmative Decisions on Petitions for Modification Granted in Whole or in Part

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

SUMMARY: The Mine Safety and Health Administration (MSHA) enforces mine operator compliance with mandatory safety and health standards that protect miners and improve safety and health conditions in U.S. Mines. This **Federal Register** Notice (FR Notice) notifies the public that it has investigated and issued a final decision on certain mine operator petitions to modify a safety standard.

ADDRESSES: Copies of the final decisions are posted on MSHA's Web site at *http://www.msha.gov/indexes/petition.htm*. The public may inspect the petitions and final decisions during normal business hours in MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209. All visitors must first stop at the receptionist desk on the 21st Floor to sign-in.

FOR FURTHER INFORMATION CONTACT: Ria Moore Benedict, Deputy Director, Office of Standards, Regulations, and Variances at 202–693–9443 (Voice), *benedict.ria@dol.gov* (e-mail), or 202–693–9441 (Telefax), or Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (e-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 101 of the Federal Mine Safety and Health Act of 1977, a mine operator may petition and the Secretary of Labor (Secretary) may modify the application of a mandatory safety standard to that mine if the Secretary determines that: (1) An alternative method exists that will guarantee no less protection for the miners affected than that provided by the standard; or (2) that the application of the standard will result in a diminution of safety to the affected miners.

MSHA bases the final decision on the petitioner's statements, any comments and information submitted by interested persons, and a field investigation of the conditions at the mine. In some instances, MSHA may approve a petition for modification on the condition that the mine operator complies with other requirements noted in the decision.

II. Granted Petitions for Modification

On the basis of the findings of MSHA's investigation, and as designee of the Secretary, MSHA has granted or partially granted the following petitions for modification:

- *Docket Number:* M–2005–005–C.
  FR Notice: 70 FR 7760 (February 15, 2005).
  Petitioner: R S & W Coal Company, Inc., 207 Creek Road, Klingerstown, Pennsylvania 17941.
  Mine: R S & W Drift, MSHA I.D. No. 36–01818.
  Regulation Affected: 30 CFR 75.332(b)(1) and (b)(2) (Working sections and working places).

- *Docket Number:* M–2005–030–C.
  FR Notice: 70 FR 28321 (May 17, 2005).
  Petitioner: Wabash Mine Holding Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15219.
  Mine: Wabash Mine, MSHA I.D. No. 11–00877.
  Regulation Affected: 30 CFR 75.364(b)(1) and (b)(4) (Weekly examination).

- *Docket Number:* M–2005–045–C.
  FR Notice: 70 FR 39800 (July 11, 2005).
  Petitioner: Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528.
  Mine: Deer Creek Mine, MSHA I.D. No. 42–00121.
  Regulation Affected: 30 CFR 75.350 (Belt air course ventilation).

- *Docket Number:* M–2005–052–C.
  FR Notice: 70 FR 42103 (July 21, 2005).
  Petitioner: Bear Gap Coal Company, P.O. Box 64, Spring Glen, Pennsylvania 17978.
  Mine: No. 6. Slope, MSHA I.D. No. 36–09296.
  Regulation Affected: 30 CFR 75.1400 (Hoisting equipment; general).

- *Docket Number:* M–2005–053–C.
  FR Notice: 70 FR 42103 (July 21, 2005).
  Petitioner: Bear Gap Coal Company, P.O. Box 64, Spring Glen, Pennsylvania 17978.
  Mine: No. 6 Slope, MSHA I.D. No. 36–09296.
  Regulation Affected: 30 CFR 75.335 (Construction of seals).

- *Docket Number:* M–2005–062–C.
  FR Notice: 70 FR 55174 (September 20, 2005).
  Petitioner: Kingwood Mining Company, LLC, Route 1, Box 294C, Newburg, West Virginia 26410.
  Mine: Whitetail Kittanning Mine, MSHA I.D. No. 46–08751.
  Regulation Affected: 30 CFR 75.364(b)(1) (Weekly examination).

- *Docket Number:* M–2005–065–C.
  FR Notice: 70 FR 59374 (October 12, 2005).
  Petitioner: Black Stallion Coal Company, 500 Lee Street, P.O. Box 1189, Charleston, West Virginia 25324.
  Mine: Black Stallion Mine, MSHA I.D. No. 46–09086.
  Regulation Affected: 30 CFR 75.900 (Low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers).

- *Docket Number:* M–2005–066–C.
  FR Notice: 70 FR 59374 (October 12, 2005).
  Petitioner: San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421.
  Mine: San Juan South Mine, MSHA I.D. No. 29–02170.
  Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable trailing cables and cords).

- *Docket Number:* M–2005–068–C.
  FR Notice: 70 FR 61473 (October 24, 2005).
  Petitioner: Six M Coal Company, 482 High Road, Ashland, Pennsylvania 17921.
  Mine: No. 1 Slope Mine, MSHA I.D. No. 36–09138.
  Regulation Affected: 30 CFR 75.1100–2(a)(2) (Quantity and location of firefighting equipment).

- *Docket Number:* M–2005–071–C.
  FR Notice: 70 FR 66469 (November 2, 2005).
  Petitioner: Kennecott Energy Company, 748 T–7 Road (82718), P.O. Box 1449, Gillette, Wyoming 82717–1449.
  Mine: Cordero-Rojo Mine, MSHA I.D. No. 48–00992; Jacobs Ranch Mine, MSHA I.D. No. 48–00997; Antelope Mine, MSHA I.D. No. 48–01337; Spring Creek Mine, MSHA I.D. No. 24–01457; and Colowyo Coal Mine, MSHA I.D. No. 05–02962.
  Regulation Affected: 30 CFR 75.803 (Fail safe ground check circuits on high-voltage resistance grounded systems).

- *Docket Number:* M–2005–075–C.
  FR Notice: 70 FR 71862 (November 30, 2005).
  Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.
  Mine: Nolo Mine, MSHA I.D. No. 36–08850.
  Regulation Affected: 30 CFR 75.1710–1(a) (Canopies or cabs; self-propelled diesel-powered and electric face equipment; installation requirements).

- *Docket Number:* M–2005–077–C.
  FR Notice: 70 FR 75221 (December 19, 2005).

Petitioner: Rockdale Energy, EHS, 3990 John D. Harper Road, Rockdale, Texas 76567, on behalf of Alcoa, Inc.

Mine: Sandow Mine, MSHA I.D. No. 41–00356 and Three Oaks Mine, MSHA I.D. No. 41–04085.

Regulation Affected: 30 CFR 77.803 (Fail safe ground check circuits on high-voltage resistance grounded systems).

• *Docket Number:* M–2005–078–C.

FR Notice: 70 FR 75221 (December 19, 2005).

Petitioner: Advent Mining, LLC, 3603 State Route 370, Sebree, Kentucky 42455.

Mine: Onton #9 Mine, MSHA I.D No. 15–18547.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Dated: May 18, 2007.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. E7–10077 Filed 5–23–07; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 07–038]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE0000, Washington, DC 20546, (202) 358–1350. *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting approval for a new collection for the Exploration Systems Mission Directorate Student Internship program. NSA must elect candidates for a competitive process for student internship, requiring personal information on the application. The students must meet the basic eligibility requirements of: full student enrollment at an accredited college or university in the U.S., be a U.S. citizen, and have a Grade Point Average (GPA) of 3.0 on a scale of 4.0.

II. Method of Collection

NASA will utilize a Web-based on-line application form for the information collection.

III. Data

Title: Exploration Systems Mission Directorate Student Internship Program Application.

OMB Number: 2700–XXXX.

Type of review: New Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 292.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 292.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Acting Deputy Chief Information Officer.

[FR Doc. 07–2585 Filed 5–23–07; 8:45 am]

BILLING CODE 7510–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 07–039]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is an application form to be considered for a summer internship. Students are required to submit an application package consisting of an application form, a personal essay describing career goals, a parent/guardian permission form for parents to sign approving the child's participation, and a teacher recommendation.

II. Method of Collection

NASA will utilize a Web-base application form with instructions and other application materials also on-line. However, once the application form and other application materials are downloaded and filled out, the package is mailed in to NASA.

III. Data

Title: INSPIRE (Interdisciplinary National Science Program Incorporating Research and Education Experience) Application.

OMB Number: 2700–XXXX.

Type of Review: New Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 4000.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Acting Deputy Chief Information Officer.

[FR Doc. E7–9956 Filed 5–23–07; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–250]

Florida Power and Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–31, issued to Florida Power and Light Company (the licensee), for operation of the Turkey Point Nuclear Plant, Unit 3, located in Miami-Dade County, Florida.

The proposed amendment would revise Technical Specifications (TSs) 3/4.1.3.1, 3/4.1.3.2, and 3/4.1.3.6 to allow the use of an alternate method of determining rod position for the control rods G–5 and M–6, which have inoperable rod position indicators (RPIs). The method to be used will monitor the stationary gripper coils of G–5 and M–6 Control Rod Drive Mechanisms until repairs can be conducted, but no later than the next outage, which is scheduled for fall 2007.

The licensee indicated the need for the amendment is due to the unanticipated recent additional failure of the Turkey Point Unit 3 Analog RPI for control rod G–5 in Control Rod Bank A. Additionally, there is a concern that exercising the movable incore detectors every 8 hours (90 times per month) to comply with the compensatory actions required by the current Action Statement a. of TS 3.1.3.2 will result in excessive wear.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 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. 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. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change provides an alternative method for verifying rod position of control rod M–6 and G–5. The proposed change meets the intent of the current specification in that it ensures verification of position of the control rod once every eight (8) hours. The proposed change provides only an alternative method of monitoring control rod position and does not change the assumption or results of any previously evaluated accident.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As described above, the proposed change provides only an alternative method of determining the position of Unit 3 control rods M–6 and G–5. No new accident initiators are introduced by the proposed alternative manner of performing rod position verification. The proposed change does not affect the reactor protection system or the reactor control system. Hence, no new failure modes are created that would cause a new or different kind of accident from any accident previously evaluated.

Therefore, operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

No. The bases of Specification 3.1.3.2 state that the operability of the rod position indicators is required to determine control rod positions and thereby ensure compliance with the control rod alignment and insertion limits. The proposed change does not alter the requirement to determine rod position but provides an alternative method for determining the position of the affected rods. As a result, the initial conditions of the accident analysis are preserved and the consequences of previously analyzed accidents are unaffected.

Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant reduction in the margin of safety.

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.

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, Rulemaking, Directives and Editing 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 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC'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 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 O1F21, 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 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 requestors/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/requestor 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. 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.

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, 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.

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(c)(1)(i)–(viii).

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 M. S. Ross, Managing Attorney, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated May 17, 2007, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 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*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 17th day of May 2007.

Brenda L. Mozafari,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–10047 Filed 5–23–07; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request a revision to the following collection of information: 3220–0198, Request for Internet Services. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB uses a Personal Identification Number (PIN)/Password system that allows RRB customers to conduct business with the agency electronically. As part of the system, the RRB collects information needed to establish a unique PIN/Password that allows customer access to RRB Internet-based services. The information collected is matched against records of the railroad employee that are maintained by the RRB. If the information is verified, the request is approved and the RRB mails a Password Request Code (PRC) to the requestor. If the information provided cannot be verified, the requestor is advised to contact the nearest field office of the RRB to resolve the discrepancy. Once a PRC is obtained from the RRB, the requestor can apply for a PIN/Password online. Once the PIN/Password has been established, the requestor has access to RRB Internet-based services. The RRB estimates that approximately 14,040 requests for PRC's and 14,040 PIN/Passwords are established annually and that it takes 5 minutes per response to secure a PRC and 1.5 minutes to establish a PIN/Password. Two responses are requested of each respondent and completion is voluntary.

However, the RRB will be unable to provide a PRC or allow a requestor to establish a PIN/Password (thereby denying system access), if the requests are not completed. The RRB proposes non-burden impacting, editorial changes to the PRC and PIN/Password screens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (72 FR 13828 on March 23, 2007) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Request for Internet Services.

OMB Control Number: 3220–0198.

Form(s) submitted: N/A.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or households.

Abstract: The Railroad Retirement Board collects information needed to provide customers with the ability to request a Password Request Code and subsequently, to establish an individual PIN/Password, the initial steps in providing the option of conducting transactions with the RRB on a routine basis through the Internet.

Changes Proposed: The RRB proposes minor, non-burden impacting, editorial changes to the PRC and Pin/Password screens.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 14,040.

Total annual responses: 28,080.

Total annual reporting hours: 1,521.

Additional Information or Comments: Copies of the screens and supporting documents can be obtained by contacting Charles Mierzwa, the agency clearance officer, at (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–10021 Filed 5–23–07; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension of the following collection of information: 3220–0070, Employer Service and Compensation Reports.

Section 2(c) of the Railroad Unemployment Insurance Act (RUIA) specifies the maximum normal unemployment and sickness benefits that may be paid in a benefit year. Section 2(c) further provides for extended benefits for certain employees and for beginning a benefit year early for other employees. The conditions for these actions are prescribed in 20 CFR part 302.

All information about creditable railroad service and compensation needed by the RRB to administer Section 2(c) is not always available from annual reports filed by railroad employers with the RRB (OMB 3220–0008). When this occurs, the RRB must obtain supplemental information about service and compensation. The RRB utilizes Form(s) UI–41, Supplemental Report of Service and Compensation, and UI–41a, Supplemental Report of Compensation, to obtain the necessary information.

Our ICR describes the information we seek to collect from the public. Completion of the forms is mandatory. One response is required (per individual) from a respondent. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (72 FR 12639 on March 16, 2007) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employer Service and Compensation Reports.

OMB Control Number: 3220–0070.

Form(s) submitted: UI–41, UI–41a.

Type of request: Extension of a currently approved collection.

Affected public: Business or other for-profit.

Abstract: The reports obtain the employee's service and compensation for a period subsequent to those already on file and the employee's base year compensation. The information is used to determine the entitlement to and the amount of benefits payable.

Changes Proposed: The RRB proposes no changes to Form(s) UI–41 and UI–41a.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 30.

Total annual responses: 3,000.

Total annual reporting hours: 400.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–10048 Filed 5–23–07; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55784; File No. SR–ISE–2007–27]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Order Delivery

May 18, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2007, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by ISE. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its rules to allow for order delivery. The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and *http://www.iseoptions.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has asked the Commission to waive the 30-day operative delay required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). See discussion *infra* Section III.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend ISE Rules to allow order delivery Electronic Communication Networks ("ECNs") to display quotations on the ISE Stock Exchange ("ISE Stock" or "System"). An order delivery ECN submits quotations that are displayed on the Exchange, while simultaneously executing buy and sell orders internally as agent for its subscribers. To preclude the potential for double liability on a single order (*e.g.*, an order executing internally in the ECN immediately before the quotation that reflects such order is executed in ISE order book), the Exchange will first confirm the continued availability of an order before executing it against incoming orders. In this context, the Commission requires that the system that connects an exchange facility and an ECN be of very high reliability and speed, and that the exchange's rules governing order delivery assure fast and efficient handling of quotation updates.[6]

The Exchange proposes to amend ISE Rule 2107 (the "Rule") to offer order delivery to Equity Electronic Access Members ("EAMs") in a manner consistent with the Commission's requirements. To be eligible to use the order delivery functionality, an ECN that is an Equity EAM must demonstrate the ability to produce system response times that meet or exceed the maximum standard set by the Exchange, which shall not exceed 100 milliseconds.[7] The System will automatically cancel a limit order designated for order delivery treatment if no response is received from the Equity EAM within a time limit established by the Exchange, which shall not exceed 500 milliseconds. The Exchange will notify Equity EAMs of the required response times under the Rule by issuing a Regulatory Information Circular.

The Exchange also proposes to further amend the Rule to clarify that, in order to receive an immediate execution, Fill-or-Kill ("FOK") orders will execute against regular limit orders on the ISE order book and will be canceled if any portion of the FOK order would need to

[6] *See* Question 2.04: Automated Trading Centers/Order-Delivery ECNs, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS, Division of Market Regulation, SEC (October 31, 2006).

[7] "Response time" shall include the Exchange's message to the order delivery ECN, the order delivery ECN's response to the Exchange, and the execution of the trade.

execute against an order that has been entered on an order delivery basis to receive its fill.[8] FOK orders are immediately executed upon receipt in their entirety at the Best Available Price[9] or canceled. Accordingly, the System cannot hold an FOK order for the duration of time necessary to confirm that the order entered on an order delivery basis is still available. To ensure a maximum execution rate for FOK orders, the System, in seeking a fill for a FOK order, will suppress time priority for orders on the ISE order book that have been entered on an order delivery basis to those that are limit orders, but will not violate price priority. In other words, FOK orders will only be eligible to execute against limit orders on the ISE order book. The following example shows how this will work:

Assume there are the following orders on the ISE order book in Company XYZ: An order entered on an order delivery basis to buy 1000 shares for 10.00, a limit order to buy 1000 shares for 10.00, and a limit order to buy 500 for 9.99—and the orders were received in that time sequence. If the ISE Stock then receives a FOK order with a limit price of 9.99 to sell 1000 shares of Company XYZ, then the order will execute against the regular limit order to buy 1000 shares for 10.00 and the order delivery order will remain at the top of the book. In contrast, if the ISE Stock receives a FOK order with a limit price of 9.99 to sell 1500 shares, the order would be canceled because to receive the best available price the order would need to be filled at 10.00, which would require an execution against the order entered on the order delivery basis.

The above example illustrates that the System will skip order delivery orders with respect to time priority when doing so will allow for an execution of a FOK order, but will never give an inferior execution price by ignoring the limit price of order delivery orders.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is found in Section 6(b)(5).[10] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, this filing will provide investors with more flexibility in entering orders and receiving executions of such orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.[13]

A proposed rule change filed under Commission Rule 19b–4(f)(6)[14] normally does not become operative prior to thirty days after the date of filing. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change to become operative immediately. The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to benefit investors by affording them access, without delay, to the additional liquidity available from order-delivery ECNs. For these reasons, the Commission designates the proposed rule change as effective upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2007–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2007–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted

[8] Equity EAMs should conduct a regular and rigorous review of their order routing practices to ensure that their orders are routing in compliance with their best execution obligations.

[9] *See* ISE Rule 2100(c)(3).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] Pursuant to Rule 19b–4(f)(6)(iii), the Exchange gave the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change. *See* 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File No. SR–ISE–2007–27 and should be submitted on or before June 14, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10008 Filed 5–23–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55781; File No. SR–NASDAQ–2007–052]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to the Trade Units of the United States Natural Gas Fund, LP Pursuant to Unlisted Trading Privileges

May 17, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 10, 2007, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to trade, pursuant to unlisted trading privileges ("UTP"), units ("Units") of the United States Natural Gas Fund, LP ("USNG" or the "Partnership").

The text of the proposed rule change is available from Nasdaq's Web site at *http://www.nasdaq.complinet.com*, at Nasdaq's principal office, and at the Commission's Public Reference Room.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to trade pursuant to UTP the Units, which represent ownership of a fractional undivided interest in the net assets of USNG.[3] The net assets of USNG consist of investments in futures contracts based on natural gas, crude oil, heating oil, gasoline, and other petroleum-based fuels traded on the New York Mercantile Exchange ("NYMEX"), Intercontinental Exchange ("ICE Futures"), or other U.S. and foreign exchanges (collectively, "Futures Contracts"). USNG may also invest in other natural-gas-related investments such as cash-settled options on Futures Contracts, forward contracts for natural gas, and over-the-counter transactions that are based on the price of natural gas, oil, and other petroleum-based fuels, Futures Contracts, and indices based on the foregoing (collectively, "Other Natural Gas Related Investments"). Futures Contracts and Other Natural Gas Related Investments collectively are referred to as "Natural Gas Interests."

The investment objective of USNG is for changes in percentage terms of a Unit's net asset value ("NAV")[4] to reflect the changes in percentage terms of the price of natural gas delivered to the Henry Hub, Louisiana as measured by the natural gas futures contract traded on NYMEX ("Benchmark Futures Contract"). The Benchmark Futures Contract employed is the near month expiration contract, except when the near month contract is within two weeks of expiration, in which case USNG would invest in the next expiration month. USNG invests in Natural Gas Interests to the fullest extent possible without being leveraged or unable to satisfy its current or potential margin or collateral obligations. In pursuing this objective, the primary focus of USNG's investment manager, Victoria Bay Asset Management, LLC ("General Partner"), is the investment in Futures Contracts and the management of its investments in short-term obligations of the United States ("Treasuries"), cash equivalents, and cash for margining purposes and as collateral. The Commission previously approved the original listing and trading of the Units by the American Stock Exchange ("Amex").[5]

Issuances of the Units of USNG is made only in baskets of 100,000 Units ("Basket") or multiples thereof. A Basket is issued in exchange for Treasuries and/or cash in an amount equal to the NAV per Unit times 100,000 Units ("Basket Amount"). An Authorized Purchaser[6] that wishes to purchase a Basket must transfer the Basket Amount to the administrator[7] ("Deposit Amount"). An Authorized Purchaser that wishes to redeem a Basket would receive an amount of Treasuries and cash in exchange for each Basket surrendered in an amount equal to the NAV per Basket.

The daily settlement prices for the NYMEX-traded Futures Contracts held by USNG are publicly available on the NYMEX Web site at *http://www.nymex.com*. Nasdaq on its Web site at *http://www.nasdaq.com* will include a hyperlink to the NYMEX Web site for the purpose of disclosing futures contract pricing. NYMEX also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site. The specific contract specifications for the futures contracts are also available on the NYMEX Web site and the ICE Futures Web site at *http://www.icefutures.com*.

[3] USNG is commodity pool that issues Units that may be purchased and sold on Nasdaq.

[4] NAV is the total assets less total liabilities of USNG, determined on the basis of generally accepted accounting principles. NAV per Unit is the NAV of USNG divided by the number of outstanding Units.

[5] *See* Securities Exchange Act Release No. 55632 (April 13, 2007), 72 FR 19987 (April 20, 2007) ("Amex Order"); Securities Exchange Act Release No. 55372 (February 28, 2007), 72 FR 10267 (March 7, 2007) (SR–Amex–2006–112) ("Amex Notice").

[6] An "Authorized Purchaser" is a person, who at the time of submitting to the General Partner of USNG an order to create or redeem one or more Baskets, (i) Is a registered broker-dealer or other market participant, such as a bank or other financial institution that is exempt from broker-dealer registration; (ii) is a Depository Trust Company Participant; and (iii) has in effect a valid Authorized Purchaser Agreement.

[7] Under separate agreements with USNG, Brown Brothers Harriman & Co. serves as USNG's administrator, registrar, transfer agent, and custodian.

The Web site for Amex at *http://www.amex.com*, which is publicly accessible at no charge, contains the following information: (1) The prior business day's NAV and the reported closing price; (2) the mid-point of the bid-ask price[8] in relation to the NAV as of the time the NAV is calculated ("Bid-Ask Price"); (3) calculation of the premium or discount of such price against such NAV; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (5) the prospectus; and the most recent periodic reports filed with the Commission or required by the CFTC; and (6) other applicable quantitative information.

USNG's total portfolio composition is disclosed, each business day that Amex is open for trading, on USNG's Web site at *http://www.unitedstatesnaturalgasfund.com*. USNG expects that Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the name and value of each Natural Gas Interest, the specific types of Natural Gas Interests, and characteristics of such Natural Gas Interests, Treasuries, and amount of cash and cash equivalents held in the portfolio of USNG. The public Web site disclosure of the portfolio composition of USNG coincides with the disclosure by the administrator on each business day of the NAV for the Units. Therefore, the same portfolio information is provided on the public Web site as well as in the facsimile or e-mail to Authorized Purchasers containing the NAV and Basket Amount ("Daily Dissemination"). The format of the public Web site disclosure and the Daily Dissemination differ because the public Web site lists all portfolio holdings while the Daily Dissemination provides the portfolio holdings in a format appropriate for Authorized Purchasers, *i.e.*, the exact components of a Creation Unit.

As described above, the NAV for USNG is calculated and disseminated daily.[9] Amex also disseminates for USNG on a daily basis, by means of CTA/CQ High Speed Lines, information with respect to the Indicative Partnership Value (as discussed below), recent NAV, Units outstanding, the Basket Amount, and the Deposit Amount. Amex also makes available on its Web site daily trading volume, closing prices, and the NAV. The closing price and settlement prices of the futures contracts held by USNG are also readily available from the NYMEX, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, Nasdaq will provide a hyperlink on its Web site at *http://www.nasdaq.com* to USNG's Web site.

In order to provide updated information relating to USNG for use by investors, professionals, and persons wishing to create or redeem the Units, Amex disseminates through the facilities of the CTA an updated Indicative Partnership Value ("Indicative Partnership Value"). The Indicative Partnership Value is disseminated on a per-Unit basis at least every 15 seconds during the regular trading hours of 9:30 a.m. to 4:15 p.m. ET. The Indicative Partnership Value is calculated based on the Treasuries and cash required for creations and redemptions (*i.e.*, NAV per limit x 100,000) adjusted to reflect the price changes of the Benchmark Futures Contract.

Nasdaq will halt trading in the Units under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Units will also be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the Indicative Partnership Value. Additionally, Nasdaq may cease trading the Units if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq will stop trading the Units if the listing market delists them.

Nasdaq deems the Units to be equity securities, thus rendering trading in the Units subject to its existing rules governing the trading of equity securities, including Rule 4630, which governs trading of Commodity-Related Securities. The trading hours for the Units on the Exchange would be 9:30 a.m. to 4:15 p.m., ET.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Units on Nasdaq. Trading of the Units through Nasdaq facilities is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular.[10]

Nasdaq is able to obtain information regarding trading in the Units and the underlying Futures Contracts through its members in connection with the proprietary or customer trades that such members effect on any relevant market. In addition, Nasdaq may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG. Finally, Nasdaq is party to Information Sharing Agreements with NYMEX and ICE Futures for the purpose of providing information in connection with trading in or related to Futures Contracts traded on the those markets. To the extent that USNG invests in Natural Gas Interests traded on other exchanges, Nasdaq will enter into information sharing agreements with those particular exchanges.[11]

Prior to the commencement of trading, Nasdaq will inform its members in an Information Circular of the special characteristics and risks associated with trading the Units. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Units in Baskets (and that Units are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Units to customers; (3) how information regarding the Intraday Partnership Value is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (5) trading information. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that USNG is subject to various fees and expenses described in the Registration Statement. The Information Circular will also reference that the CFTC has regulatory jurisdiction over the trading of natural-gas-based futures contracts and related options.

The Information Circular will also disclose the trading hours of the Units of USNG and that the NAV for the Units

[8] The Bid-Ask Price of Units is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

[9] Amex has obtained a representation from USNG that its NAV per Unit will be calculated daily and made available to all market participants at the same time.

[10] NASD surveils trading pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

[11] In such event, Nasdaq will file a proposed rule change pursuant to Rule 19b–4 of the Act, indicating such surveillance arrangements.

will be calculated after 4 p.m. ET each trading day. The Information Circular will also disclose that information about the Units of USNG will be publicly available on USNG's Web site.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [12] in general and Section 6(b)(5) of the Act [13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, Nasdaq believes that the proposal is consistent with Rule 12f–5 under the Act [14] because it deems the Covered Securities to be an equity securities, thus rendering trading in the Covered Securities subject to Nasdaq's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2007–052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–052. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2007–052 and should be submitted on or before June 14, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Units.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[17] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[18] The Commission notes that it previously approved the listing and trading of the Units on Amex.[19] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[20] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Units to be equity securities, thus rendering trading in the Units subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Units are disseminated through the facilities of the CTA and the Consolidated Quotation System. Furthermore, the Indicative Partnership Value is calculated by Amex and published via the facilities of the Consolidated Tape Association on a 15-second delayed basis throughout the trading hours for the Units. In addition, if the listing market halts trading when the Indicative Partnership Value is not being calculated or disseminated, the Exchange would halt trading in the Shares.

The Commission notes that, if the Units should be delisted by the listing exchange, the Exchange would no

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 240.12f–5.

[15] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78*l*(f).

[18] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[19] *See supra* note 5.

[20] 17 CFR 240.12f–5.

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

longer have authority to trade the Units pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange has in place an Information Sharing Agreement with the NYMEX and ICE Futures for the purpose of providing information in connection with trading in or related to futures contracts traded on the NYMEX and ICE Futures, respectively. To the extent USNG invests in Natural Gas Interests traded on other exchanges, the Exchange will enter into information sharing agreements with those particular exchanges.

2. The Exchange's surveillance procedures are adequate to properly monitor trading of the Units on the Exchange.

3. Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Units.

4. The Information Circular will discuss the requirement that members deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Units on Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Units on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Units.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASDAQ–2007–052), be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10038 Filed 5–23–07; 8:45 am]

BILLING CODE 8010–01–P

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55783; File No. SR–NYSEArca–2007–36]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Establish Generic Listing Standards for Exchange-Traded Funds Based on Fixed Income Indexes and Order Granting Accelerated Approval of Proposed Rule Change as Amended

May 17, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 4, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Exchange. On May 17, 2007, the Exchange filed Amendment No. 1.[3] This order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule change as amended on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through NYSE Arca Equities, proposes to amend its rules governing NYSE Arca, LLC, the equities trading facility of NYSE Arca Equities. The Exchange proposes to amend NYSE Arca Equities Rules 5.2(j)(3) and 8.100 to include generic listing and trading standards for series of Investment Company Units ("Units") and Portfolio Depositary Receipts ("PDRs") that are based on indexes or portfolios consisting of fixed income securities ("Fixed Income Indexes") or on composite indexes consisting of equity and fixed income indexes or indexes or portfolios consisting of both equity and fixed income securities (collectively, "Combination Indexes").

The text of the proposed rule change is available at the NYSE Arca, at the Commission's Public Reference Room, and on the Exchange's Web site at *http://www.nyse.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rules 5.2(j)(3) and 8.100 to include generic listing standards for series of Units and PDRs (together referred to herein as "exchange-traded funds" or "ETFs") that are based on Fixed Income Indexes or on Combination Indexes. These generic listing standards would be applicable to Fixed Income Indexes and Combination Indexes that the Commission has yet to review as well as those Fixed Income Indexes described in exchange rule changes that have previously been approved by the Commission under Section 19(b)(2) of the Act for the trading of ETFs, options, or other index-based securities. This proposal will enable the Exchange to list and trade ETFs pursuant to Rule 19b–4(e) under the Act[4] if each of the conditions in Commentaries .02 or .03 to Rule 5.2(j)(3) or 8.100, as applicable, is satisfied. Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,[5] if the Commission has approved, pursuant to Section 19(b) of the Act,[6] the self-regulatory organization's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the self-regulatory organization has a surveillance program for the product class.[7] A similar proposal by the

[4] 17 CFR 240.19b–4(e).

[5] 17 CFR 240.19b–4(c)(1).

[6] 15 U.S.C. 78s(b).

[7] When relying on Rule 19b–4(e), the exchange must submit Form 19b–4(e) to the Commission within five business days after it begins trading the

American Stock Exchange LLC ("Amex") has been approved by the Commission.[8]

Exchange-Traded Funds

NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) provide standards for initial and continued listing of Units, which are securities representing interests in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity. The investment company must hold securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities, or the investment company must hold securities in another registered investment company that holds securities in such a manner.[9] NYSE Arca Equities Rule 8.100 allows for the listing and trading on the Exchange of PDRs. PDRs are securities based on a unit investment trust that holds the securities that comprise an index or portfolio underlying a series of PDRs. Pursuant to Rules 5.2(j)(3) and 8.100, Units and PDRs must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount. When aggregated in the same specified minimum number, Units and PDRs may be redeemed by the issuer for the securities and/or cash.

To meet the investment objective of providing investment returns that correspond to the price, dividend, and yield performance of the underlying index, an ETF may use a "replication" strategy or a "representative sampling" strategy with respect to the ETF portfolio. An ETF using a replication strategy would invest in each security found in the underlying index in about the same proportion as that security is represented in the index itself. An ETF using a representative sampling strategy would generally invest in a significant number, but perhaps not all, of the component securities of the underlying index, and would hold securities that, in the aggregate, are intended to approximate the full index in terms of certain key characteristics. In the context of a Fixed Income Index, such characteristics may include liquidity, duration, maturity, and yield.

In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code ("IRC").[10]

Generic Listing Standards for Exchange-Traded Funds

The Exchange notes that the Commission has previously approved generic listing standards for ETFs based on indexes that consist of stocks listed on U.S. and non-U.S exchanges.[11] This proposal seeks to adopt generic listing standards ETFs based on Fixed Income and Combination Indexes that generally reflect existing generic listing standards for equities, but are tailored for the fixed income markets.

The Commission has previously approved listing and trading of ETFs based on certain fixed income indexes.[12] The Commission has also approved generic listing standards for other index-based derivatives that permit the listing—pursuant to Rule 19b–4(e)—of such securities where the Commission had previously approved the trading of specified index-based derivatives on the same index, on the condition that all of the standards set forth in the original order are satisfied by the exchange employing generic listing standards.[13]

The Exchange believes that adopting additional generic listing standards for ETFs based on Fixed Income Indexes and Combination Indexes and applying Rule 19b–4(e) should fulfill the intended objective of that rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading, without the need for individualized Commission approval. The proposed rules have the potential to reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular ETF to comply with the proposed generic listing standards would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade that ETF.

The Exchange represents that any securities listed pursuant to this proposal will be deemed equity securities, and subject to existing NYSE Arca rules governing the trading of equity securities.[14]

Requirements for Listing and Trading ETFs Based on Fixed Income Indexes

Exchange-traded funds listed pursuant to these generic standards would be traded in all other respects under the Exchange's existing trading rules and procedures that apply to ETFs, and would be covered under the Exchange's surveillance procedures for derivative products.[15] The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Units and PDRs listed and/or traded pursuant to the proposed new listing and trading standards. The Exchange stated that it may obtain information via the Intermarket Surveillance Group ("ISG") from exchanges that are members or affiliates of the ISG. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

To list an ETF pursuant to the proposed generic listing standards for Fixed Income Indexes, the index underlying the ETF would have to satisfy all the conditions contained in proposed Commentary .02 to Rule 5.2(j)(3) (for Units) or Rule 8.100 (for PDRs). However, for Units traded on the Exchange pursuant to UTP, only the provisions of paragraphs (c), (e), (f), (g), and (h) of Commentary .02 to Rule 5.2(j)(3)—regarding disseminated information, minimum price variation, hours of trading, written surveillance procedures, and disclosures—would apply. For PDRs traded on the Exchange pursuant to UTP, only the provisions set

new derivative securities product. *See* 17 CFR 240.19b–4(e)(2)(ii).

[8] *See* Securities Exchange Act Release No. 55437 (March 9, 2007), 72 FR 12233 (March 15, 2007) (SR–Amex–2006–118) (approving generic listing standards for series of ETFs based on Fixed Income and Combination Indexes).

[9] *See* NYSE Arca Equities Rule 5.2(j)(3)(A)(i)(a)–(b).

[10] For an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC, including requirements with respect to the nature and the value of the ETF's assets.

[11] *See* Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), Commentary .01 to NYSE Arca Equities Rule 8.100; Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (approving generic listing standards for Units and PDRs); Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca 2006–86) (approving foreign generic listing standards for Units and PDRs).

[12] *See, e.g.*, Securities Exchange Act Release No. 48662 (October 20, 2003), 68 FR 61535 (October 28, 2003) (SR–PCX–2003–41) (approving the listing and trading pursuant to unlisted trading privileges ("UTP") of fixed income funds and the UTP trading of certain iShares fixed income funds).

[13] *See* NYSE Arca Equities Rule 5.2(j)(6); Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR–PCX–2005–63) (approving generic listing standards for index-linked securities).

[14] *See* an e-mail from Tim J. Malinowski, Director, NYSE Group, Inc., to Natasha Cowen, Special Counsel, Division of Market Regulation, Commission, dated May 17, 2007.

[15] *See* NYSE Arca Equities Rules 5.2(j)(3), 5.5(g)(2), and 8.100. The Exchange notes that its current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

forth in Rule 8.100(c) and paragraphs (c), (e), (f), and (g) and of Commentary .02 to Rule 8.100—regarding disclosures, disseminated information, minimum price variation, hours of trading, and written surveillance procedures—would apply.

As with existing generic listing standards for ETFs based on domestic and international or global indexes, the proposed generic listing standards are intended to ensure that fixed income securities with substantial market distribution and liquidity account for a substantial portion of the weight of an index or portfolio. While the standards in this proposal are loosely based on the standards contained in Commission and Commodity Futures Trading Commission ("CFTC") rules regarding the application of the definition of narrow-based security index to debt security indexes [16] as well as existing fixed income ETFs, they have been adapted as appropriate to apply generally to Fixed Income Indexes for ETFs.

Fixed Income Securities

As proposed, Commentary .02 to each Rule 5.2(j)(3) or Rule 8.100 define the term "Fixed Income Securities" to include notes, bonds (including convertible bonds), debentures, or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored-entity securities ("GSE Securities"), municipal securities, trust-preferred securities,[17] supranational debt,[18] and debt of a foreign country or subdivision thereof.

For purposes of the proposed definition, a convertible bond is deemed to be a Fixed Income Security until the time that it is converted into its underlying common or preferred stock.[19] Once converted, the equity security may no longer continue as a component of a Fixed Income Index under the proposed rules, and accordingly, would be removed from such index.

The Exchange proposes that, to list a Unit or PDR based on a Fixed Income Index pursuant to the generic standards, the index must meet the following criteria:

- The index or portfolio must consist of Fixed Income Securities;
- Components that in aggregate account for at least 75% of the weight of the index or portfolio each must have a minimum original principal amount outstanding of $100 million or more;
- No component Fixed Income Security (excluding Treasury Securities or GSE Securities) represents more than 30% of the weight of the index, and the five most heavily weighted component fixed income securities in the index do not in the aggregate account for more than 65% of the weight of the index;
- An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and
- Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either:
  - From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; [20]
  - From issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more;
  - From issuers that have outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least $1 billion;
  - Exempted securities, as defined in Section 3(a)(12) of the Act; [21] or
  - From issuers that are governments of foreign countries or political subdivisions of foreign countries.

The Exchange believes that these proposed component criteria standards are reasonable for Fixed Income Indexes, and, when applied in conjunction with the other listing requirements, would result in ETFs that are sufficiently broad-based in scope.

The Exchange notes that the proposed standards are similar to the standards set forth by the Commission and the CFTC in the Joint Rules as well as existing fixed-income-based ETFs. For example, in the proposed standards, the most heavily weighted component security cannot exceed 30% of the weight of the index or portfolio, which is consistent with the standard for U.S. equity ETFs set forth in Commentary .01(a)(A) to each of NYSE Arca Equities Rules 5.2(j)(3) and 8.100. In addition, this standard is identical to the standard set forth by the Commission and the CFTC in the Joint Rules.[22] In addition, in the proposed standards, the five most heavily weighted component securities could not exceed 65% of the weight of the index or portfolio, consistent with the standard for U.S. equity ETFs set forth in Commentary .01(a)(A) to each of Rules 5.2(j)(3) and 8.100 as well as the Joint Rules. Also, the minimum number of fixed income securities (except for portfolios consisting entirely of exempted securities, such as Treasury Securities or GSE Securities) from unaffiliated [23] issuers in the proposed standards is consistent with the standard for U.S. equity ETFs set forth in Commentary .01(a)(A) to each of Rule 5.2(j)(3) and Rule 8.100 and the Joint Rules. This requirement together with the diversification standards set forth above would provide assurance that the fixed income securities comprising an index on which an overlying ETF may be listed pursuant to this proposal would not be overly dependent on the price behavior of a single component or small group of components.

Finally, the proposed standards would require that at least 90% of the weight of the index or portfolio must be either (i) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; [24] (ii) from issuers that each have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (iii) from issuers that have outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least $1 billion;

[16] *See* Securities Exchange Act Release No. 54106 (July 6, 2006), 71 FR 39534 (July 13, 2006) (File No. S7–07–06) (the "Joint Rules").

[17] Trust-preferred securities are undated cumulative securities issued from a special purpose trust in which a bank or bank holding company owns all of the common securities. The trust's sole asset is a subordinated note issued by the bank or bank holding company. Trust-preferred securities are treated as debt for tax purposes so that the distributions or dividends paid are a tax-deductible interest expense.

[18] Supranational debt represents the debt of international organizations such as the World Bank, the International Monetary Fund, regional multilateral development banks, and multilateral financial institutions. Examples of regional multilateral development banks include the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, and the Inter-American Development Bank. In addition, examples of multilateral financial institutions include the European Investment Bank and the International Fund for Agricultural Development.

[19] 19 The Exchange notes that, under the Section 3(a)(11) of the Act, 15 U.S.C. 78c(a)(11), a convertible security is defined as an equity security. However, for the purpose of the proposed generic listing criteria, NYSE Arca believes that defining a convertible security (prior to its conversion) as a Fixed Income Security is consistent with the objectives and intention of the generic listing standards for fixed-income-based ETFs as well as the Act.

[20] 15 U.S.C. 78m and 78o(d).

[21] 15 U.S.C. 78c(a)(12).

[22] *See* note 16 *supra*.

[23] Rule 405 under the Securities Act of 1933, 17 CFR 230.405, defines an affiliate as a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such person. Control, for this purpose, is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

[24] 15 U.S.C. 78m and 78o(d).

(iv) exempted securities, as defined in Section 3(a)(12) of the Act;[25] or (v) from issuers that are governments of foreign countries or political subdivisions of foreign countries. This proposed standard is consistent with a similar standard in the Joint Rules and is designed to ensure that the component fixed income securities have sufficient publicly available information.

The proposed generic listing requirements for fixed income ETFs would not require that component securities in an underlying index have an investment-grade rating.[26] In addition, the proposed requirements would not require a minimum trading volume, due to the lower trading volume that generally occurs in the fixed income markets as compared to the equity markets.

The proposed standards would also provide that the Exchange could not approve a series of fixed income ETFs under the proposed generic listing requirements if such series seeks to provide investment results that either exceed the performance of a specified index by a specified multiple ("Multiple ETF") or that correspond to the inverse (opposite) of the performance of a specified index by a specified multiple ("Inverse ETF"), pursuant to Rule 5.2(j)(3).

Requirements for Listing and Trading ETFs Based on Combination Indexes

The Exchange also seeks to list and trade ETFs based on Combination Indexes. An ETF listed pursuant to the generic standards for Combination Indexes would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to ETFs, and would be covered under the Exchange's surveillance program for derivative products.

To list an ETF pursuant to the proposed generic listing standards for Combination Indexes, an index underlying a Unit or PDR must satisfy all the conditions contained in proposed Commentary .03 to each of Rule 5.2(j)(3) (for Units) and Rule 8.100 (for PDRs). However, for Units traded on the Exchange pursuant to UTP, only the provisions of paragraphs (c), (e), (f), (g), and (h) of Commentary .01 to Rule 5.2(j)(3)—regarding disseminated information, minimum price variation, hours of trading, written surveillance procedures and disclosures—would apply. For PDRs traded on the Exchange pursuant to UTP, only the provisions set forth in Rule 8.100(c) and paragraphs (c), (e), (f), and (g) and of Commentary .01 to Rule 8.100—regarding disclosures, disseminated information, minimum price variation, hours of trading, and written surveillance procedures—would apply.

These generic listing standards are intended to ensure that securities with substantial market distribution and liquidity account for a substantial portion of the weight of both the equity and fixed income portions of an index or portfolio.

Proposed Commentary .03 to each of Rule 5.2(j)(3) (for Units) and Rule 8.100 (for PDRs) would provide that the Exchange may approve series of Units and PDRs—based on a combination of indexes or a series of component securities representing the U.S. or domestic equity market, the international equity market, and the fixed income market—for listing and trading pursuant to Rule 19b–4(e) under the Act. The standards that an ETF would have to comply with are as follows: (i) Such portfolio or combination of indexes has been described in an exchange rule for the trading of options, Units, PDRs, Index-Linked Exchangeable Notes, or Index-Linked Securities that has been approved by the Commission under Section 19(b)(2) of the Act, and all of the standards set forth in the original order are satisfied; or (ii) the equity portion and fixed income portion of the component securities separately meet the criteria set forth in Commentary .01(a) (equities) and proposed Commentary .02(a) (fixed income) for Units and PDRs. In all cases, Multiple or Inverse ETFs listed pursuant to Rule 5.2(j)(3) may not be the subject of these proposed generic listing standards.

Index Methodology and Dissemination. The Exchange proposes to adopt Commentary .02(b) to each of Rule 5.2(j)(3) and Rule 8.100 to establish requirements for index methodology and dissemination in connection with Fixed Income and Combination Indexes.

If a broker-dealer or fund advisor is responsible for maintaining (or has a role in maintaining) the underlying index, such broker-dealer or fund advisor would be required to erect and maintain a "firewall," in a form satisfactory to the Exchange, to prevent the flow of non-public information regarding the underlying index from the personnel involved in the development and maintenance of such index to others such as sales and trading personnel.

With respect to dissemination of the index value, the Exchange proposes to adopt Commentary .02(b)(ii) to each of Rule 5.2(j)(3) and Rule 8.100 to require that the index value for an ETF listed pursuant to the proposed standards for fixed income ETFs be widely disseminated by one or more major market data vendors at least once a day during the time when the ETF shares trade on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. This reflects the nature of the fixed income markets as well as the frequency of intra-day trading information with respect to Fixed Income Indexes. If an ETF is based on a Combination Index, the index would have to be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the ETF shares trade on the Exchange to reflect updates for the prices of the equity securities included in the Combination Index. The non-U.S. component stock portion of the combination index will be updated at least every 60 seconds, and the fixed income portion of the Combination Index will be updated at least daily. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours.

The Corporation may designate each series of Units or PDRs for trading during the Opening Session (as defined in NYSE Arca Equities Rule 7.34) and/or Late Trading Session (as defined in NYSE Arca Equities Rule 7.34); provided, however that the Corporation will not designate a series of Units or PDRs for trading in the Opening Session or Late Trading Session unless the requirements of Commentary .01(b)(2) and (c) to NYSE Arca Equities Rule 5.2(j)(3) or Commentary .01(b)(3) and (c) to NYSE Arca Equities Rule 8.100 are satisfied for Units or PDRs, respectively. If there is no overlap with the trading hours of the primary market(s) trading the underlying components of a series of Units, the Corporation may designate such series for trading in the Opening Session as long as the last official calculated Intraday Indicative Value remains available.

Application of General Rules. Commentaries .02(c)–(h) and .03(b) to Rule 5.2(j)(3) and Commentaries .02(c)–(g) and .3(b) to Rule 8.100 would be added to identify those requirements for ETFs that would apply to all series of Units and PDRs based on Fixed Income or Combination Indexes. This would include the dissemination of the Intraday Indicative Value, an estimate of the value of a share of each ETF, updated at least every 15 seconds. In

[25] 15 U.S.C. 78c(a)(12).

[26] *Cf.* Joint Rules, 71 FR at 30538.

addition, proposed Commentaries .02(c)–(h) and .03(b) to Rule 5.2(j)(3) and Commentaries .02(c)–(g) and .3(b) to Rule 8.100 set forth the requirements for Units or PDRs relating to initial shares outstanding, minimum price variation, and written surveillance procedures.

The Exchange states that the Commission has approved generic standards providing for the listing pursuant to Rule 19b–4(e) of other derivative products based on indexes described in rule changes previously approved by the Commission under Section 19(b)(2) of the Act. The Exchange proposes to include in the generic standards for the listing of Units and PDRs based on Fixed Income and Combination Indexes, in new Commentary .02 and .03 to each of Rule 5.2(j)(3) and Rule 8.100, indexes described in exchange rules approved by the Commission in connection with the listing of options, Investment Company Units, Portfolio Depositary Receipts, Index-Linked Exchangeable Notes, or Index-Linked Securities. The Exchange believes that the application of that standard to ETFs is appropriate because the underlying index would have been subject to Commission review in the context of the approval of listing of other derivatives.[27]

The Exchange notes that existing Rules 5.5(g)(2) and 8.100 provide continued listing standards for all Units and PDRs. For example, where the value of the underlying index or portfolio of securities on which the ETF is based is no longer calculated or available, the Exchange would commence delisting proceedings. The Exchange notes that Rules 5.2(j)(3)(A)(v) and 8.100(e)(1)(ii) provide that, before approving an ETF for listing, the Exchange will obtain a representation from the ETF issuer that the net asset value ("NAV") per share will be calculated daily and made available to all market participants at the same time.

The trading halt requirements for existing ETFs will similarly apply to fixed income and combination index ETFs. In particular, Rules 5.5(g)(2)(b) and 8.100(e)(2)(ii) provide that, if the Intraday Indicative Value or the index value applicable to that series of ETFs is not being disseminated as required when the Exchange is the listing market, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.[28]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[29] in general, and furthers the objectives of Section 6(b)(5) of the Act[30] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on this proposal.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–36. 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 NYSE Arca. 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–NYSEArca–2007–36 and should be submitted on or before June 14, 2007.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[31] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act[32] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Currently, the Exchange would have to file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act[33] and Rule 19b–4

[27] *See supra* notes 12 and 13.

[28] If an ETF is traded on the Exchange pursuant to UTP, the Exchange will halt trading if the primary listing market halts trading in such ETF because the Intraday Indicative Value and/or the index value is not being disseminated. *See* NYSE Arca Equities Rule 7.34.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78s(b)(1).

thereunder[34] to list or trade any ETF based on a Fixed Income Index or on a Combination Index. The Exchange also would have to file a proposed rule change to list or trade an ETF based on a Fixed Income or Combination Index described in an exchange rule previously approved by the Commission as an underlying benchmark for a derivative security. Rule 19b–4(e), however, provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b 4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and trading of ETFs pursuant to Rule 19b 4(e) based on (1) Certain indexes with components that include Fixed Income Securities or (2) indexes or portfolios described in exchange rules previously approved by the Commission as underlying benchmarks for derivative securities fulfill these requirements. Use of Rule 19b 4(e) by NYSE Arca to list and trade such ETFs should promote competition, reduce burdens on issuers and other market participants, and make such ETFs available to investors more quickly.[35]

The Commission previously has approved generic listing standards for another exchange, Amex, that are substantially similar to those proposed here by NYSE Arca.[36] This proposal does not appear to raise any novel regulatory issues. Therefore, the Commission finds that NYSE Arca's proposal is consistent with the Act on the same basis that it approved Amex's generic listing standards for ETFs based on Fixed Income or Combination Indexes or on indexes or portfolios described in exchange rules that have previously been approved by the Commission and underlie derivative securities.

Proposed Commentaries .02 and .03 to each of NYSE Arca Equities Rules 5.2(j)(3) and 8.100 establish the standards for the composition of a Fixed Income Index or Combination Index underlying an ETF. The Commission believes that these standards are reasonably designed to ensure that a substantial portion of any underlying index or portfolio consists of securities about which information is publicly available, and that when applied in conjunction with the other applicable listing requirements, will permit the listing and trading only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation. The Commission further believes that the proposed listing standards are reasonably designed to preclude NYSE Arca from listing and trading ETFs that might be used as a surrogate for trading in unregistered securities.

The proposed generic listing standards also will permit NYSE Arca to list and trade an ETF if the Commission previously has approved an exchange rule that contemplates listing and trading a derivative security based on the same underlying index. NYSE Arca would be able to rely on that earlier approval order, provided that NYSE Arca complies with the commitments undertaken by the other SRO set forth in the prior order, including any surveillance-sharing arrangements.

The Commission believes that NYSE Arca's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[37] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The value of a Fixed Income Index underlying underlying an ETF listed pursuant to this proposal is required to be widely disseminated by one or more major market data vendors at least once a day. Likewise, the value of an underlying Combination Index is required to be widely disseminated by one or more major market data vendors at least once every 15 seconds during the time when the corresponding ETF trades on the Exchange, provided that, with respect to the fixed income components of the Combination Index, the impact on the index is required to be updated only once each day.

Furthermore, the Commission believes that the proposed rules are reasonably designed to promote fair disclosure of information that may be necessary to price an ETF appropriately. If a broker-dealer or fund advisor is responsible for maintaining (or has a role in maintaining) the underlying index, such broker-dealer or fund advisor would be required to erect and maintain a "firewall," in a form satisfactory to the Exchange, to prevent the flow of non-public information regarding the underlying index from the personnel involved in the development and maintenance of such index to others such as sales and trading personnel. The Commission also notes that current NYSE Arca Equities Rules 5.2(j)(3)(A)(v) and 8.100(e)(1)(ii) provide that, in connection with approving an ETF issuer for listing on the Exchange, the Exchange will obtain a representation from the ETF issuer that the NAV per share will be calculated each business day and made available to all market participants at the same time.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in an ETF when transparency is impaired. NYSE Arca Equities Rules 5.5(g)(2)(b) and 8.100(e)(2)(ii) provide that, when the Exchange is the listing market, if the IIV or index value applicable to an ETF is not disseminated as required, the Exchange may halt trading during the day in which the interruption occurs. If the interruption continues, then the Exchange will halt trading no later than the beginning of the next trading day. Also, the Exchange may commence delisting proceedings in the event that the value of the underlying index is no longer calculated or available.

The Commission further believes that the trading rules and procedures to which ETFs will be subject pursuant to this proposal are consistent with the Act. NYSE Arca has represented that any securities listed pursuant to this proposal will be deemed equity securities, and subject to existing NYSE Arca rules governing the trading of equity securities.

The Exchange will implement written surveillance procedures for ETFs based on Fixed Income Indexes or Combination Indexes.[38] In approving this proposal, the Commission relied on NYSE's representation that its surveillance procedures are adequate to properly monitor the trading of Units listed pursuant to this proposal. This approval is conditioned on the continuing accuracy of that representation.

Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that NYSE Arca's proposal is substantially similar to an Amex proposal that has been approved

[34] 17 CFR 240.19b–4.

[35] The Commission notes that failure of a particular ETF to satisfy the Exchange's generic listing standards does not preclude the Exchange from submitting a separate proposal under Rule 19b–4 to list and trade such ETF.

[36] *See* supra note 8.

[37] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[38] *See* proposed Commentary .02 to Rule 5.2(j)(3) (for Units) or Rule 8.100 (for PDRs).

by the Commission.[39] The Commission does not believe that NYSE Arca's proposal raises any novel regulatory issues and, therefore, believes that good cause exists for approving the filing before the conclusion of a notice-and-comment period. Accelerated approval of the proposal will expedite the listing and trading of additional ETFs by the Exchange, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Exchange Act,[40] to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[41] that the proposed rule change (SR–NYSEArca–2007–36), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10034 Filed 5–23–07; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10873]

Connecticut Disaster #CT–00007

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Connecticut (FEMA–1700–DR), dated 5/11/2007.

Incident: Severe Storms and Flooding.

Incident Period: 4/15/2007 through 4/27/2007.

DATES: *Effective Date:* 5/11/2007.

Physical Loan Application Deadline Date: 7/10/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 5/11/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Fairfield, Litchfield.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10873.

(Catalog of Federal Domestic Assistance Number 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–10039 Filed 5–23–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5814]

Culturally Significant Objects Imported for Exhibition Determinations: "Gifts for the Gods: Images from Egyptian Temples"

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Gifts for the Gods: Images from Egyptian Temples", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about October 15, 2007, until on or about February 18, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

For Further Information Contact: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: May 21, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–10120 Filed 5–23–07; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of public hearing and commission meeting.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting beginning at 8:30 a.m. on June 13, 2007 in North East, Maryland. At the public hearing, the Commission will consider: (1) The approval of certain water resources projects, including a project modification involving a diversion of water from the basin; (2) an enforcement action involving one project; and (3) a revision of its Comprehensive Plan for Management and Development of the Water Resources of the Susquehanna River Basin (Comprehensive Plan). Details concerning the matters to be addressed at the public hearing, as well as other matters on the business meeting agenda, are contained in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: June 13, 2007.

ADDRESSES: Cecil Community College Conference Center, Room TC208, 1 Seahawk Drive, North East, Maryland. See **SUPPLEMENTARY INFORMATION** section for mailing and electronic mailing addresses for submission of written comments.

[39] *See supra* note 8.

[40] 15 U.S.C. 78s(b)(2).

[41] *Id.*

[42] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, *telephone:* (717) 238–0423; ext. 306; *fax:* (717) 238–2436; *e-mail: rcairo@srbc.net* or Deborah J. Dickey, Secretary to the Commission, *telephone:* (717) 238–0423, ext. 301; *fax:* (717) 238–2436; *e-mail: ddickey@srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes the following items on the agenda: (1) A presentation by the U.S. Fish & Wildlife Service regarding the 2007 migratory fish run and a presentation by the U.S. Geological Survey regarding a 7-year Coastal Plain Aquifer Study; (2) consideration of a FY–09 Budget; (3) approval/ratification of grants and contracts; (4) election of Commission officers for the 2007/2008 term; and (5) presentation of the Commission's Maurice K. Goddard Award.

Public Hearing—Projects Scheduled for Action

1. *Project Sponsor and Facility:* Town of Conklin (Well 5), Broome County, NY. Application for groundwater withdrawal of up to 0.350 mgd.

2. *Project Sponsor and Facility:* Town of Erwin (IP Well 2), Steuben County, NY. Application for groundwater withdrawal of up to 0.504 mgd.

3. *Project Sponsor and Facility:* Far Away Springs—Brandonville, East Union Township, Schuylkill County, PA. Applications for groundwater withdrawal of up to 0.200 mgd and consumptive water use of up to 0.200 mgd.

4. *Project Sponsor and Facility:* Hughesville Borough Authority, Wolf Township, Lycoming County, Pa. Application for groundwater withdrawal of up to 1.440 mgd.

5. *Project Sponsor:* Glenn O. Hawbaker, Inc. Project Facility: Pleasant Gap, Spring Township, Centre County, Pa. Modification of consumptive water use approval (Docket No. 20050307).

6. *Project Sponsor and Facility:* Centre Hills Country Club, College Township, Centre County, Pa. Application for groundwater withdrawal of up to 0.300 mgd.

7. *Project Sponsor:* New Enterprise Stone & Lime Company, Inc. Project Facility: Tyrone Quarry, Warriors Mark Township, Huntingdon County, Pa. Modification of surface water and groundwater approval (Docket No. 20031205).

8. *Project Sponsor:* New Enterprise Stone & Lime Company, Inc. Project Facility: Ashcom Quarry, Snake Spring Township, Bedford County, Pa. Modification of groundwater approval (Docket No. 20031204).

9. *Project Sponsor and Facility:* East Cocalico Township Authority (Well M), West Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 1.580 mgd.

10. *Project Sponsor and Facility:* East Cocalico Township Authority (Well F), East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 1.150 mgd.

11. *Project Sponsor:* Golf Enterprises, Inc. Project Facility: Valley Green Golf Course, Newberry Township, York County, Pa. Modification of consumptive water use approval (Docket No. 20021019).

12. *Project Sponsor and Facility:* Dillsburg Area Authority, Carroll Township, York County, Pa. Application for groundwater withdrawal of up to 0.360 mgd.

13. *Project Sponsor and Facility:* Mount Joy Borough Authority, Mount Joy Borough, Lancaster County, Pa. Application for groundwater withdrawal of up to 1.020 mgd.

14. *Project Sponsor and Facility:* Dart Container Corporation of Pennsylvania (Well B), Upper Leacock Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.123 mgd.

15. *Project Sponsor and Facility:* Honey Run GIBG LLC, Dover Township, York County, Pa. Modification of surface water withdrawal approval (Docket No. 20020827).

Public Hearing—Project Scheduled for Action Involving a Diversion

1. *Project Sponsor and Facility:* AES Ironwood, LLC, South Lebanon Township, Lebanon County, Pa. Modification of surface water and consumptive use approval and diversion (Docket No. 19980502).

Public Hearing—Project Scheduled for Enforcement Action

1. *Project Sponsor:* South Slope Development Corporation (Docket No. 19991103). *Project Facility:* Song Mountain Ski Resort, Town of Preble, Cortland County, N.Y.

Public Hearing—Revision of Comprehensive Plan

1. Incorporation of the Whitney Point Lake Section 1135 Project Modification and the (Barnes and Tucker) Lancashire No. 15 AMD Treatment Plant into the Commission's Comprehensive Plan.

Opportunity To Appear and Comment

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102–2391, or submitted electronically to Richard A. Cairo, General Counsel, *e-mail: rcairo@srbc.net* or Deborah J. Dickey, Secretary to the Commission, *e-mail: ddickey@srbc.net.* Comments mailed or electronically submitted must be received prior to June 13, 2007 to be considered.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: May 15, 2007.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. E7–10070 Filed 5–23–07; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–21]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 13, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2004–19218 using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov*

and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Docket:* To read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 17, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2004–19218.

Petitioner: Lynx Air International, Inc.

Section of 14 CFR Affected: 14 CFR 187.1 and appendix B and part 187.

Description of Relief Sought: Lynx Air International, Inc. (Lynx), is requesting relief from § 187.1 and appendix B of part 187 to the extent necessary to allow Lynx to operate certain aircraft without being subject to overflight fees when making technical stops.

[FR Doc. E7–10060 Filed 5–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–20]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 13, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–25287 using any of the following methods:

• *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 17, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–25287.

Petitioner: Robinson Helicopter Company.

Section of 14 CFR Affected: § 27.695.

Description of Relief Sought: To allow certification of hydraulically boosted controls on the R66 without considering the jamming of a control valve as a possible single failure.

[FR Doc. E7–10062 Filed 5–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–18]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 13, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2004–19218 using any of the following methods:

• *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department

of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Docket:* To read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 17, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2007–27670.

Petitioner: Continental Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.915(b).

Description of Relief Sought: Continental Airlines, Inc., is seeking relief from § 121.915(b) to the extent necessary to permit the line check requirement of § 121.915(b)(2)(ii) to be met by an alternative line check program.

[FR Doc. E7–10064 Filed 5–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–19]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 13, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–26340 using any of the following methods:

• *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 17, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–26340.

Petitioner: Central Nebraska Regional Airport.

Section of 14 CFR Affected: § 139.319.

Description of Relief Sought: The petitioner is requesting relief to permit Aircraft Rescue and Firefighting personnel to be within a 15-minute response time of airport property during commercial flights scheduled after normal business hours, weekends, and holidays.

[FR Doc. E7–10072 Filed 5–23–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2007–28285; Notice No. 07–4]

Safety Advisory: Removal From Service of Liner-Less, Fully-Wrapped Fiberglass Composite Cylinders

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Safety advisory notice—Removal from service.

SUMMARY: Recently, five (5) 33-pound propane cylinders authorized under DOT Special Permit (DOT–SP 13957) ruptured during storage at a facility in Miami, Florida. The purpose of this notice is to alert owners and users of certain cylinders manufactured under this special permit to potential safety problems and to advise them to remove the cylinders from service as outlined in this notice. Also, PHMSA requests information on any other failures or leakage of lading, involving all cylinders made under DOT–SP 13957, which include 10-pound, 20-pound, and 33-pound cylinders, that may not have been previously reported to the agency.

FOR FURTHER INFORMATION CONTACT: Cheryl West Freeman, Office of Hazardous Materials Technology, (202) 366–4545 or Wayne Chaney, Office of

Hazardous Materials Enforcement, (202) 834–3568, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington DC 20590; or by e-mail to *HM–Enforcement@dot.gov* and referring to the Docket and Notice numbers set forth above.

SUPPLEMENTARY INFORMATION: PHMSA has been notified of the rupture of five (5) 33-pound liner-less, fully wrapped fiberglass composite cylinders. The cylinders are of two-part construction, which are adhesively joined to form the completed cylinder. The cylinders have a permanently attached thermoplastic outer casing which provides protection from impact damage and serves as a carry handle. The ruptured cylinders were manufactured by The Lite Cylinder Company Incorporated (TLCCI) in Franklin, Tennessee, under DOT–SP 13957, in January 2007. The cylinders are marked DOT–SP 13957 followed by the service pressure, 294 psig. All of the failed cylinders were 33-pound cylinders, which were typically horizontally mounted to fuel forklift trucks. The cylinders were in liquefied petroleum gas (propane) service.

The ruptures occurred during storage at the Heritage Propane facility in Miami, Florida. All cylinders involved were in storage on an outside platform and had been filled with propane. The first cylinder ruptured on April 4, 2007. The second cylinder ruptured on April 10, 2007. The third incident involved the rupture of three cylinders on April 13, 2007. The serial numbers were 14674, 14750, 14757, 14866, and 14881. The dates of manufacture were from January 16 to January 18, 2007. There were no injuries or property damage associated with any of the failures. PHMSA is currently conducting an investigation to determine the cause of the failures and the full scope of problems in the manufacturing process.

In order to avoid any potential injury or damage, PHMSA is removing from service all cylinders of the same design as those involved in the incidents. Any person who owns, uses, fills, or retests a 33-pound propane cylinder marked DOT–SP 13957 should take the following actions:

1. Do not vent the cylinder. Have only qualified persons safely discharge and purge the cylinder.

2. Send the empty cylinders to the manufacturer at the following address: T.L.C.C.I., Incorporated, 112 Alpha Drive, Franklin, TN 37064.

3. Provide the serial number of each returned cylinder to PHMSA at the contact address. Please note any problems that may have been witnessed with the cylinder (e.g. leaking, damage, etc.).

4. Under no circumstances should a cylinder described in this safety advisory be filled, refilled, or used for the transportation of hazardous materials.

Any person who is aware of the rupture of any cylinder, 10-pound, 20-pound, or 33-pound, marked DOT–SP 13957, is requested to contact PHMSA, through one of the individuals or e-mail address listed under the **FOR FURTHER INFORMATION CONTACT** section above, as soon as possible.

This safety advisory is available for review on the Internet by accessing the HazMat Safety Homepage at *http://hazmat.dot.gov*.

Issued in Washington, DC, on May 18, 2007.

Theodore L. Willke,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. E7–10081 Filed 5–23–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1005X]

Finger Lakes Railway Corp.—Abandonment Exemption—in Yates County, NY

Finger Lakes Railway Corp. (FGLK) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 4.95-mile line of railroad between milepost 41.35, in the Village of Penn Yan, Township of Benton, and milepost 46.3, outside the Township of Benton, located in Yates County, NY. The line traverses United States Postal Service Zip Code 14527. The line for which the abandonment exemption request was filed includes one station, Bellona, located at milepost 46.3—SPLC 183992.

FGLK certifies that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 23, 2007, unless stayed pending reconsideration.[1] Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 4, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 13, 2007, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to FGLK's representative: Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

FGLK has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by May 29, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic

[1] The earliest this transaction may be consummated is June 23, 2007. FGLK has originally indicated a consummation date of on or after June 18, 2007.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), FGLK shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by FGLK's filing of a notice of consummation by May 24, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 18, 2007.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–10058 Filed 5–23–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–988 (Sub–No. 1X)]

Nebkota Railway, Inc.—Abandonment Exemption—in Dawes and Sheridan Counties, NE

On May 4, 2007, Nebkota Railway, Inc. (NRI) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 30.3-mile segment of its line of railroad between milepost 404.3 near Chadron 69337 and the end of the line at milepost 374 at Rushville 69360, in Dawes and Sheridan Counties, NE. The line traverses U.S. Postal Service Zip Codes 69337, 69347, and 69360, and includes the stations of Chadron, Bordeaux, Hay Springs and Rushville.

The line does not contain federally granted rights-of-way. Any documentation in NRI's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 22, 2007.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,300 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 13, 2007. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–988 (Sub–No. 1X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001, and (2) Fritz R. Kahn, 1920 N Street, N.W., 8th Floor, Washington, DC 20036–1601. Replies to NRI's petition are due on or before June 13, 2007.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 245–0230 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 15, 2007.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–9688 Filed 5–23–07; 8:45 am]

BILLING CODE 4915–01–P

Federal Register

Thursday,
May 24, 2007

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 922

50 CFR Part 660

Establishment of Marine Reserves and a Marine Conservation Area Within the Channel Islands National Marine Sanctuary; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

50 CFR Part 660

[Docket No. 0612242956–7123–01]

RIN 0648–AT18

Establishment of Marine Reserves and a Marine Conservation Area Within the Channel Islands National Marine Sanctuary

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS) and National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: On August 11, 2006 NOAA issued a notice of proposed rulemaking to establish a network of marine zones within the state and federal waters of the Channel Islands National Marine Sanctuary (CINMS or Sanctuary). State waters in the Sanctuary extend from the shoreline of the islands to approximately 3 nautical miles from shore. Federal waters of the Sanctuary extend from the offshore extent of state waters to the Sanctuary's outer boundary. In this final rule, NOAA is issuing final regulations for the federal-waters portion of the Sanctuary. NOAA has decided to defer a final decision and seeking additional comment on the state-waters portion of the Sanctuary pending action by the State of California to extend the boundaries of several existing state-waters zones to the three mile state-federal-waters boundary.

Marine zones are discrete areas that have special regulations differing from the regulations that apply throughout or above the Sanctuary as a whole. The purpose of these zones within the federal waters of the Sanctuary is to further the protection of Sanctuary biodiversity and complement an existing network established by the State of California in October 2002, and implemented in April 2003, under its authorities. Two types of zones are being established by this action: Marine reserves and marine conservation areas. All extractive activities (e.g., removal of any Sanctuary resource) and injury to Sanctuary resources are prohibited in all marine reserves. Commercial and recreational lobster fishing and recreational fishing for pelagic species are allowed within the marine conservation area, while all other extraction and injury are prohibited. This action establishes approximately 110.5 square nautical miles of marine reserves and 1.7 square nautical miles of marine conservation area in the federal waters of the Sanctuary. As part of this action, NOAA is also modifying the terms of designation for the Sanctuary, which were originally published on October 2, 1980 (45 FR 65198), to allow for the regulation of extractive activities, including fishing, in marine reserves and marine conservation areas, and a slight modification to the outer boundary of the CINMS.

DATES: Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1434(b), the revised terms of designation and this final rule shall take effect and become final after the close of a review period of 45 days of continuous session of Congress, beginning on the day on which this document is published in the **Federal Register**. Announcement of the effective date of this final rule will be published in the **Federal Register** at a later date.

Public comments on the state-waters portion of this rulemaking must be received by July 23, 2007.

ADDRESSES: Copies of the final environmental impact statement, regulatory impact review, and final regulatory flexibility analyses may be obtained from NOAA's Channel Islands National Marine Sanctuary Web site at *http://channelislands.noaa.gov/* or by writing to Sean Hastings, Resource Protection Coordinator, Channel Islands National Marine Sanctuary, 113 Harbor Way, Suite 150, Santa Barbara, CA 93109; e-mail: *Sean.Hastings@noaa.gov*.

You may submit comments on the state-waters portion of this rulemaking by any of the following methods:

- *E-mail*: *CINMSReserves.FEIS@noaa.gov*. Include in the subject line the following document identifier: Marine reserves in CINMS.
- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail*: Sean Hastings, Channel Islands National Marine Sanctuary, 113 Harbor Way, Suite 150, Santa Barbara, CA 93109.

FOR FURTHER INFORMATION CONTACT: Sean Hastings, (805) 884–1472; e-mail: *Sean.Hastings@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Channel Islands National Marine Sanctuary

The CINMS area is approximately 1,113 square nautical miles adjacent to the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (collectively the Channel Islands), extending seaward to a distance of approximately 6 nautical miles. NOAA designated the CINMS in 1980 to protect the area's rich and diverse range of marine life and habitats, unique and productive oceanographic processes and ecosystems, and culturally significant resources (see 45 FR 65198). The Sanctuary was designated pursuant to NOAA's authority under the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*). There are significant human uses in the Sanctuary as well, including commercial and recreational fishing, marine wildlife viewing, boating and other recreational activities, research and monitoring activities, numerous educational activities, and maritime shipping.

The waters surrounding California's Channel Islands represent a globally unique and diverse assemblage of habitats and species. This region is a subset of the larger ecosystem of the Southern California Bight, an area bounded by Point Conception in the north and Punta Banda, Mexico in the south. In the area between Santa Barbara Island in the south and San Miguel Island in the northwest, the colder waters of the Oregonian oceanic province in the north converge and mix with the warmer waters of the Californian oceanic province. Each of these two provinces has unique oceanic conditions and species assemblages, which in turn are parts of distinct biogeographic regions. The mixing of these two provinces in the vicinity of the Channel Islands creates a transition zone within the island chain. Upwelling and ocean currents in the area create a nutrient rich environment that supports high species and habitat diversity.

In the Southern California Bight, marine resources have declined under pressure from a variety of factors, including commercial and recreational fishing, changes in oceanographic conditions associated with El Niño and other large-scale oceanographic cycles, introduction of disease, and increased levels of pollutants. The urbanization of southern California has significantly increased the number of people visiting the coastal zone. The burgeoning coastal population has greatly increased the influx of human, industrial, and agricultural wastes to California coastal waters. Population growth has also increased human demands on the ocean, including commercial and recreational fishing, wildlife viewing

and other activities. New technologies have increased the yield of sport and commercial fisheries. Many former natural refuges for targeted species, such as submarine canyons, submerged pinnacles, deep waters, and waters distant from harbors, can now be accessed due to advancements in fishing technology and increased fishing effort.

The significant changes in ecological conditions resulting from the array of human activities in the Channel Islands region are just beginning to be understood. For example, many kelp beds have converted to urchin barrens, where urchins and coralline algae have replaced kelp as the dominant feature. Deep canyon and rock areas that were formerly rich rockfishing grounds have significantly reduced populations of larger rockfish such as cowcod and bocaccio.

In the Southern California Bight, commercial and recreational fisheries target more than 100 fish species and more than 20 invertebrate species. Targeted species have exhibited high variability in landings from year to year (*e.g.*, squid) and in several cases have declined to the point that the fishery has had to be shut down (*e.g.*, abalone). Many targeted species are considered overfished and one previously targeted species (white abalone) is listed as endangered. Excessive bycatch has caused declines of some non-targeted species. The removal of species that play key ecological roles, such as predatory fish, has altered ecosystem structure. Some types of fishing gear have caused temporary or permanent damage to marine habitats. The combination of direct take, bycatch, indirect effects, and habitat damage and destruction has contributed to a negative transformation of the marine environment around the Channel Islands.

B. Marine Zoning

For over twenty years, NOAA has used marine zoning as a tool in specific national marine sanctuaries to address a wide array of resource protection and user conflict issues. Marine zones are discrete areas within or above a national marine sanctuary that have special regulations that differ from the regulations that apply throughout or above the sanctuary as a whole. For example, marine zones are used to regulate the use of motorized personal watercraft in the Monterey Bay National Marine Sanctuary. Marine zones, including areas where all extraction is prohibited, have also been established in the Florida Keys National Marine Sanctuary to provide for varying levels of resource protection.

NOAA has used zoning within the CINMS since its original designation in 1980. For example, the CINMS regulations prohibit:

1. Cargo vessels from coming within 1 nautical mile of any island in the CINMS;

2. disturbance of marine mammals or seabirds by flying aircraft below 1,000 feet within 1 nautical mile of any island within the CINMS; and

3. construction upon or drilling into the seabed within 2 nautical miles of any island in the CINMS.

In addition to NOAA, other federal and state agencies have also established marine zones wholly or partially within the Sanctuary (e.g., California Department of Fish and Game, National Park Service). In 1978, commercial and recreational fishing was prohibited by the State of California in one small marine protected area of the Channel Islands, the Anacapa Island Ecological Reserve. The International Maritime Organization has designated a voluntary vessel traffic separation scheme to guide large vessel traffic running through the Santa Barbara Channel. The National Park Service (NPS) has established several zoned areas within the Channel Islands National Park for different public uses, principally to protect seabird colonies and marine mammal haul outs. More recently, the NPS is instituting a new zoning approach to managing park lands, coasts, and adjacent waters.

Due to historic lows in the stocks of certain rockfish (e.g., cowcod and bocaccio), in 2001 the Pacific Fishery Management Council (PFMC) took emergency action and established large bottom closures to rebuild these stocks. NOAA implemented the Cowcod Conservation Area regulations on January 1, 2001 (66 FR 2338) and the Rockfish Conservation Area emergency regulations on September 13, 2002 (67 FR 57973). The Cowcod Conservation Area and the California Rockfish Conservation Area partially overlay Sanctuary waters. Finally, in 2002, the California Fish and Game Commission (FGC) authorized the establishment of marine reserves and marine conservation areas within the state waters of the Sanctuary that prohibit or limit the take of living, geological or cultural marine resources.

C. Marine Reserves

The number of documented successful examples of no-take marine reserves is growing, providing substantial evidence that rapid increases in biomass, biodiversity, abundance and size of organisms usually result from their designation. Increased biodiversity, abundance, and habitat quality within closed areas generally improve the resiliency and ability of marine ecosystems to adapt to ongoing human-caused or natural disturbance, such as climate shifts, major storm damage, and pollution.

The designation of marine reserves can also reinforce traditional fish management approaches to substantially reduce overall fishery impacts to the ecosystem. Traditional management, like controls on fishery catch and effort, may fail due to factors such as stock assessment errors, inadequate institutional frameworks, and uncertainty. Marine reserves can help to rebuild depleted populations, reduce bycatch and discards, and reduce known and as-yet-unknown ecosystem effects of fishing. In addition, marine reserves offer scientists and resource managers a controlled opportunity to study the influence of change on marine ecosystems in the absence of direct human disturbance.

D. Channel Islands Marine Reserves Process, Community Phase 1999–2001

The NMSA requires NOAA to periodically review the management plan and regulations for each national marine sanctuary and to revise them, as necessary, to fulfill the purposes and policies of the NMSA (16 U.S.C. 1434(e)). NOAA began the process to review the CINMS management plan and regulations in 1999. Through the scoping process, many members of the public voiced concern over the state of biodiversity in the CINMS and called for fully protected (i.e., no-take) zones to be established.

In 1998, the Commission received a recommendation from a local recreational fishing group to create marine reserves around the northern Channel Islands as a response to declining fish populations. In response to concerns about changes in the ecosystem and comments raised to the Commission and during the CINMS management plan scoping process, NOAA and the California Department of Fish and Game (CDFG) developed a Federal-state partnership to consider the establishment of marine reserves in the Sanctuary.

Since the marine reserves process is inherently complex, and is a stand-alone action that is programmatically independent of and severable from the more general suite of actions contemplated in the management plan review process, NOAA decided to separate the process to consider marine reserves from the larger CINMS management plan review process. The draft management plan and DEIS for the

management plan review were released for public comment on May 19, 2006 (71 FR 29148). NOAA also published a proposed rule to implement the management plan on May 19, 2006 (71 FR 29096). Please see *http://channelislands.noaa.gov* for more information.

The CINMS Advisory Council, a federal advisory board of local community representatives and federal, state and local government agency representatives, created a multi-stakeholder Marine Reserves Working Group (MRWG) to seek agreement on a recommendation regarding the potential establishment of marine reserves within the Sanctuary. The CINMS Advisory Council also designated a Science Advisory Panel of recognized experts and a NOAA-led Socio-economic Team to support the MRWG in its deliberations.

Extensive scientific, social, and economic data were collected in support of the marine reserves assessment process. From July 1999 to May 2001, the MRWG met monthly to receive, weigh, and integrate advice from technical advisors and the public. The MRWG reached consensus on a set of ground rules, a mission statement, a problem statement, a list of species of interest, and a comprehensive suite of implementation recommendations. The MRWG found that in order to protect, maintain, restore, and enhance living marine resources, it is necessary to develop new management strategies that encompass an ecosystem perspective and promote collaboration between competing interests. A set of goals were also agreed upon by the MRWG:

1. To protect representative and unique marine habitats, ecological processes, and populations of interest.

2. To maintain long-term socioeconomic viability while minimizing short-term socioeconomic losses to all users and dependent parties.

3. To achieve sustainable fisheries by integrating marine reserves into fisheries management.

4. To maintain areas for visitor, spiritual, and recreational opportunities which include cultural and ecological features and their associated values.

5. To foster stewardship of the marine environment by providing educational opportunities to increase awareness and encourage responsible use of resources.

The MRWG developed over 40 different designs for potential marine reserves and evaluated the ecological value and potential economic impact of each design. To do so, members of the MRWG contributed their own expertise to modify designs or generate alternatives and utilized a geospatial tool, known as the Channel Islands Spatial Support and Analysis Tool (CI-SSAT). CI-SSAT provided opportunities for visualization, manipulation, and analysis of data for the purpose of designing marine reserves.

After months of deliberation, a consensus design could not be reached and the MRWG selected two designs to represent the diverse views of the group. These designs depict the best effort that each MRWG representative could propose. Ultimately, the CINMS Advisory Council provided the MRWG's two designs, as well as all of the supporting information developed during the process, including background scientific and economic information, to NOAA and the CDFG for consideration and action.

Based on this information and additional internal agency analysis, NOAA and the CDFG crafted a draft reserve network and sent it to the CINMS Advisory Council and the former MRWG, Science Panel and Socio-Economic Team members seeking further input. The draft reserve network was also published in local papers and on the CINMS Web site to solicit input from the general public. Several meetings were held with constituent groups, including the CINMS Advisory Council's Conservation Working Group, Fishing Working Group and Ports and Harbors Working Group, to discuss the draft network. Following this period of input, the CDFG and NOAA prepared a recommendation for establishing a network of marine reserves and marine conservation areas. The recommendation proposed a network of marine reserves and marine conservation areas in the same general locations as the MRWG Composite Map. The composite map was forwarded to the CINMS Advisory Council and represented two versions of a reserve and conservation area network, one version from consumptive interests and the other from non-consumptive interests. These two versions were overlaid on one map, and depicted a number of areas that the constituent groups agreed upon. This recommendation became the basis for the preferred alternative in the State's California Environmental Quality Act (CEQA) environmental review process.

E. Establishment of State Reserves in the CINMS, 2001 to 2003

Due to the fact that the proposed network spanned both state and federal waters, NOAA and the CDFG determined the implementation of the recommendation would need to be divided into a state phase and a federal phase. State waters extend from the shore to a distance of three nautical miles. Federal waters extend beyond the limit of state waters to the extent of the exclusive economic zone, with the outer boundary of the CINMS at a distance of approximately six nautical miles from shore. The state phase was to be considered by the Commission under its authorities.

The CDFG completed an environmental review under the requirements of CEQA resulting in the publication of an environmental document. The draft environmental document (ED) was released for public comment on May 30, 2002. Comments were accepted for an extended period until September 1, 2002. The Commission and CDFG received 2,492 letters, e-mails and oral comments. Of this total, 2,445 were form letters that made identical comments.

The Commission certified the final ED on October 23, 2002. At this same meeting, the Commission approved the CDFG's preferred alternative. The CDFG published final regulations for its action in January 2003. As part of its implementation, the FGC acknowledged the need for NOAA to complete the network by extending the marine zones into the deeper and federal waters of the CINMS.

F. Federal Marine Reserves Process, 2003–2007

Following the publication of the CDFG's final regulations in 2003, NOAA's NMSP initiated the federal marine reserves process, and hosted scoping meetings with the general public, the CINMS Advisory Council, and PFMC. In 2004, the NMSP released a preliminary environmental document with a range of alternatives for public review. In 2005, the NMSP consulted with local, state, and federal agencies and the PFMC on possible amendments to the CINMS designation document pursuant to section 303(b)(2) of the NMSA (16 U.S.C. 1433(b)(2)). In addition, in 2005 the NMSP provided the PFMC with the opportunity to prepare draft NMSA fishing regulations pursuant to section 304(a)(5) of the NMSA (16 U.S.C. 1434(a)(5)) for the potential establishment of marine reserves and marine conservation areas.

In its response to NOAA's letter regarding draft NMSA fishing regulations, the PFMC stated its support for NOAA's goals and objectives for marine zones in the CINMS but recommended that NOAA issue fishing regulations under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the relevant authorities of the states of

California, Oregon, and Washington rather than under the NMSA. To that end, and in accordance with advice from the NOAA Administrator in his October 19, 2005 letter to the PFMC, the PFMC recommended the Channel Islands marine zones in federal waters be designated as Essential Fish Habitat and Habitat Areas of Particular Concern with corresponding management measures to prohibit the use of bottom contact gear under Amendment 19 of the Groundfish Fishery Management Plan. To complete the process of addressing closure of the remaining aspect of the marine zones (i.e., in the water column) the PFMC stated its intent to pursue those closures through other fishery management plan authorities and complementary state laws.

NOAA reviewed the PFMC's recommendations and determined that they did not have the specificity or record to support the use of the MSA or state laws to establish limited take or no-take zones in the water column and thereby did not fulfill NOAA's goals and objectives for these marine zones in the CINMS. However, Amendment 19 to the Groundfish Fishery Management Plan implemented, in part, the proposed marine zones by prohibiting all bottom contact gear in the proposed zones. Accordingly, the NMSA regulations issued in this rule prohibit the take of resources from the zones not prohibited by the Amendment 19 regulations. Thus, along with the regulations implementing Amendment 19, the NMSA regulations establish comprehensive limited-take and no-take zones in the CINMS in a manner that fulfills NOAA's goals and objectives for these marine zones in the CINMS.

As stated in the summary, the purpose of these zones is to further the protection of Sanctuary biodiversity and complement an existing network established by the State of California in October 2002, and implemented in April, 2003, under its authorities. The goals of the zones are:

- To ensure the long-term protection of Sanctuary resources by restoring and enhancing the abundance, density, population age structure, and diversity of the natural biological communities.
- To protect, restore, and maintain functional and intact portions of natural habitats (including deeper water habitats), populations, and ecological processes in the Sanctuary.
- To provide, for research and education, undisturbed reference areas that include the full spectrum of habitats within the CINMS where local populations exhibit a more natural abundance, density, diversity, and age structure.
- To set aside, for intrinsic and heritage value, representative habitats and natural biological communities.
- To complement the protection of CINMS resources and habitats afforded by the State of California's marine reserves and marine conservation areas.
- To create models of and incentives for ways to conserve and manage the resources of CINMS.

On August 11, 2006 NOAA issued a notice of proposed rulemaking (71 FR 46134) to prohibit the take of resources from the zones not prohibited by the Amendment 19 regulations. NOAA subsequently issued a correction to this notice on October 5, 2006 (71 FR 58767) to correct certain figures presented on the size of the Sanctuary.

Between August and October of 2006, NOAA received public comments and held two hearings on the proposed rule. Over 30,000 individuals submitted written comments and/or presented oral testimony on NOAA's proposal. 99% of these individuals supported the establishment of marine zones in some form, particularly Alternatives 1A and 2 as described in NOAA's DEIS. During the public comment period, the State of California also submitted comments on NOAA's proposal. In its October 2006 letter, the CDFG stated that it could only support Alternative 1C as described in NOAA's draft environmental impact statement (DEIS). Under Alternative 1C, NOAA would establish marine reserves only in federal waters. NOAA's preferred alternative in the DEIS, identified as Alternative 1A, would have established marine zones in both federal and state waters with federal regulations overlaying the entire network (i.e., from the outer boundary of the federal waters reserves to the shore of the Channel Islands). As indicated in the DEIS, Alternative 1C would leave gaps in protection between the offshore extent of some of the state waters marine zones established by the State of California in 2003 and the marine zones proposed by NOAA (refer to figure 1 for an illustration of these gaps).

On March 16, 2007, the California Coastal Commission (Coastal Commission) held a public meeting on NOAA's proposal pursuant to its authorities under section 307 of the Coastal Zone Management Act (16 U.S.C. 1456). See *http://www.coastal.ca.gov/meetings/mtg-mm7-3.html* for more information about this meeting. At that meeting, the Coastal Commission passed a motion as follows: "In the event NOAA elects not to implement Alternative 1a, NOAA will implement Alternative 1c, with the following additional provisions: Until such time as the Resources Agency and the Fish and Game Commission designate the areas in between the existing State-designated MPAs and the 3 mile limit (i.e., the "gaps" between the existing state MPAs and the federal MPAs depicted in Alternative 1c [and shown on Exhibit 9]), or the Fish and Game Commission/DFG and NOAA enter into an interagency agreement that establishes MPA protection for these "gap" areas, NOAA will expand Alternative 1c to include in its MPA designation these "gaps" between the outer boundaries of the existing state MPAs and the state-federal waters boundary (3nm from shore)." At this meeting, the CDFG representative also stated that the FGC could close these gaps in protection using state laws by August 2007.

Based on the record, including comments received during the public comment period and the record of the Coastal Commission, NOAA has determined that there is sufficient information and rationale to establish marine zones in the federal waters of the Sanctuary (i.e., implement NOAA's Alternative 1C). With regard to state waters of the Sanctuary, NOAA has decided to defer action on establishing marine zones until the FGC has had an opportunity to close those gaps in a manner consistent with the Coastal Commission's motion and the CDFG representative's statement. The State of California has already begun this process by placing it on the agenda for a decision at the August 2007 meeting of the FGC. Also, the CDFG has begun preparing the necessary documentation to support the FGC's decision. NOAA is, therefore, leaving the record open with regard to a decision to establish marine zones in state waters of the Sanctuary, and will be accepting additional public comment on this specific issue.

NOAA will make a final decision with regard to its action in state waters in fall, 2007. If the FGC is able to take sufficient action before this time, NOAA proposes to take no further action under the NMSA. If the FGC is not able to take sufficient action before this time, NOAA would finalize regulations under the NMSA that would effectively close the gaps associated with alternative 1C by extending federal protections into state waters to meet the boundaries of the marine zones established by the FGC in 2003. In either case, NOAA will provide public notice of this action through issuance of a **Federal Register** document at the appropriate time.

II. Summary of Final Environmental Impact Statement and Record of Decision

NOAA prepared a draft environmental impact statement (DEIS) for the proposed rule to establish marine reserves and marine conservation areas within the Sanctuary (71 FR 46220; August 11, 2006). The DEIS was prepared in accordance with the NMSA and National Environmental Policy Act of 1969 (NEPA) requirements. The DEIS was distributed for public comments in early August 2006. The public comment period, which closed on October 10, 2006, yielded many comments on NOAA's proposed action and suggestions for improving the DEIS. NOAA has prepared a final environmental impact statement (FEIS) to address these comments and make appropriate changes to its environmental analysis. The FEIS contains a statement of the purpose and need for the project, description of proposed alternatives including the no action alternative, description of the affected environment, and evaluation and comparison of environmental consequences including cumulative impacts. The preferred alternative incorporates the network of marine reserves and marine conservation areas originally identified for the federal phase in the Commission's CEQA document.

NOAA's record of decision for this action, prepared pursuant to 40 CFR 1505.2, is set forth below:

Record of Decision

Introduction

Designated in 1980, the Channel Islands National Marine Sanctuary (CINMS or Sanctuary) consists of an area of approximately 1,113 square nautical miles (nmi2) off the southern coast of California. The Sanctuary boundary begins at the mean high water line and extends seaward to a distance of approximately six nautical miles (nmi) from the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (collectively the Islands). Located offshore from Santa Barbara and Ventura counties, the Sanctuary supports a rich and diverse range of marine life and habitats, unique and productive oceanographic processes and ecosystems, and culturally significant resources. More than 27 species of cetaceans (whales and dolphins) use the Sanctuary during at least part of the year. There are also 5 species of pinnipeds (seals and sea lions) that occur in the area. More than 60 species of birds feed in the sanctuary and more than 23 species of sharks occur here. In addition, a wealth of Chumash Native American artifacts as well as the remains of over 100 historic shipwrecks line the ocean floor of the Sanctuary.

The primary objective of the CINMS is to protect Sanctuary resources. In meeting this objective, NOAA is establishing federal marine zones in the CINMS to further the protection of Sanctuary biodiversity, and to complement the existing network of marine zones established by the State of California in October 2002 (and implemented under its authorities in April 2003). The regulations implementing this action add nine new federal marine zones to the Sanctuary (eight no-take marine reserves and one limited-take marine conservation area).

These zones total 110.5 nmi^2 as marine reserves and 1.7 nmi^2 as marine conservation areas. The area of the total network, including the existing state marine zones, is 214.1 nmi^2. All extractive activities (e.g., removal of any sanctuary resource) and injury to Sanctuary resources are prohibited in marine reserves. Lobster harvest and recreational fishing for pelagic finfish (with hook and line only) are allowed within the marine conservation area, while all other extraction or injury to Sanctuary resources is prohibited.

NOAA has prepared this record of decision (ROD) in accordance with regulations published by the Council on Environmental Quality (40 CFR 1505.2) implementing the National Environmental Policy Act (NEPA).

Decision

NOAA is issuing new regulations for the CINMS. These new regulations prohibit take of all Sanctuary resources in marine reserves and limit take of all Sanctuary resources in a marine conservation area.

Alternatives Considered

In its final environmental impact statement, NOAA considered three alternatives for this action: A no action (or status quo) alternative, Alternative 1, and Alternative 2.[1]

No Action Alternative

The no action alternative would have maintained the status quo in the Sanctuary (i.e., no new marine zones would be designated). Under this alternative, the NMSP would not have taken any new regulatory action under the NMSA. Existing Sanctuary regulations (e.g., no discharge) would continue to apply throughout the CINMS. Existing state marine reserves and marine conservation areas and existing state and federal management of commercial and recreational activities, including fishing, would remain in place.

Alternative 1

Under Alternative 1, the NMSP will establish a series of marine zones. The spatial extent of the overall marine zoning network alternative was developed by the CDFG and NMSP in 2001, based on the extensive work of the MRWG and its advisory panels, and is the original proposed project in the CDFG (2002). The portions of the marine zones within state waters were established by the FGC and CDFG in 2003.

Alternative 1 contained three sub-alternatives: 1A, 1B, and 1C. In Alternative 1A, the boundaries of the marine zones (and their corresponding NMSA regulations) completely overlay the existing state marine zones and terminate at the mean high water line of the northern Channel Islands. In Alternative 1B, the boundaries of the marine zones (and their corresponding NMSA regulations) abut the existing state marine zone boundaries, thereby including a small portion of state waters. In Alternative 1C, the boundaries of the proposed marine zones terminate at the boundary between state and federal waters (3 nmi from shore), thereby including no state waters. Alternative 1C was NOAA's preferred alternative.

Alternative 2

Alternative 2 is based on a larger network of marine reserves developed during the MRWG process with slight modifications to conform to the boundaries of the existing state marine reserves and conservation areas. Alternative 2 is the largest of the alternatives proposed, thereby increasing protection of various habitats and species of interest, as compared to Alternative 1A. When compared to the no-action alternative, Alternative 2 adds 11 new marine reserves and one new marine conservation area. Alternative 2 has a total of 276.9 nmi^2 as marine reserves and 12.1 nmi^2 as marine conservation areas for a total of 289.0 nmi^2. Alternative 2 would have had the same regulations as Alternative 1.

Environmentally Preferred Alternative

All alternatives, aside from the no action alternative, would result in

[1] In addition, NOAA and the State of California considered and analyzed dozens of other spatial designs. See section 3 of the FEIS for more information about the process used to develop the range of alternatives.

environmental benefits in the form of protection of sensitive marine habitats and species. Alternative 2 is the largest of the alternatives proposed and includes a network of existing state marine zones and new federal zones, and would increase protection of various habitats and species of interest, as compared to the sub-alternatives under Alternative 1. Therefore, this alternative is considered to be the environmentally preferred. It was not selected because Alternative 1 better met NOAA's purpose and need.

Mitigation Measures

Because the action would not result in any environmental harm, there are no specific mitigation measures needed to avoid, minimize, or compensate for environmental harm.

Decision Making Process

Collectively referred to as the "Channel Islands marine reserves process," the consideration of marine zones within the CINMS occurred in three distinct phases: (1) A community-based phase; (2) a State of California (State) regulatory phase; and (3) a federal regulatory phase. These three phases are described in detail in the Final Environmental Impact Statement for this action (see **ADDRESSES**).

In summary, the alternatives described evolved as a result of the Channel Islands marine reserves process. Comprehensive marine zoning network options were originally developed by NOAA and the CDFG following a comprehensive stakeholder process conducted from 1999 through 2002. In 2002, the FGC supported establishment of state marine zones in the state waters of the Sanctuary (0–3 nmi) [2].

Following the publication of the State's final regulations in 2003, NOAA hosted scoping meetings to consider the extension of the State's zones into deeper waters of the Sanctuary. In 2004, NOAA released a preliminary environmental document with a range of alternatives for public review. NOAA then consulted with local, state, and federal agencies and the Pacific Fishery Management Council (PFMC) on possible amendments to the CINMS designation document pursuant to section 303(b)(2) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1433(b)(2)). In addition, in 2005 NOAA provided the PFMC with the opportunity to prepare draft NMSA fishing regulations pursuant to section 304(a)(5) of the NMSA (16 U.S.C. 1434(a)(5)) for the potential establishment of marine reserves and marine conservation areas.

The PFMC response to NOAA's letter regarding draft fishing regulations stated its support for NOAA's goals and objectives for marine zones in the CINMS, but recommended that, rather than utilizing the NMSA, NOAA issue fishing regulations under the Magnuson-Steven Fishery Conservation and Management Act (MSA) and the relevant authorities of the states of California, Oregon, and Washington. To that end, and in accordance with advice from the NOAA Administrator in his October 19, 2005 letter to the PFMC, the PFMC recommended the northern Channel Islands federal marine zones be designated as Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC) under Amendment 19 of the Groundfish Fishery Management Plan (FMP). The water column in the marine zones would be closed under other fishery management plan authorities and complementary state laws.

NOAA reviewed the PFMC's recommendations and determined that PFMC did not have the specificity or record to support the use of the MSA or state laws to establish limited take or no-take zones in the water column and thereby did not fulfill NOAA's goals and objectives for these marine zones in the CINMS. Amendment 19 to the Groundfish FMP implemented, in part, the proposed marine zones by prohibiting all bottom contact gear in those proposed zones. Accordingly, NOAA's NMSA regulations prohibit the take of resources from the zones not prohibited by the Amendment 19 regulations. Thus, along with the regulations implementing Amendment 19, the NMSA regulations establish comprehensive marine reserves and a marine conservation area in the federal waters part of the CINMS in a manner that fulfills NOAA's goals and objectives for the marine zones in the CINMS.

In August 2006, NOAA published proposed regulations for this action and released the related draft environmental impact statement (DEIS) for public review and comment. Between August and October of 2006, NOAA received public comment and held two hearings on the proposed rule and DEIS. Over 30,000 individuals submitted written comments and/or presented oral testimony on NOAA's proposal. Approximately 99% of these individuals supported the establishment of Alternative 1A or Alternative 2.

During the public comment period, the State of California also submitted comments on NOAA's proposal. In its October 2006 letter, the CDFG stated that it could only support Alternative 1C (NMSA regulations in federal waters only) as described in the DEIS. In subsequent consultations with State representatives and in a letter from the Secretary of Resources dated January 2, 2007, the State reiterated that it could only support Alternative 1C at this time. Under Alternative 1C, NOAA would establish marine reserves and a marine conservation area only in federal waters. NOAA's preferred alternative, identified as Alternative 1A in the DEIS, would have established marine zones in both federal and state waters with federal regulations overlaying the entire network (*i.e.*, from the outer boundary of the federal waters reserves to the mean high water line of the Channel Islands). As indicated in the DEIS, Alternative 1C leaves small gaps in protection between the offshore extent of some of the state waters marine zones established by the State of California in 2003 and the federal waters marine zones proposed by NOAA.

On March 16, 2007, the Coastal Commission held a public meeting on NOAA's consistency determination with California's Coastal Zone Management Plan under section 307 of the Coastal Zone Management Act (see *http://www.coastal.ca.gov/meetings/mtg-mm7-3.html*). At that meeting, the Coastal Commission passed a motion as follows:

In the event NOAA elects not to implement Alternative 1a, NOAA will implement Alternative 1c, with the following additional provisions: Until such time as the Resources Agency and the Fish and Game Commission designate the areas in between the existing State-designated MPAs and the 3 mile limit (i.e., the "gaps" between the existing state MPAs and the federal MPAs depicted in Alternative 1c [and shown on Exhibit 9]), or the Fish and Game Commission/DFG and NOAA enter into an interagency agreement that establishes MPA protection for these "gap" areas, NOAA will expand Alternative 1c to include in its MPA designation these "gaps" between the outer boundaries of the existing state MPAs and the State-federal waters boundary (3nm from shore).

At this meeting, the CDFG representative also stated that the FGC could close these gaps in protection using state laws by August 2007.

Based on the record, including comments received during the public comment period and the record of the Coastal Commission, NOAA determined that at this time there is sufficient information and rationale to establish marine zones in the federal waters of the Sanctuary (*i.e.*, implement NOAA's alternative 1C). This Record of Decision

[2] Refer to the Environmental Impact Report prepared by the State of California for its 2002 action. This document is available for download on NOAA's CINMS Web site at *http://channelislands.noaa.gov/marineres/main.html*.

supports that determination and represents NOAA's final decision to implement the regulations in the federal waters of the Sanctuary associated with Alternative 1C.

With regard to state waters of the Sanctuary, NOAA has decided to defer action on establishing federal marine zones until the FGC has had an opportunity to close the gaps between the federal marine zones and the state marine zones in a manner consistent with the Coastal Commission's resolution and the CDFG representative's statement.[3] The State of California has already begun this process by placing it on the agenda for a decision at the August 2007 meeting of the FGC. Also, the CDFG has begun preparing the necessary documentation to support the FGC's decision. If the FGC is able to take sufficient action in a timely manner, NOAA would take no further action under the NMSA. If the FGC is not able to take sufficient action in a timely manner, NOAA would issue regulations under the NMSA that would effectively close the gaps associated with Alternative 1C by extending federal protections into state waters to meet the boundaries of the marine zones established by the FGC in 2003. In that instance, a second record of decision for that subsequent action would be issued to finalize such action.

Conclusion

The new regulations identified above apply to all users of the Sanctuary. Based on socioeconomic information gathered by NOAA and identified in the FEIS, the socioeconomic impacts of these regulations can be characterized as:

- Having a small impact on existing consumptive activities (commercial fishing and consumptive recreational activities).
- Beneficial to non-consumptive recreational users. These increased benefits take the form of increases in diversity and abundance of wildlife for viewing and photography opportunities. Benefits may also be derived from the decrease in the density of users or in the reduction in conflicts with consumptive users.
- Beneficial to management, research, and education because relatively undisturbed areas (i.e., reference areas) will be available for comparison with areas outside the marine zones; and
- Beneficial for intrinsic and heritage purposes.

NOAA expects, therefore, that this rule will have no significant socioeconomic impacts and that the implementation of marine zones in the CINMS will have beneficial ecological impacts on marine communities and habitats.

[3] Closing the gaps would also be consistent with the public record supporting the 2002 decision of the California Fish and Game Commission to establish marine zones in the Sanctuary.

III. Revised Designation Document

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities subject to regulation by the Secretary to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. To implement this action, the CINMS Designation Document, originally published in the **Federal Register** on October 2, 1980 (45 FR 65198), is modified to read as follows (new text in bold and deleted text in brackets and italics):

Preamble

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92–532, (the Act) the waters surrounding the northern Channel Islands and Santa Barbara Island are hereby designated a Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecological community.

Article 1. Effect of Designation

Within the area designated as the Channel Islands National Marine Sanctuary (the Sanctuary), described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of this Designation lists those activities which may require regulation but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through regulation, and additional activities may be regulated only by amending Article 4.

Article 2. Description of the Area

The Sanctuary consists of an area of the waters off the coast of California, of approximately [*1252.5*] 1,128 square nautical miles (nmi) adjacent to the northern Channel Islands and Santa Barbara Island seaward to a distance of **approximately** 6 nmi. The precise boundaries are defined by regulation.

Article 3. Characteristics of the Area That Give It Particular Value

The Sanctuary is located in an area of upwelling and in a transition zone between the cold waters of the California Current and the warmer Southern California Countercurrent. Consequently, the Sanctuary contains an exceptionally rich and diverse biota, including 30 species of marine mammals and several endangered species of marine mammals and sea birds. The Sanctuary will provide recreational experiences and scientific research opportunities and generally will have special value as an ecological, recreational, and esthetic resource.

Article 4. Scope of Regulation

Section 1. Activities Subject to Regulation

In order to protect the distinctive values of the Sanctuary, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of its marine features and the ecological, recreational, and esthetic value of the area:

a. Hydrocarbon operations.

b. Discharging or depositing any substance.

c. Dredging or alteration of, or construction on, the seabed.

d. Navigation of vessels except fishing vessels or vessels [travelling] traveling within a Vessel Traffic Separation Scheme or Port Access Route designated by the Coast Guard outside of 1 nmi from any island.

e. Disturbing marine mammals or birds by overflights below 1000 feet.

f. Removing or otherwise deliberately harming cultural or historical resources.

g. Within a marine reserve, marine park, or marine conservation area, harvesting, removing, taking, injuring, destroying, possessing, collecting, moving, or causing the loss of any Sanctuary resource, including living or dead organisms or historical resources, or attempting any of these activities.

h. Within a marine reserve, marine park, or marine conservation area, possessing fishing gear.

Section 2. Consistency With International Law

The regulations governing the activities listed in Section 1 of this article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law including treaties and international agreements to which the United States is signatory.

Section 3. Emergency Regulations

Where essential to prevent immediate, serious and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this article would be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs

Section 1. Fishing

The regulation of fishing is not authorized under Article 4, except within portions of the Sanctuary designated as marine reserves, marine parks, or marine conservation areas established pursuant to the goals and objectives of the Sanctuary and within the scope of the State of California's Final Environmental Document "Marine Protected Areas in NOAA's Channel Islands National Marine Sanctuary" (California Department of Fish and Game, October 2002), certified by the California Fish and Game Commission. However, fishing vessels may be regulated with respect to discharges in accordance with Article 4, Section 1, paragraph (b) and aircraft conducting kelp bed surveys below 1000 feet can be regulated in accordance with Article 4, Section 1, paragraph (e). All regulatory programs pertaining to fishing, including particularly regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 et seq., shall remain in effect. All permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. Fishing as used in this article and in Article 4 includes kelp harvesting.

Section 2. Defense Activities

The regulation of those activities listed in Article 4 shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practicable.

Section 3. Other Programs

All applicable regulatory programs shall remain in effect and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. The Sanctuary regulations shall set forth any necessary certification procedures.

Article 6. Alterations to This Designation

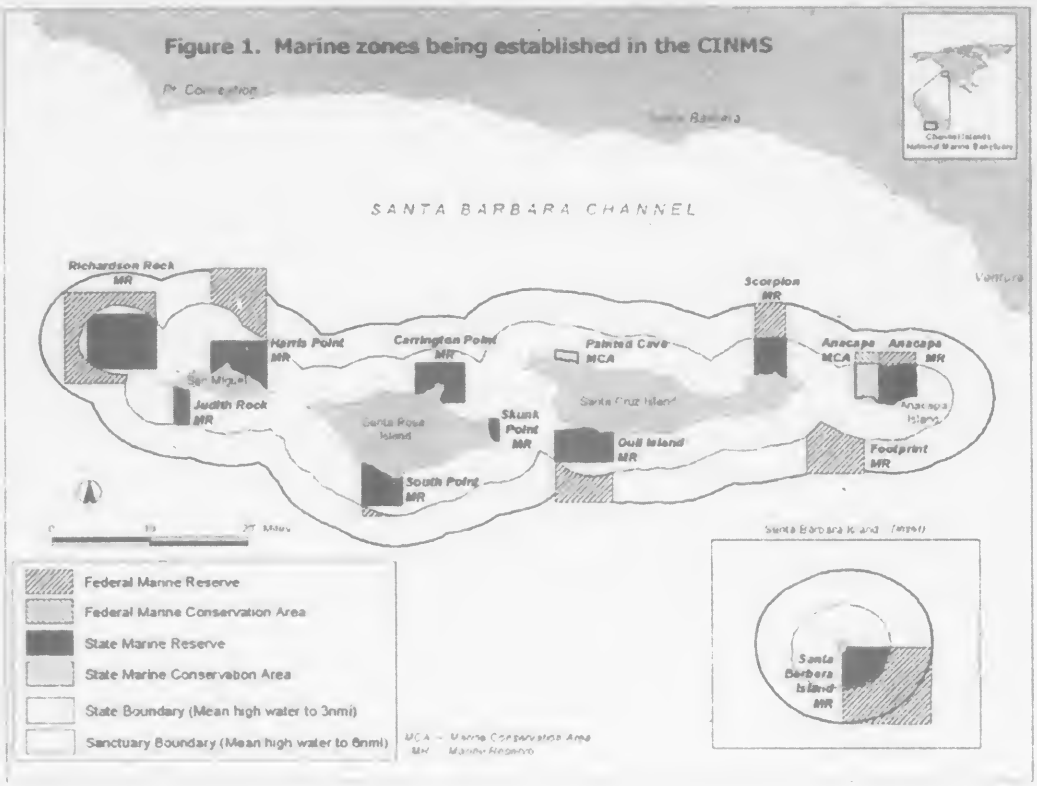
This Designation can be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested federal and state agencies and the Pacific Regional Fishery Management Council, and approval by the President of the United States.

IV. Summary of Regulations

These final regulations implement NOAA's preferred alternative by establishing marine reserves and a marine conservation area within the federal waters of CINMS. The regulations define two new terms (*pelagic finfish* and *stowed and not available for immediate use*), prohibit all extractive activities and injury to Sanctuary resources within the marine reserves, and prohibit all extractive activities and injury to Sanctuary resources within the marine conservation area except recreational fishing for pelagic finfish and commercial and recreational lobster fishing (Anacapa Island Marine Conservation Area). These regulations also add two new appendices that list the boundary coordinates for the marine reserves and marine conservation area. These regulations modify subpart G of the National Marine Sanctuary Program Regulations (15 CFR part 922), the regulations for the Channel Islands National Marine Sanctuary.

A. Establishment of Marine Reserves and Marine Conservation Areas

These regulations establish under the NMSA eight marine reserves and one marine conservation area within the CINMS. Refer to figure 1 for a map depicting the locations of the marine reserves and marine conservation area. The marine reserves are distributed throughout the CINMS and extend slightly beyond the current boundaries of the CINMS in four locations, increasing the geographic area of the Sanctuary by about 15 square nautical miles. This action increases the overall size of the Sanctuary from approximately 1,113 square nautical miles to approximately 1,128 square nautical miles, an approximately 15 square nautical mile increase. This small amount added allows the boundary of four of the marine reserves to be defined by straight lines projecting outside the current CINMS boundary, allowing for better enforcement of the marine reserves. The boundaries of the marine reserves and marine conservation area are consistent with the marine reserves and marine conservation areas established by the Commission in 2002 in state waters-essentially extending most of them into federal waters of the Sanctuary. NOAA is changing the number identifying the total area of the CINMS from approximately 1,252.5 square nautical miles to approximately 1,128 square nautical miles. This change is based on North American Datum of 1983 (NAD 83) and adjusts for technical corrections using updated technologies. The legal description of the CINMS is updated to reflect this change. This update does not constitute a change in the geographic area of the Sanctuary (other than the approximately 15 square nautical miles referred to above) but rather an improvement in the estimate of its size.



Under these final regulations, NOAA establishes two marine reserves in the area around San Miguel Island, one around Santa Rosa Island, two around Santa Cruz Island, two around Anacapa Island, and one around Santa Barbara Island. The marine conservation area is established off of Anacapa Island.

The total area designated marine reserves under these final regulations is 110.5 square nautical miles. The marine conservation area encompasses an additional 1.7 square nautical miles.

Based on the record, including comments received during the public comment period and the record of the Coastal Commission, NOAA has determined that there is sufficient information and rationale to establish marine zones in the federal waters of the Sanctuary (i.e., implement NOAA's Alternative 1C). With regard to state waters of the Sanctuary, NOAA has decided to defer action on establishing marine zones until the FGC has had an opportunity to close those gaps in a manner consistent with the Coastal Commission's motion and the CDFG representative's statement. The State of California has already begun this process by placing it on the agenda for a decision at the August 2007 meeting of the FGC. Also, the CDFG has begun preparing the necessary documentation to support the FGC's decision. NOAA is, therefore, leaving the record open with regard to a decision to establish marine zones in state waters of the Sanctuary, and is requesting additional public comment on this specific issue.

B. Activities Prohibited Within the Marine Reserves

Under the final regulations, NOAA prohibits any harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, including living or dead organisms or historical resources, or attempting to do so, within any of the marine reserves. The term "sanctuary resource" is broadly defined in the NMSP regulations at 15 CFR 922.3 and means any living or non-living resource that contributes to the conservation, recreational, ecological, historical, scientific, educational, or aesthetic value of the Sanctuary. For the CINMS, the term "Sanctuary resource" includes, for example, the seafloor and all animals and plants of the Sanctuary. It also includes historical resources (which, pursuant to 15 CFR 922.3, include cultural and archeological resources), such as shipwrecks and Native American remains. In addition, to enhance compliance and aid in enforcement, these final regulations also prohibit possessing fishing gear and Sanctuary resources inside a marine reserve, except in certain circumstances. These final regulations allow possession of legally harvested fish stowed on a vessel at anchor in or transiting through a marine reserve and also allow the possession of stowed fishing gear, provided the gear is not available for immediate use.

These final regulations prohibit only those extractive activities within marine reserves that are not prohibited by 50 CFR part 660, the NOAA regulations that govern "Fisheries off West Coast States" (MSA regulations). Therefore, if an extractive activity is prohibited by MSA regulations, it is not prohibited by these final NMSA regulations. Conversely, all extractive activities not prohibited by MSA regulations are prohibited by these final NMSA regulations within marine reserves. In the future, if NOAA were to amend the MSA regulations to prohibit additional extractive activities within marine reserves, these NMSA regulations would correspondingly narrow in scope. If, for MSA purposes, NOAA were to amend the MSA regulations to allow additional extractive activities, these NMSA

regulations would correspondingly expand in scope to ensure all forms of extraction are prohibited within marine reserves. In either case, the MSA rulemaking making such change would provide the public with notice of the corresponding change in applicability of the NMSA regulation.

Regardless of the specific regulatory mechanism, the intended result of this final rule is for all extractive activities to be prohibited within the marine reserves.

C. Activities Prohibited Within the Marine Conservation Areas

These final regulations prohibit the same activities within the marine conservation area as within the marine reserves except that commercial and recreational lobster fishing and recreational fishing for pelagic finfish are allowed in the marine conservation area at Anacapa Island. Commercial fishing for pelagic finfish is prohibited within the marine conservation area.

Like the final regulations for marine reserves, the final regulations for the marine conservation area only prohibit activities that are not prohibited by applicable MSA regulations codified at 50 CFR part 660. Any changes to the applicable MSA regulations would result in a corresponding change in the applicability of the NMSA regulations, as discussed above.

D. Enforcement

The final regulations will be enforced by NOAA and other authorized agencies (e.g., the California Department of Fish and Game, United States Coast Guard, and National Park Service) in a coordinated and comprehensive way. Enforcement actions for an infraction will be prosecuted under the appropriate statutes or regulations governing that infraction. The result is that enforcement actions may be taken under State of California authorities, the NMSA, the MSA, or other relevant legal authority.

E. Permitting

The NMSP regulations, including the regulations for the CINMS, allow NOAA to issue permits to conduct activities that would otherwise be prohibited by the regulations. Most permits are issued by the Superintendent of the CINMS. Requirements for filing permit applications are specified in NMSP regulations and the Office of Management and Budget-approved application guidelines (OMB control number 0648–0141). Criteria for reviewing permit applications are contained in the CINMS and NMSP regulations at 15 CFR 922.77 and 922.48, respectively. In general, permits may be issued for activities related to scientific research, education, and management. Permits may also be issued for activities associated with the salvage and recovery efforts for a recent air or marine casualty. (Emergency activities would not require a permit.)

Nationwide, NOAA issues approximately 200 national marine sanctuary permits each year. Of this amount, two or three are for activities within the CINMS. The majority of permits issued for activities within the CINMS are for activities related to scientific research. NOAA expects this trend to continue with the final regulations. Although there may be an increase in the number of permits requested for activities within the CINMS, NOAA does not expect this increase to appreciably raise the average number of permits issued nationwide. Therefore, NOAA has determined that these final regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act.

V. Summary of Comments and Responses

This section contains NOAA's responses to the substantive comments received on the proposed rule and DEIS. NOAA has summarized the comments according to the content of the statement or question put forward in the letters, e-mails, and written and oral testimony at the public hearings on this action. Many commenters submitted similar enough questions or statements that they could be addressed by one response. NOAA also made several changes in the FEIS in response to the public comments, e.g., updating the socioeconomic and ecological impact analyses. Several technical or editorial comments on the DEIS and proposed rule were taken under consideration by NOAA and, where appropriate, applied to the FEIS and this final rule. These comments are not, however, included in the substantive list below.

NOAA's FEIS contains these comments and responses, but also includes a table listing the names of the individuals that submitted comments on the DEIS and proposed rule and an index indicating which comments were submitted by each person and NOAA's response to those particular comments.

1. *Comment:* Collectively, the following five reasons were identified by commenters in support of NOAA's Alternative 2:

- It provides the greatest amount of ecosystem protection, habitat representation, and opportunities for species recovery/restoration.
- It best recognizes the intrinsic values associated with biodiversity and ecosystem-based protection.
- It contains zones of sufficient size, space, and connectivity to maximize larval production and recruitment.
- It best fulfills the mandates of the National Marine Sanctuaries Act (NMSA) and the goals of the proposed network.
- It best achieves recommendations in the 2004 report from the Pew Oceans Commission and U.S. Ocean Commission.

Response: Alternative 2 would provide the greatest amount of ecosystem protection as it is the largest spatial alternative. However, Alternative 1 (and its sub-alternatives) provides not only a robust level of ecosystem protection, habitat representation, and opportunity for species recovery and restoration, but is consistent with the existing network established by the State of California (State) in state waters of the Sanctuary and aligned with the offshore marine zones envisioned by the State's preferred alternative in its CEQA document. Also, Alternative 1 (and its three subalternatives) is consistent with the benthic habitat protections adopted by the PFMC and NOAA Fisheries through the EFH conservation areas established by NOAA under MSA regulations (see NOAA's final rule at 71 FR 27408; May 11, 2006). Further, implementation of Alternative 1 would fulfill the mandates of the NMSA, achieve the goals of the CINMS zoning network, and meet several of the recommendations put forward by the Pew Oceans and U.S. Ocean Commissions.

Designation of Alternative 2 under the envisioned regulatory structure may require additional administrative actions that may delay implementation. This regulatory structure, which uses a combination of the MSA and NMSA, may require that the current EFH designation in the Sanctuary, which corresponds to the zone boundaries under Alternative 1, be re-designated to incorporate the larger zone boundaries proposed under Alternative 2. Alternative 1 is the most prudent course of action for the marine zoning network in the Sanctuary.

2. *Comment:* Approximately 30,000 commenters supported NOAA's preferred alternative in the DEIS (Alternative 1A) as the most efficient and coherent zone network for protecting Channel Islands wildlife.

Response: In the DEIS, the three sub-alternatives analyzed under Alternative 1 (1A, 1B, and 1C) provide different

boundary configurations for the marine zoning network based on the extent of federal regulatory overlap in state waters. During the public comment period, the CDFG submitted a letter to NOAA stating that Alternative 1C was the only acceptable alternative. In a January 2, 2007 letter to NOAA, the Secretary of the California Resources Agency reiterated this position again stating that Alternative 1C was the only alternative acceptable to the State of California and that overlap by federal regulations in state waters was never contemplated by the State.

The NMSA allows the Governor of a state for which the NMSP is making changes to a sanctuary's terms of designation to review and reject those changes with regard to state waters. Because implementation of Alternative 1A requires a change to the CINMS terms of designation (to allow regulation of fishing and other resource extraction in State, as well as Federal, waters), NOAA conducted a thorough re-evaluation of Alternatives 1A and 1C, given the Secretary of Resources' opposition to all NOAA alternatives but 1C.

As identified in the DEIS, Alternative 1C leaves small gaps between some of the state designated marine reserves and the proposed federal marine reserves (see section 3.2.4 of the FEIS). The January 2, 2007 letter also stated that the CDFG and the FGC would as soon as possible initiate the process to close the gaps associated with Alternative 1C by bringing the boundaries of a number of the existing state marine zones up to the State-Federal jurisdictional line; that process has commenced. NOAA's analysis identifies that, if these gaps are closed, the differences among the three sub-alternatives are distinguished by management considerations, not ecological and socioeconomic impacts. As such, because the CDFG and the FGC are closing the gaps associated with Alternative 1C, the net ecological benefits and socioeconomic impacts between Alternatives 1A (NOAA's original preferred alternative) and 1C (the State of California's recommended alternative) will be the same. NOAA has determined, therefore, that Alternative 1C will accomplish the goals of the zoning network while respecting the position of the State. If NOAA implements Alternative 1C and the State does not act to close the gaps in a timely manner, NOAA envisions closing the gaps via NMSA regulations.

Furthermore, NOAA and the State strongly support a close, collaborative working relationship to implement the CINMS zoning network and will sign a formal agreement to ensure that management of the network (e.g., enforcement, education and outreach, and monitoring) is implemented in a collaborative, efficient, and effective manner.

3. *Comment:* Several commenters support the no action alternative because they believe existing regulations are sufficient to meet the goals of NOAA's action.

Response: NOAA has determined existing regulations are not sufficient to meet the goals of this action. The State of California has reached the same conclusion in adopting the state waters portions of the network and is asking NOAA for prompt action in the federal waters zones. NOAA's analysis discusses the relationship of the action with other existing management regimes in the region (see sections 3.1 and 5.1.2 of the FEIS) and the effectiveness they have on achieving NOAA's goals for this action.

Marine zones and sound fishery management are complementary components of a comprehensive effort to sustain marine habitats and fisheries. Marine zones are considered one of many tools available to ocean managers and are not the only tool used in the project area for this action. However, certain ecosystem functions cannot be protected as well by other management measures. For example, size, season, and bag limits do not prevent bycatch of non-target species or undersized individuals nor do they fully provide for natural predator and prey interactions. Traditional single species-based management measures alone have not been sufficient to protect groundfish and other populations in the CINMS region and other parts of the world. Incidental impacts of various fishing practices may also have unintended effects that would not occur in a marine zone, particularly in a no-take reserve. This includes both direct impacts to the environment (e.g., habitat damage from trawling) and indirect ecosystem impacts (e.g., removing all large, old fish and altering the species size composition). Marine zones of the type proposed here by their nature provide relatively undisturbed habitats and act as "natural hatcheries", which leads to benefits in total production and export of young.

NOAA's action is intended to address a suite of ecological goals, including providing special protection of habitats and species for their intrinsic values. Marine zones of the type proposed here provide insurance for management uncertainty by providing areas where species can interact in a relatively undisturbed ecosystem. Furthermore, NOAA's action under the NMSA does not duplicate existing NOAA regulations promulgated under the MSA. The regulations being issued under this action have been carefully crafted in such a way so that the regulations being issued here under the NMSA are subject to NOAA's regulations under the MSA. This applies to the current regime and any future changes, so that if NOAA were to amend the MSA regulations, the applicability of the NMSA regulations would expand or contract automatically to ensure complete protection with no duplication. See the final regulations for how this is achieved.

The specific integration of marine zones into fisheries management, including reductions in overall fleet capacity, total allowable catch, and allocation between user groups is more appropriately dealt with through the PFMC and FGC processes, which is used to establish these limits.

4. *Comment:* Several commenters support the no action alternative because they believe that any additional zones can and should be designated by the PFMC via the MSA and the State of California via State statutes.

Response: In May 2005, NOAA presented the PFMC, per section 304(a)(5) of the NMSA, with the opportunity to prepare draft NMSA fishing regulations to meet the goals of the CINMS marine zones. Section 304(a)(5) requires that the relevant Fishery Management Council be given the opportunity to prepare draft fishing regulations within the Exclusive Economic Zone (EEZ) portion of the given sanctuary. The EEZ portion of the CINMS is from 3 to 6 nmi offshore the northern Channel Islands. The PFMC responded and recommended that fishing regulations for the CINMS marine zones in federal waters be implemented through the existing authorities of the MSA and the states of California, Oregon, and Washington.

Based on its review of the existing factual and scientific evidence, NOAA determined that there was a credible basis for regulations prohibiting the use of bottom-contact gear in the CINMS marine zones under the MSA. With respect to fishing throughout the remainder of the water column, however, NOAA determined that there was an insufficient factual and scientific basis to support pursuit of this aspect of the PFMC's proposal under the MSA. NOAA determined that the PFMC's recommendations did not have the specificity or record to support the use of the MSA or state laws to establish limited take or no-take zones in the water column and thereby did not fulfill the goals and objectives of the CINMS.

Further, MSA regulations cannot legally address other extractive activities that could be addressed under the NMSA, such as certain scientific research activities. In response, the PFMC changed its recommendation under Amendment 19 to the Pacific Coast Groundfish Management Plan (see next paragraph) to close the existing and proposed CINMS marine zones to only bottom-contact gear.

In 2006, the PFMC submitted and NOAA approved Amendment 19 to the Pacific Coast Groundfish Fishery Management Plan, which, among other things, identified and described EFH within the CINMS for groundfish species and designated the existing and proposed CINMS marine zones as Habitat Areas of Particular Concern (HAPC). Amendment 19 also prohibited the use of bottom-contact gear in the CINMS HAPCs.

The final NMSA regulations for this marine zones action prohibit those extractive activities within the marine zones that are not prohibited by 50 CFR part 660, the NOAA regulations that govern "Fisheries off West Coast States," which includes the Amendment 19 regulations. Therefore, if an extractive activity is prohibited by those MSA regulations, it is not prohibited by the NMSA regulations. Conversely, all extractive activities not prohibited by those MSA regulations in the marine reserves are prohibited by these NMSA regulations. In the future, if NOAA were to amend the MSA regulations to prohibit additional extractive activities in the marine zones, notice and opportunity for public comment would be provided regarding those activities no longer being prohibited by regulations under the NMSA. Likewise, if NOAA were to amend the MSA regulations to allow currently prohibited extractive activities in the marine zones, notice and opportunity for public comment would be provided regarding those additional activities being prohibited under these NMSA regulations.

5. *Comment:* Ecosystem-based management should be favored over traditional fisheries management in this action, because it is more effective at meeting NOAA's purpose and need.

Response: This action to complete the CINMS marine zoning network is a form of ecosystem-based management that is being applied to meet NOAA's responsibility to protect Sanctuary resources. Sanctuary resources are defined at 15 CFR 922.3 as follows:

"Sanctuary resource means any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brineseep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources."

6. *Comment:* Limit the proposed designation document changes and regulations to prohibit non-fishing activities and fishing in the water column only.

Response: Under the NMSA, when a national marine sanctuary is designated, NOAA must specify the new sanctuary's "terms of designation." The terms of designation include the boundaries of the sanctuary, the characteristics that give it value, and "the types of activities that will be subject to regulation" by NOAA. Terms of designation may only be modified by following the same procedures by which the sanctuary was designated. The types of activities subject to regulation are usually expressed in fairly general terms. This is necessary to allow NOAA to make appropriate modifications to the regulations in the future, e.g., to allow for adaptive management. However, even minor changes must be made through a full public process, including an opportunity for the public to review the change and provide comment before it is finalized. Furthermore, NOAA must prepare all legally required analysis for such regulatory changes, including appropriate environmental and economic impact analyses (under the National Environmental Policy Act and Regulatory Flexibility Act).

The designation document amendment has been carefully crafted and comments were solicited from NOAA Fisheries, other relevant resource management agencies, and the PFMC. It is also crafted to be consistent with the deliberations made throughout this process, including the community and state phases (see the Executive Summary of NOAA's FEIS for a summary of the process). As indicated above, the scope of authority defined in designation documents for all national marine sanctuaries is typically general, and the implementing regulations are more specific. NOAA believes this provides sufficient parameters to its authority while allowing flexibility to manage the network adaptively in the future in response to biological, ecological, and economic indicators of the network's effectiveness. Any proposed regulatory adjustment to the current network would undergo rigorous environmental review, analysis, and public input.

As indicated above, in contrast to the general scope of the terms of designation, sanctuary regulations are often very specific and are developed to implement the terms of designation by defining the human activities that are prohibited or otherwise restricted. The final regulations for this NOAA action prohibit those extractive activities within marine reserves that are not prohibited by 50 CFR part 660, the NOAA regulations that govern "Fisheries off West Coast States" (MSA regulations). Therefore, if an extractive activity is prohibited by MSA regulations, it is not prohibited by these final NMSA regulations. Conversely, all extractive activities not prohibited by MSA regulations are prohibited by these final NMSA regulations within marine reserves.

Furthermore, NOAA has determined that limiting the scope of the regulations and terms of designation to prohibiting activities only within the water column would leave unacceptable gaps in the cover of the regulations. Certain activities, such as scientific research, would not be covered by other regulations (either State or MSA regulations) thus preventing total closure of the zones. Given this, NOAA has determined that limiting the scope of the regulations and terms of designation would not meet its purpose and need for this action.

7. *Comment:* The geographic scope of the proposed authority to regulate fishing under the NMSA, as described in the DEIS, is too broad.

Response: The designation document amendment has been carefully crafted and comments solicited from NOAA Fisheries, other relevant resource management agencies, and the PFMC. It is also crafted to be consistent with the deliberations made throughout this process, including the community and state phases (see the Executive Summary of NOAA's FEIS for a summary of the process). The scope of authority defined in designation documents for all national marine sanctuaries is typically general, and the implementing regulations are more specific. NOAA believes this provides sufficient parameters to its authority while allowing flexibility to manage the network adaptively in the future in response to biological, ecological, and economic indicators of the network's effectiveness. Any proposed regulatory adjustment to the current network would undergo rigorous environmental review, analysis, and public input.

8. *Comment:* CINMS lacks a fisheries manager position, expert fisheries

advisory bodies, an extensive stakeholder input process, and overall adequate organization for fisheries management, which will complicate existing fisheries management coordination.

Response: The CINMS marine zoning process has required close coordination among staff from the PFMC, NOAA Fisheries, CDFG, FGC and NMSP, and the constituents involved in the respective public policy forums. See Appendix D of the FEIS for a meeting history among these organizations during the CINMS marine zoning process.

In addition, the CINMS Advisory Council has provided, and will continue to provide, a robust, open, and transparent community based public forum to provide advice to NOAA on resource protection, education, and research issues, including fishing issues within the Sanctuary. The Advisory Council has representatives from all major sectors that utilize the CINMS, including commercial and recreational fishermen and the region's primary fisheries regulators, NOAA Fisheries and the CDFG. In addition, the Advisory Council's recreational fishing working group has representatives from local, regional, and national fishing organizations, including United Anglers of Southern California and the Recreational Fishing Alliance. The commercial fishing working group includes representatives from the Santa Barbara and Ventura fishing communities and fishing organizations such as the Sea Urchin Harvesters Association.

9. *Comment:* Commenter requests funding for collaborative research involving the fishing community.

Response: NOAA continues to support and fund the Channel Islands Collaborative Marine Research Program (CMRP), managed by the Channel Islands Marine Sanctuary Foundation, which involves the commercial and recreational fishing communities. To date the CMRP has funded close to $200,000 in research projects involving commercial and recreational fishermen and the scientific community. If future CINMS budgets are stable, funding for this program would continue.

10. *Comment:* NMSA fishery regulations need to be enforceable, clearly understood by the public, and meet the goals and objectives of the PFMC and NOAA.

Response: NOAA has utilized and continues to seek guidance on enforcement of NMSA regulations provided by the PFMC Enforcement Sub-committee, CDFG wardens, National Park Service (NPS) Park Rangers, the NOAA Office of Law Enforcement, and U.S. Coast Guard (USCG) officials. These enforcement experts have provided extensive input on the regulations, and this input is reflected in the final rule. Further, this NOAA action is intended to achieve goals established for the CINMS marine zones under the NMSA, not specific PFMC fishery goals.

11. *Comment:* The various agencies are under-funded and there are not enough staff members to monitor and enforce the existing or proposed project.

Response: NOAA believes that adequate resources exist to manage, monitor, and report on the CINMS marine zones. The Channel Islands region benefits from the resources and coordinated efforts of multiple state and federal agencies and institutions. Through formal and informal agreements, the CDFG, NOAA, the USCG, and the NPS will continue to work collaboratively to monitor, enforce, and manage the marine reserves network.

In addition to research by these agencies, other research organizations and institutions (e.g., University of California, California State Universities, and California Sea Grant Extension Program) have provided research, monitoring and evaluation programs and opportunities. Existing monitoring projects will continue to provide data on changes in the abundance of various species in the region (see *http://www.dfg.ca.gov/mrd/channel_islands/monitoring.html*).

Interagency coordination will result in more efficient use of NOAA and State resources. CDFG enforcement staff cooperates with other public agencies through existing agreements and there are several enforcement agreements and funding mechanisms among the CDFG, the NPS NOAA, and the USCG.

12. *Comment:* Commenter believes there is currently not enough research for NOAA to choose Alternatives 1 or 2 and therefore supports the no action alternative.

Response: NOAA's analysis contained in the proposed rule, DEIS and FEIS presents detailed information on the projected biological and socioeconomic impacts of its alternatives for this action and believes this adequately supports the final action.

13. *Comment:* Commenter requests installation of artificial reefs and rigs-to-reefs programs to create replacement fishing opportunities to mitigate the loss of fishing grounds.

Response: Under NOAA's action, fishing would continue to be allowed in 81% of the Sanctuary (over 800 square nmi), subject to existing state and federal fishery regulations. NOAA expects displacement impacts resulting from its action will be minimal (see section 5.1 of the FEIS). NOAA does not believe there will be any significant loss of fishing grounds and, therefore, no need to develop any mitigation measures at this time. The CINMS social science program calls for monitoring displacement of fishing effort to determine if any mitigation efforts are warranted. Should displacement impacts prove to be significant in the future, NOAA and the State have the ability to take appropriate action under their respective authorities.

14. *Comment:* The action will displace fishing effort and increase impacts in other areas.

Response: Displacement from NOAA's action is expected to be minimal and less than significant (see section 5.1 of the FEIS). Ongoing monitoring, research, and evaluation after implementation will provide additional information on this issue. Should displacement impacts prove to be significant in the future, NOAA and the State have the ability to take appropriate action under their respective authorities.

15. *Comment:* There is no dedicated source of funding at CINMS for education and outreach programs that explain fishery management measures, marine zoning, and marine access programs.

Response: A significant amount of funding from the CINMS budget is dedicated to extensive education and outreach efforts on the CINMS marine zones. Since 2000, the CINMS education and outreach program has been helping the public understand what and where the state marine reserves and marine conservation areas are within the Sanctuary, why they were established, and what we can learn from them (see the Public Awareness and Understanding action plan in section III of the CINMS draft management plan at *http://www.cinms.nos.noaa.gov/manplan/overview.html*). The CINMS also works closely with CDFG to match funding for marine zoning education and outreach. Education and outreach on regional fishery management measures is addressed by NOAA Fisheries, the PFMC, and the CDFG.

16. *Comment:* NOAA should consider more stringent restrictions for commercial lobster fishing and more lenient restrictions for recreational lobster fishing.

Response: Lobster fishing is regulated by the FGC. The existing marine zoning network adopted by the State of California includes two marine conservation areas (Anacapa Island

MCA and Painted Cave MCA) that permit recreational lobster harvest. Commercial lobster fishing is allowed in the Anacapa MCA, but not in the Painted Cave MCA.

17. *Comment:* The FEIS should discuss the effectiveness of other agency management actions.

Response: NOAA's DEIS included a detailed discussion the relationship of NOAA's preferred action with other existing management regimes in the region (see, e.g., sections 2.2 and 3.1.2.1). The effectiveness of these regulatory regimes in achieving NOAA's goals for this action is also discussed. These sections are included in the FEIS.

18. *Comment:* The Channel Islands National Marine Sanctuary (CINMS) Advisory Council (SAC) should be reformed to better address fisheries issues. Specifically, the SAC lacks any members with expertise in fisheries economics, anthropology, geography, etc.

Response: The SAC has representatives from the CDFG and NOAA Fisheries. Representatives from these two entities, in addition to the representatives from commercial and recreational fishing interests and their associated community-based fishing working groups, provide NOAA with significant insight into fisheries issues. In addition, NOAA Fisheries and the CDFG representatives also serve as a conduit to the PFMC and FGC, respectively, which brings NOAA additional perspective on fisheries issues. Moreover, the vast majority of issues faced by the CINMS and its SAC are not related to fisheries and, therefore, require a broad and diverse SAC membership.

19. *Comment:* The "effective date" provision in the proposed regulation is unclear, burdensome, and inconsistent with the model language previously presented to the PFMC by NOAA for inclusion under the NMSA 304(a)(5) process, and therefore should not be used.

Response: The effective date clause has been omitted from the final rule.

20. *Comment:* Do not remove the Marine Reserve Working Group's (MRWG) sustainable fisheries goal of integrating marine reserves with existing fisheries management.

Response: The goals for NOAA's action are based on the NMSA. NOAA's goals for this action do attempt to address the goals put forward by the MRWG where appropriate.

21. *Comment:* The CINMS should be an "experimental station" for holistic management.

Response: NOAA manages the National Marine Sanctuary System on the principles of ecosystem-based management. This "holistic" approach attempts to incorporate all functions of the marine environment into the decision-making process at all sanctuaries, including the CINMS.

22. *Comment:* NOAA should expand its assessment of the action's economic impacts to better account for non-monetary benefits.

Response: NOAA believes the analysis of the passive (non-use) value of the marine zones is sufficient to inform its decision making on this action (see Section 5.2.6 of the FEIS for an evaluation of the passive values associated with NOAA's action).

23. *Comment:* Marine reserves are superior to marine conservation areas in meeting NOAA's purpose and need and are more consistent with the MRWG's recommendations.

Response: See section 3.1.2.2 of the FEIS for a discussion of the differences between marine reserves and marine conservation areas.

24. *Comment:* Many commenters state NOAA should implement the offshore waters of the CINMS marine zone network as the final phase of the CINMS marine reserves process that began in 1999.

Response: See section 2.0 of the FEIS for a description of the purpose of this action, which identifies complementing the existing state network as one of the goals.

25. *Comment:* NOAA should consider fishing as an important cultural resource and protect it as such.

Response: NOAA has carefully evaluated the impacts of the action on fishing communities and has determined the impacts to be minimal. See section 5.2 of the FEIS.

26. *Comment:* Commenter is concerned about the impacts of bottom trawl and long line fishing, bycatch, harvest of bait fish, pesticides and pollution in the ocean, and impacts to kelp and coastal ecosystems.

Response: Marine zones provide reference sites in which to gauge the impacts of many of the commenters' concerns relative to fished areas.

27. *Comment:* Commenter recommends increasing the number of regional field game wardens and their wages, increasing fines, and making sure catch limits are enforced.

Response: NOAA recognizes the critical role enforcement officials play in management of the marine zoning network. This recommendation, however, is outside the scope of NOAA's immediate action.

28. *Comment:* NMSA fishing regulations and designation document amendments for the CINMS marine zones should automatically expire ("sunset") at the time MSA regulations are promulgated.

Response: NOAA has determined that provision a sunset date is not appropriate because it would not provide NOAA with the flexibility to adaptively manage and respond to unforeseen circumstances.

29. *Comment:* The proposed closures don't greatly affect commercial fishermen, but the previous closures have been devastating.

Response: NOAA's analysis takes existing fishery closures into account and acknowledges their socioeconomic and biological impacts. For this particular CINMS action, NOAA's analysis has determined that the socioeconomic impacts of new closures in the federal waters of the network will be minimal (see section 5.2 of the FEIS for more details).

30. *Comment:* If sea urchin fishermen were offered money for their urchin permits, they might move on to a different career, but they can't transfer or sell their permits.

Response: The issue of permit transferability is beyond the scope of this action and would be handled by the CDFG and FGC, who both issue and manage these types of permits.

31. *Comment:* Pollution has a huge impact on water conditions and the resources in southern California.

Response: Marine resources in the Southern California Bight, such as kelp forest ecosystems, have declined under pressure from a variety of factors, including commercial and recreational fishing, changes in oceanographic conditions associated with El Niño and other large-scale oceanographic cycles, introduction of disease, and increased levels of pollutants. Marine reserves offer scientists and resource managers a controlled opportunity to study the influence of change (e.g., pollution) on marine ecosystems in the absence of direct human disturbance (e.g., fishing pressure).

32. *Comment:* The regional seal population negatively impacts the regional halibut population.

Response: The management of seals and halibut as individual species falls under the purview of NOAA Fisheries and the PFMC and is outside the scope of this rule.

33. *Comment:* The DEIS was not distributed to the United Anglers of Southern California.

Response: NOAA records indicate the President of United Anglers of Southern California was sent a copy of the DEIS on Aug. 11, 2006, and was notified electronically via e-mail of the availability of the document on the

CINMS Web site or by requesting a copy from the CINMS.

34. *Comment:* NOAA's aerial monitoring program data does not account for existing regulations (such as the Rockfish Conservation Area) displacing fishing vessels. NOAA has, therefore, erroneously concluded that there is little fishing activity in the proposed zones.

Response: NOAA's aerial monitoring program, which has been collecting data since prior to the establishment of the Rockfish Conservation Area, confirms that there is little fishing activity in the geographic area associated with NOAA's action. See section 5.2.6.4 of the FEIS for NOAA's analysis of this issue.

35. *Comment:* There are too many marine reserves and not enough marine conservation areas in NOAA's proposed action.

Response: Marine conservation areas will not achieve the purpose and goals of the action as well as marine reserves. However, NOAA has decided to establish one marine conservation area off of Anacapa Island to ensure consistency with the State of California's marine zone network, which also established a marine conservation area in that location. See sections 3.1.2.2 and 5.1.1.1 of the FEIS for more discussion on the ecological value of marine reserves compared to marine conservation areas.

36. *Comment:* NOAA should implement marine parks where pelagic fishing is allowed, especially in the Footprint area.

Response: Allowing the take of pelagic species does not fully meet the goals of NOAA's action. See section 3.1.2.2 of the FEIS for a discussion on the impacts of limited take.

37. *Comment:* NOAA's action will negatively impact uses prioritized in the Local Coastal Plan, such as commercial fishing, tourism, and residential sectors, and therefore the commenter supports the no action alternative.

Response: NOAA supports healthy fisheries, economies, and harbors and believes the zoning network is likely to support Sanctuary-dependent and coastal dependent uses. The proposed marine zones are expected to promote visitation and may assist, over the long term, in the sustainability of local fisheries.

On March 16, 2007, the Coastal Commission held a public meeting on NOAA's proposal pursuant to its authorities under section 307 of the Coastal Zone Management Act (16 U.S.C. § 1456). At that meeting, the Coastal Commission issued a conditional concurrence for the consistency determination by NOAA on the grounds that, if modified as described in the Commission's conditional concurrence below, the project would be fully consistent, and thus consistent to the maximum extent practicable, with the policies of Chapter 3 of the Coastal Act. The conditional concurrence is: "In the event NOAA elects not to implement Alternative 1a, NOAA will implement Alternative 1c, with the following additional provisions: until such time as the Resources Agency and the Fish and Game Commission designate the areas in between the existing State-designated MPAs and the 3 mile limit (*i.e.*, the "gaps" between the existing state MPAs and the federal MPAs depicted in Alternative 1c), or the Fish and Game Commission/DFG and NOAA enter into an interagency agreement that establishes MPA protection for these "gap" areas, NOAA will expand Alternative 1c to include in its MPA designation these "gaps" between the outer boundaries of the existing state MPAs and the State-federal waters boundary (3nm from shore)." NOAA is, therefore, leaving the record open with regard to a decision to establish marine zones in state waters of the Sanctuary, and is requesting additional public comment on this specific issue.

38. *Comment:* NOAA should not reject the zone options put forward by local fishermen.

Response: NOAA conducted a preliminary analysis on all of the fishermen options and determined that they did not adequately or completely protect a full range of habitats and populations in the Sanctuary and thus do not satisfy the purpose and goals of NOAA's action. For more, see section 3.2.5 of the FEIS.

39. *Comment:* Incorporate into the FEIS all of the PFMC Science and Statistical Committee's (SSC) critique of the CINMS marine zoning process and Sanctuary documentation.

Response: The input from the SSC has been addressed in NOAA's analysis in the FEIS. The SSC's input can be found at *http://pcouncil.org/*

40. *Comment:* Include a verbatim copy of the original designation document in the FEIS and proposed rule so the public can compare the proposed amendments.

Response: The original designation document, in its entirety, and the amendments being made by this action are included in this preamble to the final rule.

41. *Comment:* NOAA's environmental review process is not a robust stake-holder process like the PFMC process, because CDFG and the PFMC are not represented.

Response: The CDFG, PFMC, and NOAA Fisheries have been integral partners in the process to date. CDFG and NOAA Fisheries, which both have membership on the PFMC, also hold seats on the CINMS SAC.

42. *Comment:* Include discussions and consultations with the State of California, other agencies within NOAA, and the other agencies within the government in the public record.

Response: All official correspondence related to this action and all comment letters NOAA has received on this action are available on the CINMS Web site at *http://www.cinms.nos.noaa.gov/marineres/main.html.*

43. *Comment:* Include in the FEIS the journal article written by NOAA employee Mark Helvey that critiques the community-based phase of the CINMS marine zoning project.

Response: NOAA has determined this article is not integral to the decision making process for this action and should not, therefore, be included in the FEIS.

44. *Comment:* Recreational fishermen have a relatively minimal impact on the resources and should not be excluded from the CINMS marine zones.

Response: NOAA has determined that any take of marine resources within the marine reserves would compromise the goals for this action. Limited take is allowed in the Anacapa Marine Conservation areas Area in order to be consistent with the State's action, which in turn determined that the overall benefits of limited take status in the marine conservation areas (areas off Anacapa Island and Santa Cruz Island, the latter area totally in state waters) might be studied in comparison to the overall benefits of no-take status in marine reserves. Fishing is allowed throughout the rest of the Sanctuary, subject to other existing federal and state restrictions where applicable.

45. *Comment:* Restrict sea lion populations in the CINMS region because they may be contributing to the demise of fishing.

Response: Sea lions are protected under the Marine Mammal Protection Act, which is administered by NOAA Fisheries.

46. *Comment:* The decline in many species, like abalone, is due to natural cycles and the reintroduction of sea otters, not over-fishing or excessive take by sport divers.

Response: Abalone decline has been linked to a combination of human and natural caused influences. For more see Karpov *et al.* 2000 and Moore *et al.* 2002. Karpov, K. A., P. L. Haaker, I. K. Taniguchi, and L. Rogers-Bennett. 2000. Serial depletion and the collapse of the

California abalone (/Haliotis/ spp.) fishery. /In/ Workshop on rebuilding abalone stocks in British Columbia, A. Campbell, ed. Can. Spec. Publ. Fish. Aquat. Sci. 130: 11–24. Moore, J.D., C. A. Finley, T. T. Robbins, and C. S. Friedman. 2002. Withering syndrome and restoration of southern California abalone populations. CalCOFI Report. 43: 112–117.

47. *Comment:* The Gull Island and Footprint closures will greatly affect harpoon sword fishermen, who have limited access to these two areas due to weather, fishing seasons, and migration patterns of the fish.

Response: While any impact may seem significant for those who experience it, NOAA's economic analysis has determined that the socioeconomic impact to fisheries from NOAA's action will be minimal.

48. *Comment:* How will enforcement work with a harpooned fish that swims into a closed area?

Response: Each situation is evaluated on a case by case basis to determine whether an enforcement response is warranted, and if so, the appropriate course of action.

49. *Comment:* Commenter acknowledges the usefulness of creating an MPA for scientific study purposes, but believes there is no urgent need to do so in CINMS.

Response: For more on the need for this action, see section 2.0 of the FEIS.

50. The Pacific Fishery Management Council process is a fair, public and scientifically based process to deal with conservation and/or fishery management questions.

Response: NOAA recognizes and supports the PFMC's role in addressing fishery management issues.

51. *Comment:* The proposed closures will affect the supply of seafood locally and nationally.

Response: On page 25 of Leeworthy, Wiley, and Stone (2005), the potential impacts on supply and prices of various seafoods are assessed for potential losses as measured by consumer surplus (i.e., losses to consumers from restrictions in supply of commercial seafood). Per this analysis, none of the alternatives considered would change the amount of supply enough to have any effects on prices and thus, no loss in consumer surplus. Leeworthy, Vernon R., Peter C. Wiley and Edward A. Stone, 2005. Socioeconomic Impact Analysis of Marine Reserves for the Channel Islands National Marine Sanctuary. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, Special Projects, Silver Spring, Maryland, May 2005.

52. *Comment:* If an area is closed to commercial fishing it should also be closed to recreational fishing because recreational fishing has an impact on the resource too.

Response: All fishing (both commercial and recreational) in the marine reserves is prohibited. See Response 44 for information about the Anacapa Marine Conservation Area.

53. *Comment:* The simultaneous rule changes to both the CINMS management plan and designation document indicate that the NMSP intended to create the marine zones well in advance of it having the authority to do so, indicating the process has been designed simply to justify the preconceived conclusion.

Response: This action and the CINMS management plan review process are distinct processes with separate and distinct rules and amendments to the CINMS designation document. With regard to the designation document changes and regulations for this action, NOAA has followed the processes to prepare NMSA regulations for fishing (and other activities) and to amend the CINMS designation document in compliance with the requirements of the NMSA. A history of the NMSA process for preparing fishing regulations and amending the Sanctuary's designation document for this action can be found on the CINMS Web site at *http://channelislands.noaa.gov/marineres/main.html.*

54. *Comment:* NOAA fails to provide scientific support for the need to impose the severe restrictions on recreational fishing.

Response: The need for NOAA's action is detailed in general in section 2.0 and specifically as it pertains to recreational fishing in section 5.1.1.1 of the FEIS.

55. *Comment:* NOAA fails to adequately address the proposals of the Pacific Fishery Management Council with regard to management under the Magnuson-Stevens Act.

Response: The PFMC's proposal that was submitted through formal consultation did not fulfill the purpose and goals of this action (see, for example, section 3.1.2.1 of the FEIS for more details on this process). See also, for example, the responses to #4 and #17 above.

56. *Comment:* NOAA fails to consider the economic impacts on recreational fishing beyond the charter sector.

Response: In addition to the charter sector, NOAA's economic impact analysis on recreational fishing included evaluation of impacts to private boat fishing and consumptive diving (see section 5.2.3 of the FEIS).

57. *Comment:* The DEIS justifies a preconceived outcome, rather than providing the analysis of a full range of options as required by the National Environmental Policy Act.

Response: The range of alternatives and analysis of them is sufficient under the requirements of NEPA (see section 3.1 of the FEIS).

58. *Comment:* NOAA fails to properly follow the requirements of the NMSA in preparing regulations for fishing and modifying the CINMS terms of designation.

Response: NOAA has followed the processes to prepare NMSA regulations for fishing and to amend the CINMS designation document in compliance with the requirements of the NMSA. A history of the NMSA process for preparing fishing regulations and amending the Sanctuary's designation document for this action can be found on the CINMS Web site at *http://channelislands.noaa.gov/marineres/main.html.* See also, for example, memorandum for the record from Daniel J. Basta, Director, National Marine Sanctuary Program, re: Reiteration of Rational for the Decision to Issue Fishing Regulations for the Channel Islands National Marine Sanctuary under the National Marine Sanctuaries Act.

59. *Comment:* Acknowledge in the FEIS and final rule that fishing regulations are being developed by the PFMC that relate to this action.

Response: See section 3.1.2.1 of the FEIS for a description of the correlation between the PFMC's actions and this action. See also the response to #17 above.

60. *Comment:* Does quantifying the difference between the biological benefits of marine reserves versus the biological benefits of limited take marine conservation areas advance the process of evaluating the cost benefit analysis of the project under the NEPA?

Response: NOAA has determined that marine reserves provide greater biological benefit than marine conservation areas. In addition, prohibition of all take is necessary to achieve the goals for this action. (See Response 44 regarding the one marine conservation area.) With regard to economic evaluation, NOAA's analysis has determined that the potential impacts are expected to be minimal.

61. *Comment:* Ecological response in areas that are not currently fished or lightly fished will likely be less than that response predicted for protection of more heavily fished areas in state reserves.

Response: Final outcomes of the marine zones will be subject to a variety

of ecological and economic responses that are challenging to predict. As discussed, NOAA will monitor the impact of the reserves to determine the actual responses.

62. *Comment:* Conduct an analysis of alternatives for the scale of no-take reserves that could mitigate mandatory stock rebuilding timelines and examine alternatives to the size of CINMS reserves that would mitigate the size of the California Rockfish Conservation zone in the Sanctuary as an explicit trade off in stock rebuilding tactics.

Response: As stated in the FEIS, the purpose of NOAA's proposed action is to further the protection of CINMS biodiversity and to complement the existing network of marine zones established by the State. This action is not being proposed as a stock rebuilding measure.

The scale of marine zones in the Sanctuary is expected to primarily affect local populations of fish, rather than stocks that range along the entire west coast. Marine reserves that incorporate locations where overfished groundfish can be found may protect a portion of the population from fishing mortality as well as protect habitats from disturbance by fishing and other gear.

NOAA's action also addresses ecological goals that do not relate to fisheries management. The NOAA Fisheries and State groundfish closures are directed at rebuilding specific species of groundfish, not at a wide range of other species. In addition, the groundfish closures are based on annual assessments and could be removed if assessments improve.

63. *Comment:* Assess stock rebuilding goals and an adaptive management approach to the MPAs in the event of an oceanographic regime change that results in more stable recruitment of depleted fisheries.

Response: One of the benefits of complete no-take zones is that they provide research and reference areas. Monitoring of the CINMS zones is expected to provide information on a wide variety of ecosystem parameters (including oceanographic effects) and the effectiveness of closing these areas on Sanctuary biodiversity and habitat protection. In addition, as stated above, this action is to further the protection of biodiversity of the CINMS and to complement the existing network of marine zones established by the State and is not being proposed as a stock rebuilding measure. Any changes to groundfish conservation measures would require action by the implementing authorities, the PFMC and NOAA Fisheries.

64. *Comment:* Consider habitats that are important to overfished groundfish, including shelf and slope habitats outside the CINMS boundary as a trade off in relaxing regulations in the Cow Cod Conservation zone.

Response: NOAA's action was developed through analysis of network design based on ecological criteria within the boundaries of the CINMS. Further, NOAA's action is to further the protection of biodiversity and to complement the existing network of marine zones established by the State and is not being done as a stock rebuilding measure for an individual species of fish. Any changes to the Cow Cod Conservation zone would require action by the implementing authorities, the Pacific Fishery Management Council and NOAA Fisheries.

65. *Comment:* NOAA should not take on any more administrative capacity until it develops performance criteria for synthesizing and managing marine reserves monitoring data.

Response: CDFG and NOAA have a State/Federal partnership to monitor the biological and socioeconomic changes occurring inside and outside of the CINMS marine zoning network. NOAA works with a multitude of partners, such as the National Park Service and UCSB, to analyze data from a variety of research projects. The Sanctuary Advisory Council's Research Activities Panel (RAP) reviews research priorities and activities related to the marine zones and assists NOAA and the CDFG with determining the effectiveness of the zoning network. Performance criteria are included in the monitoring plans (see *http://www.dfg.ca.gov/mrd/channel_islands/monitoring.html*).

66. *Comment:* The Species of Interest list in the DEIS states that species at the edge of their range are excluded from the list. However, eight species on the list, including Pacific ocean perch, dark blotch rockfish, widow rockfish, black rockfish, canary rockfish, yelloweye rockfish, Pacific cod and Pacific herring, have never been caught at the Channel Islands.

Response: The CINMS occurs at a biogeographic boundary between the colder water Oregonian province to the north and the warmer water Californian province to the south. The western portion of the Sanctuary typically lies in the colder waters of the Oregonian Province. San Miguel Island, with its influence of Oregonian province waters, may offer suitable habitat for species that are more common in central and northern California. For instance, yelloweye rockfish and widow rockfish, which are common between Alaska and northern California, have been documented to occasionally occur at San Miguel Island (Love *et al.* 2002).

67. *Comment:* A discrepancy exists between the fishing regulations reported in Appendix F of the DEIS and the notes regarding the status of fishing for certain species in Appendix G. For example, Appendix G lists pink, red and white abalone as fished species, while Appendix F states that abalone may not be taken.

Response: Footnote 1 in Appendix G intends to identify species that have either been historically fished and/or currently fished in the CINMS. The language has been clarified to highlight that species denoted with the footnote could indicate either a historical or current fishery.

68. *Comment:* The Sanctuary is only providing 1.7 square miles for pelagic fishing, while prohibiting fishing in approximately 130 square miles.

Response: Under NOAA's action, pelagic fishing would continue to be allowed in 81% of the Sanctuary (over 800 square nmi), subject to existing state and federal fishery regulations.

69. *Comment:* When reserves network experiments are designed to sustain fisheries, the monitoring programs must be designed to measure the species they are designed to manage. The commenter provides several specific recommendations for such a monitoring program.

Response: Although NOAA's action is not being implemented to sustain fisheries, the zone monitoring program for the CINMS network is guided by the CDFG's Channel Islands Marine Protected Area Monitoring Plan and the Channel Islands Deep Water Monitoring Plan Development Workshop Report. The monitoring programs involve a variety of partners collecting data on species, communities and habitats that occur in the Sanctuary. Performance of the zone network will be based on analysis of trends in biological parameters, such as abundance, mean size and reproductive potential of various species. Performance may be determined by either examining biological parameters at an individual site before and after the designation of the zone or comparing biological parameters at sites inside and outside of the zones.

A multitude of partners work with NOAA and CDFG conducting monitoring activities and collecting information on a variety of species and habitats. The data collected on a comprehensive suite of species inhabiting the Sanctuary allows for an assessment of zone effectiveness on both targeted and non-targeted species as well as community-level changes as a

result of prohibited activities. NOAA and the CDFG plan a major review of the monitoring program's results in spring of 2008. For more information on the monitoring program, go to *http://www.dfg.ca.gov/mrd/channel_islands/monitoring.html.*

70. *Comment:* There is no scientific validity of identifying the transition zone as a unique region between the Californian and Oregonian bioregions and therefore the recommendations on the number and spacing of individual zones and total size of the preferred alternative is flawed.

Response: The transition zone was identified as a unique region by the Science Advisory Panel during the MRWG process. The zone is delineated by steep persistent isotherms from satellite sea surface temperature images. It is a region with its own dynamics relative to the Oregonian and Californian subregions within CINMS. Unique species interactions occur in the transition zone because of mixing of two groups of species from the adjoining bioregions.

Marine reserves in the transition zone provide several ecological benefits. First, they may function as replicate sites that provide insurance that a single catastrophic event would most likely not impact all zones at the same time. Second, establishment of marine reserves in the transition zone enhances three of the criteria that contribute to biodiversity conservation: habitat representation, habitat replication, and connectivity between individual reserves that contribute to meeting the action goals (as discussed in Section 3.3 of the FEIS). Finally, protection of habitats and species in the transition zone is also valuable to scientists because it allows them to utilize the unique species' interactions to study marine evolution and ecology.

71. *Comment:* The DEIS describes Sanctuary resources as in decline, which is flawed and inaccurate.

Response: Section 4 of the FEIS, Affected Environment, has been updated vis-á-vis the DEIS to include a discussion of the current status and trends of those species that were historically in decline and are now showing some signs of recovery. For example, giant kelp distribution and productivity in California has increased since the 1998 El Niño event, potentially as a result of a decadal shift in climatic conditions, although not to historical levels preceding the 1980s. However, a general declining trend in the density and abundance of kelp canopy over the past 40 years has been documented in the scientific literature, particularly in southern California. The decline has been attributed to a variety of both natural and human caused disturbances. Natural disturbances include a corresponding warming trend in sea surface temperatures and the frequency of severe El Niño events. Human caused disturbances include increased turbidity, siltation, pollution and commercial and recreational fishing activities that remove animals such as California sheephead and California spiny lobster that affect species grazing on kelp.

Over the past few years, oceanographic conditions have been characterized by relatively cool summer sea temperatures and winters with relatively few large swell events. Such conditions are generally favorable for kelp resulting in stronger recruitment and an increase in canopy area of some beds in southern California. It is unknown if the increase in kelp productivity over the last few years will be sustained given the inherent inter-annual variability of the oceanographic environment. Furthermore, the effect of oceanographic conditions on kelp productivity is not uniform across all kelp beds. Certain beds in the Sanctuary that historically had an abundance of kelp remain mostly devoid of kelp and are dominated by echinoderms when studied during summer 2006. In these locations, kelp did not respond to a change in oceanographic conditions, indicating that other factors drive productivity.

Some marine mammal populations, such as gray whales and humpback whales, appear to have increased due to additional protection under the Marine Mammal Protection Act. Also refer to section 2.2 of the FEIS, Need for Action, for further details on the need for this action.

72. *Comment:* Many highly migratory and epipelagic species that traverse through the Sanctuary receive no benefit from site specific MPAs.

Response: Highly migratory and pelagic species may receive benefits from marine reserves even if they spend more time outside than inside marine reserves. Highly migratory and pelagic species fulfill an ecosystem role within marine reserves as predators on and forage for other species. Such species may benefit from fully protected zones if their prey is concentrated in a given area or if the zones include breeding, aggregating or resting grounds. Scientific research suggests that pelagic species gather in certain spots (usually banks or ridges), particularly during critical life cycle stages. Establishment of marine reserves in these areas is crucial, as the number and size of pelagic animals in the food web dictates what other organisms thrive or decline. In other words, direct pressure on pelagic species causes indirect pressure on other species present in the ecosystem.

73. *Comment:* The DEIS has not addressed the ecosystem benefits of existing fishery management to achieve the Sanctuary's biodiversity goals.

Response: Section 2.2 (Need for Action) of the DEIS and FEIS generally discusses the ecosystem impacts of existing fishery management measures, while section 5.1 addresses this issue in more detail.

74. *Comment:* Deepwater sponges and corals should be included as species of interest.

Response: NOAA recognizes that there are other important species, such as deepwater sponges and corals, that are not included in the Species of Interest list. This section of the DEIS was written in 2000, preceding the discovery of these deepwater species sponges and corals. As such, there remains the possibility of other species and communities yet to be discovered.

75. *Comment:* NOAA should use the best available substrate information to update Figure 11.

Response: NOAA has updated the substrate information using United States Geological Survey (USGS) high resolution data to refine description of each individual marine zone where data is available. The USGS data could not be used to re-analyze the percentage of each habitat type included in each alternative because it is not available for the entire Sanctuary. Currently, 20% of the Sanctuary has been mapped with high resolution technology.

76. *Comment:* There is a lack of information on marine zone benefits in temperate waters. Based on data from tropical reef ecosystems, marine reserves may only benefit a small group of west coast nearshore resident species.

Response: Over the last five years, many peer-reviewed research articles have highlighted the effects of marine reserves on temperate marine ecosystems. A meta-analysis of temperate water marine reserves shows that many species tend to benefit from the establishment of marine reserves as measured by biomass, density and size of individuals as well as diversity of communities within their bounds. See Section 5.1.1 of the FEIS for a discussion of marine reserve benefits in temperate marine ecosystems.

77. *Comment:* The FEIS should address the benefits of the proposed marine reserves to southern sea otter recovery.

Response: There are no formal studies on the benefits of marine reserves to

southern sea otter recovery. Sea otter sightings in the zones are rare at this time. However, marine reserves are generally expected to increase the biomass of apex species within their bounds and could potentially benefit sea otters by increasing the populations of their prey, such as abalone, urchins, clams, and crabs.

78. *Comment:* Provide a detailed discussion of habitat patch replication for Alternative 1A.

Response: A discussion on habitat patch replication of Alternative 1 has been added to Section 3.3 in the FEIS.

79. *Comment:* Provide an analysis and discussion that describes the actual distances between protected habitats within an MPA for each alternative rather than the average distance.

Response: A discussion on connectivity has been added to Section 3.3, specifically, by providing a figure and discussion on the distances between individual marine zones for each alternative.

80. *Comment:* Provide more detailed information on the number and distances between patches of rocky substrate included in the MPA network.

Response: The discussion on connectivity has been updated to include distances between patches of rocky substrate.

81. *Comment:* Include Alternative 2 in the analysis of management considerations and in the table summarizing the alternatives' management considerations.

Response: As stated in the DEIS, the same management considerations for Alternative 1A apply to Alternative 2. A column has been added to Table 52 of the FEIS.

82. *Comment:* In Section 5.1 of the DEIS, NOAA claims adverse ecological impacts are "unlikely." If adverse ecological impacts are defined as declines in abundance, then this term should be redefined.

Response: NOAA considers "adverse impacts" as those impacts that are counter to the goals identified for this action, such as ensuring the long-term protection of Sanctuary resources by restoring and enhancing the abundance, density, population age structure, and diversity of the natural biological communities. NOAA recognizes that declines in abundance of certain species are an expected outcome of zone designation, but does not consider this in all cases to be an adverse ecological impact. For example, certain commercially targeted species may increase in abundance (e.g., spiny lobsters) due to reduced fishing pressure while their prey items decrease (e.g., purple urchin) because of an increase in lobster predation.

83. *Comment:* Language in Section 5.1 indicates that relatively little fishing activity occurs in the proposed marine zones. The statement does not account for the fact that other regulations currently restrict fishing in these areas. The discussion should clarify this point by adding "currently" before "relatively little activity."

Response: This recommendation has been added to the FEIS.

84. *Comment:* Provide references for assertions regarding the ecological impacts of the no-action alternative made in section 5.1.2 of the DEIS.

Response: Section 5.1.2 provides references regarding current and future anthropogenic stresses on California's coastal environment.

85. *Comment:* Add a reference for the recommended distances between marine zones.

Response: References for recommended distances between marine zones have been added.

86. *Comment:* The statement in the DEIS (section 5.1.6) that the spot prawn trawling prohibition is a response to declining catch and bycatch of bocaccio is incomplete and needs clarification. The trawl closure for spot prawns was implemented primarily due to concerns of potential damage to high relief habitat from roller gear and from overall levels of bycatch, particularly finfishes, relative to spot prawn catch.

Response: As the commenter states, the trawl closure for spot prawns was implemented primarily due to concerns of potential damage to high relief habitat from roller gear and from overall levels of bycatch, particularly finfishes, relative to spot prawn catch. The FEIS has been revised accordingly (see page 102 of the FEIS).

87. *Comment:* It is illogical to include potential impacts from the existing Channel Islands state marine zones as this impact should have already occurred.

Response: Under NEPA guidelines NOAA is required to consider cumulative impacts which include the impacts of the state MPAs in the analysis. Please see Table 25 of the FEIS, (Commercial Fishing and Kelp—Summary of Impacts by Alternative Step 1 Analysis), which clearly distinguishes the cumulative impact of the "Total New Proposal."

88. *Comment:* The kelp fishery should not be included in the analysis, since no kelp beds occur in the proposed MPAs.

Response: NOAA agrees there is no impact to kelp harvesting in the federal water marine zones (see Table 26 of the FEIS, which indicates the ex-vessel value of kelp at 0% in the additional state and federal water areas). However, under its NEPA guidelines (NOAA Administrative Order 216–6), NOAA is required to consider cumulative impacts, which include the impacts to kelp harvesting in the existing state marine zones (Table 26 indicates the ex-vessel value for these areas is 5.48%).

89. *Comment:* Table 26 and Table 31 are confusing because the column headers say "value" but what the tables depict is actually "impact" to the fisheries. It would help to add another column just before the last one that lists the total value of each fishery.

Response: Ex vessel value is what the fishermen receive as revenue for their catch and only represents one category or portion of the total impact, i.e., the impact to fishermen. Other categories include income, employment, etc. To use the word "impact" in the table would be misleading, because the tables contain "maximum potential loss", i.e., all ex vessel value associated with the alternative, which is not expected as the final impact, as one would expect fishers to engage in mitigating behavior. The total value of each fishery is provided in Table 18 of the FEIS.

90. *Comment:* If $24,233,406 is used as the total value of all fisheries (Table 24, Column 2), and $3,012,974 is the total potential impact (Table 26 bottom of next to last column), then the percent total impact should be 12.43, and not 12.50 as listed at the bottom of the last column in Table 26. For Table 31, a similar problem occurs.

Response: The commenter's calculations are incorrect because they used the total baseline kelp and commercial fishing as the numerator, not the total of species for which the analysts have spatial data.

91. *Comment:* In 2003 to 2005, the landings for the port of Santa Barbara for the nearshore, shelf, and slope rockfish fisheries should not be considered as having "steep" declines. Shelf rockfish landings actually increased during this period.

Response: The commenter's estimate of what is sustainable for rockfish, and therefore the baseline for assessing socioeconomic impact, is still most likely an overstatement given the generally strong downward trend of the entire species group.

92. *Comment:* There isn't much fishing pressure in the proposed reserve areas, thus the economic impact of reserve establishment will be minimal.

Response: NOAA's analysis shows that the fishing activity in the marine zones is indeed minimal.

93. *Comment:* Further closures, particularly in the Smugglers' Cove/

Yellow Banks area, would result in economic harm to the sportfishing industry.

Response: There are no marine zones proposed for the Smugglers' Cove/Yellow Banks area. Furthermore, the economic analysis associated with this action predicts the overall impacts to the sportfishing industry will be minimal. See section 5.2.3 of the FEIS.

94. *Comment:* The data used in NOAA's economic analysis are dated and there are additional sources now available that should be used to update the document.

Response: The estimates from Leeworthy, Wiley, and Stone (2005) are based on the best available information. Adding one or two years of recent data does not necessarily provide a better estimate. In statistics, this would be recognized as an "outlier" influencing the estimate of the mean.

More recent trends show that for some species the 2000–2003 averages are better measures of what could be sustainable than the 1996–1999 average used in prior analyses. Economic impacts were updated based on these new assessments of what is sustainable and can be found in Leeworthy, Wiley, and Stone (2005).

Although some of the information is several years old, it is the only spatially distributed data available. The distributions represent a historical average of areas fished over four to five year time periods and were provided by fishermen. For a more detailed socioeconomic impact analysis, see Leeworthy, Wiley, and Stone (2005).

95. *Comment:* The socioeconomic analysis underestimates the impacts of the preferred alternative to commercial fishing.

Response: It can be expected that there will be short-term losses to the commercial fisheries from Alternative 1. However, overall the impacts are small and the net cost or benefits to commercial fisheries are likely to be negligible. See also response #29 above.

96. *Comment:* Please clarify how the "Baseline person days of recreation activity" were determined and re-evaluate these statistics. Discrepancies between the ratio of private and charter boat dives, and consumptive vs. non-consumptive divers seem inaccurate. Commenter questions whether trips in Santa Barbara are less expensive than in Los Angeles.

Response: Baseline person-days of recreation activity were determined by a survey of all charter and party boat operations active in the CINMS. Private boat fishing and consumptive diving data were compiled from a variety of sources (see Leeworthy, Wiley and Stone, 2005, Appendix B).

The data does not show discrepancies or relative price differences among geographic areas.

97. *Comment:* Clarify the meaning of "employment" in private boat diving.

Response: Employment related to private boat fishing and diving occurs through the expenditures paid by those engaged in the activity. This includes fuel, food, beverages, lodging, transportation, launch fees, etc. For each industry, there is an assumed ratio of sales and employment. Additionally, there is a multiplier effect, which accounts for additional employment of businesses supplying these businesses. For a complete explanation, see Leeworthy, Wiley, and Stone (2005).

98. *Comment:* The kayaking statistics seem inaccurate. Commenter claims that last year, for example, there were 7,000 kayaking days at Scorpion Anchorage, Santa Cruz Island.

Response: The kayaking statistics only include that activity associated with charter/party operations. The analysis does not include non-consumptive activity undertaken with private household boats. No institution estimates this activity. A project currently underway in the Socioeconomic Research & Monitoring Program for the CINMS is tracking the amount of this activity.

99. *Comment:* Make the tables easier to understand, and if appropriate presented as figures instead. If the numbers are estimates, add confidence intervals. If differences are significant, that should be noted with the level of significance. Clarify the time period and area in which the data was gathered.

Response: Figures would not provide the level of detail required to provide all of the necessary information. None of the estimates were derived through a stochastic process and therefore confidence intervals are not calculable. The time period is stated clearly in the text.

100. *Comment:* Commenter states that the negative perception toward Channel Islands MPAs by recreational fishermen has resulted in diminished recreational fishing effort and, consequently, lower revenues for businesses that serve recreational fishing interests in Santa Barbara and Ventura Counties.

Response: Scientifically credible and verifiable data regarding the statements made was not provided by the commenter and NOAA is not aware of any such data.

101. *Comment:* Add an expenditure that represents guiding fees for kayaking, e.g., a day kayaking trip is approximately $180.00 (including boat fee).

Response: Kayaking fees are included in the analysis. See page 31 of Leeworthy, Wiley, and Stone (2005) for all recreation expenditure information.

102. *Comment:* Add data from the National Economics Project, National Park Service, and Chris LaFranchi.

Response: The commenter did not provide NOAA with sufficient information to provide a response.

103. *Comment:* The impacts shown are partially an artifact of the proposed zoned areas being temporarily closed by fisheries management measures. Recommend noting that current EFH rules may change.

Response: In the Step 2 analysis in the FEIS, other regulations are discussed and how they might impact the estimates presented in the Step 1 analysis, which includes "maximum potential loss".

104. *Comment:* To protect the fisheries dependent infrastructure of Ventura Harbor, integrate into the NOAA action goals for sustainable fisheries, maintenance of long-term socioeconomic viability, and minimization of short-term socioeconomic loses to all uses and dependent parties.

Response: The goals for NOAA's action are guided by the NMSA and are clearly stated in section 2.0 of the FEIS as well as earlier in this preamble to the final rule.

105. *Comment:* Regulatory agencies should promote collaboration between competing interests to accomplish mutual fisheries goals.

Response: The SAC/MRWG process and State/Federal partnership and coordination with the PFMC have promoted collaboration between all interested parties. NOAA's goals for this action are not fisheries-specific.

106. *Comment:* Multiplier effects for the local community and the state economy must be factored into socioeconomic data for a fisheries management plan to be effective.

Response: NOAA's socioeconomic analysis includes indirect impacts to fisheries-related support services and businesses (multiplier effects). This methodology is detailed in Leeworthy, Wiley, and Stone (2005) on pages 13–16 for commercial fishing and 28–29 for the recreation industry. The analysis utilized multipliers created specifically for the commercial fishing industry. The multipliers were obtained from the Fishery Economic Assessment Model (FEAM). The FEAM was developed under contract to the PFMC, and is based on input-output models detailing inter-industry relationships. The FEAM

was designed for regional economic analysis and processing of the commercial fishery landings taking place within the county where the port is located.

107. *Comment:* Ex-Vessel value reported in Table 19 of the DEIS suggests that current regulations have effectively reduced the number of commercial fishing operators and show lower catch volumes. These trends translate into less fish harvested in the region. The percentage of vessels reporting catch from CINMS has declined from 79% in 2000 to an average of 47% in subsequent years.

Response: Table 19 shows a decline in vessels reporting catch from CINMS from 79 percent in 2000 down to 34 percent in 2002, followed by an increase between 2002 and 2003.

108. *Comment:* Commenter indicates there is a decrease of 86% in the cumulative ex-vessel value for the Ventura Harbor when comparing the study area totals for ex-vessel value by port in Table 17 (Commercial Fishing: Study Area Totals Ex Vessel Value by Port) to Table 27 (Commercial Fishing—Alternative 1 Study Area Totals, Ex Vessel Value by Port)

Response: The two tables are not showing the same estimate. Table 17 shows the study area total, while Table 27 shows the total in Alternative 1. The estimate in Table 17 did not "decrease" to the estimate in Table 27.

109. *Comment:* Ventura County has the highest economic dependency on activities in the CINMS, relative to all counties in the study area, as shown in Table 11 (Local/Regional Economic Dependence on CINMS Baseline Personal Income).

Response: While any impact may seem significant for those who experience it, the table also shows that the baseline personal income associated with all activities in CINMS for Ventura County is less than one quarter of one percent of personal income for the county.

110. *Comment:* Ensure that non-consumptive activities are sustainable in the CINMS by balancing and promoting collaboration between competing interests.

Response: NOAA believes that the CINMS Advisory Council provides an ideal forum for "competing" interests to discuss their respective issues regarding use of the Sanctuary and to provide input and advice on such matters to the CINMS superintendent.

111. *Comment:* Provide the sources of data for analysis of charter/party and private boating impacts.

Response: The source of the information is Leeworthy, Wiley, and Stone (2005) and is cited at the beginning of sections 4.3.1 and 5.2 of the FEIS. In Leeworthy, Wiley, and Stone (2005), Appendix C documents all data used in the assessment for the recreation industry. A cumulative analysis of impacts, including the state areas of closure, is provided.

112. *Comment:* The socioeconomic analysis fails to adequately address displacement and impacts on recreational access, ignores the cumulative impact of existing state and federal closures, and projects unverified supply benefits.

Response: In the Step 2 analysis in the FEIS, the potential short- and long-term impacts to a fisherman's ability to relocate fishing activity to areas outside marine zones is noted in qualitative terms using an ecological-economic model. It is not possible to estimate the net outcomes of how the ecological and economic processes will play out. For example, replenishment effects from the closed areas could offset the impacts of displacement or vice versa. The possibility of long-term losses to the recreational fishing industry by restricted access is acknowledged. Several ecological and socioeconomic monitoring efforts are underway, while others are planned. Monitoring will help determine what actual outcomes will occur, and the major stakeholders were involved in developing the priority monitoring items.

113. *Comment:* Please update Table 11 (Local/Regional Economic Dependence on CINMS: Baseline Personal Income) and Table 12 (Local/Regional Economic Dependence on CINMS—Baseline Employment) and the text explanations to reflect socioeconomic impacts to all direct and indirect incomes related to commercial and recreational fishing.

Response: The estimates in Tables 11 and 12 do reflect socioeconomic impacts to all direct, indirect, and induced incomes related to commercial and recreational fishing. This methodology is detailed in Leeworthy, Wiley and Stone (2005) on pages 13–16 for commercial fishing and 28–29 for the recreation industry.

114. *Comment:* Include Leeworthy, Wiley, and Stone (2005) as an appendix to the Final EIS.

Response: Leeworthy, Wiley, and Stone (2005) includes the sources of all the economic data used in determining the economic impacts. This report is available at *http://channelislands.noaa.gov/marineres/main.html.* As such, to avoid bulk, it was not added to the FEIS as an appendix.

115. *Comment:* The references and data that analyze the value and employment associated with "Total Consumptive Activities" (Table 1.3 and 1.4) ignore the additional value of businesses and services dedicated to supporting commercial and recreational fishing; recommend that the FEIS include the value of these businesses and support services in order to assess overall economic impact.

Response: The additional businesses and services dedicated to supporting commercial and recreational fishing are included in the estimates in Leeworthy, Wiley and Stone (2005) on Tables 1.3 and 1.4 through the multiplier process. This methodology is detailed on pages 13–16 for commercial fishing and 28–29 for the recreation industry.

116. *Comment:* The potential impact on ports and the potential economic costs of the percentage reductions in catch landings should be included.

Response: Throughout the analyses the percentage impacts on ex vessel value of the catch is presented. Ex vessel value of the catch is just pounds of catch times the price per pound and reflects both effects on supply and demand. There is no added value of listing percentage of pounds of catch separately.

117. *Comment:* The overall potential reductions in annual income and full and part time employment should include the values as percentages of the regional and local commercial fishing industries as well as the overall regional economy.

Response: The suggested percentages are in Table 25 of the FEIS.

118. *Comment:* Tables 27, 28, 29, 32, 33, and 34 (Commercial Fishing Impact) do not include the values of support services and businesses associated with commercial and recreational fishing.

Response: The impacts on ex value of the commercial fisheries are shown in Tables 27 and 32. The impacts on support services and businesses associated with commercial fisheries are included in Tables 33 and 34. Table 35 includes multiplier impacts for income and employment for recreational fishing as noted in footnotes 3 and 4 of Table 35.

119. *Comment:* Provide additional details on the socioeconomic, education, and outreach options that minimize or mitigate potential increased social costs and lawsuits, and increased costs of enforcement.

Response: The State of California and NOAA have developed ecological and socioeconomic monitoring plans to gauge the effects of the marine zones. In addition, the agencies have developed interpretive enforcement education

materials (e.g., brochures, signage) with affected stakeholders to better inform users of the marine zones. Effective communication of monitoring results through education and outreach and the application of interpretive enforcement tools may defray or avoid these social costs,

120. *Comment:* Partnering with the Sanctuary to manage the zoning network is very important.

Response: During the community phase and establishment of state marine zones, NOAA has relied on partners such as State of California, National Park Service, and U.S. Coast Guard, to implement the zone network. See the response to comment #2 for more information on this issue.

121. *Comment:* The CDFG supports Alternative 1C. It will work with FGC to fill any spatial gaps between the existing zones and the federal water zones.

Response: NOAA acknowledges the CDFG's position on the alternatives analyzed in the DEIS. See the response to comment #2 for more information on this issue.

122. *Comment:* The CDFG supports the proposed CINMS designation document amendments.

Response: NOAA acknowledges the CDFG's support for the proposed changes to the CINMS designation document.

123. *Comment:* NOAA's action may reduce conflicts between seabirds and fisheries, thus complementing NOAA's Office of Spill Prevention and Response seabird restoration efforts.

Response: Although this outcome is not a direct intent of this action, NOAA supports the Office of Spill Prevention and Response's seabird restoration efforts. Seabirds may become entangled or hooked on fishing gear and their feeding and breeding behaviors disrupted by fishing activity, such as fishing at night with bright lights.

124. *Comment:* Consultation with the State of California is required under Section 106 of the National Historic Preservation Act.

Response: NOAA has complied with all required consultations, including the National Historic Preservation Act.

125. *Comment:* A number of commenters expressed general support for marine reserves, marine conservation in general, and expanding the CINMS.

Response: NOAA acknowledges these comments.

126. *Comment:* The NOAA document should define short-term losses to both recreational and commercial fisheries, why losses will be short-term, and how the temporal nature of the impacts will be measured.

Response: As described in section 5.2.2.2 of the FEIS, short-term losses are defined as impacts over the next 1–5 years and long-term impacts are defined as 5–20 years. NOAA expects the projected maximum potential economic impacts to be primarily short-term because NOAA expects the affected community will be able to adapt to the new regulatory environment.

NOAA's socioeconomic monitoring plan calls for monitoring value of commercial fisheries catch (both inside and outside the CINMS and in state waters). Monitoring State-wide trends helps to separate out effects that have nothing to do with the CINMS marine reserves.

For the recreational fisheries, NOAA plans to monitor the following: (1) Spatial use patterns and intensity of use (total number of person-days of use); (2) charter/party boats using CDFG logbooks for Charter Passenger Fishing Vessels (CPFV); (3) private boats using the new California recreational fishing statistics data; (4) socioeconomic profiles of fishermen, including expenditure profiles; (5) net value or consumer's surplus; and (6) knowledge, attitudes and perceptions of management strategies and regulations.

For more information, see the Socioeconomic Monitoring Plan at *http://www.cinms.nos.noaa.gov/marineres/main.html.*

127. *Comment:* The expected socioeconomic impacts to the recreational and commercial fisheries and fishermen's income should be compared to that sector's total income by county and not to the total county income and regional data.

Response: The FEIS details how value of catch by each species/species group and the total across all species/species group are impacted as a percent of all commercial fishing catch from the CINMS. This is also done by port and the percentages present how the percent of the total ports value of catch is impacted by each alternative. See appendix tables in Leeworthy, Wiley and Stone (2005) for more information on the impacts by port and by county with the percents being the percents of the totals for each county.

For the recreation industry, greater detail is provided in Leeworthy, Wiley and Stone (2005) on the total impacts by county and percents of the total CINMS recreation impacted from the total CINMS recreation in the county.

128. *Comment:* As the focus of the action is Santa Barbara Channel, data relevant to this area, not the State as a whole, should be used. A statement is made that "almost 20 percent of those who use California's coastal areas for recreation are interstate or international visitors * * *" Does this figure also apply to the more geographically limited Channel Islands area? Another statement is made that as numbers of people increase (referring to coastal population growth), so do the number of CINMS users. Are there any data to support this statement? Does the increase in CINMS use parallel the rates of increase elsewhere?

Response: Recognizing there is a paucity of data specific to the CINMS or the specific local surrounding area of Santa Barbara, Ventura, and Los Angeles counties, NOAA used the best available data to estimate the amount of activity in the CINMS.

There were two sources of time series data for assessing trends: NOAA Fisheries' Marine Fishing Statistics Survey (MRFSS), which has now been replaced with the California Recreational Fishing Statistics Program, and the U.S. Fish and Wildlife Service's National Survey of Hunting, Fishing and Wildlife Associated Recreation. Both estimate use for Southern California. Leeworthy, Wiley, and Stone (2005) summarize trends from these two sources (page 27) and the trends from the two sources were not consistent. From 1993–1999, MRFSS shows a downward trend, while from 1991–1996 (survey is done every five years) it shows an upward trend. From 1999–2002, MRFSS shows an upward trend.

A 1997 California Resources Agency report estimated that for all coastal areas 20 percent of recreation is done by out of State visitors. A Santa Barbara County Conference & Visitors Bureau and Film Commission report included an estimate that 20 percent of the visitors to Santa Barbara County were foreign visitors. There are not any surveys of the visitors to the CINMS to know if the same would hold true for recreational users of the CINMS. The statement that "as coastal population grows, so will number of CINMS users" is an extrapolation from an assessment of national trends for ocean and coastal (marine) recreation from the National Survey on Recreation and the Environment (NSRE) 2000. Year 2000 data were analyzed for demographic factors related to participation in marine recreation activities and equations used to forecast future participation for years 2005 and 2010. Generally, national participation rates (the percent of the U.S. population doing an activity) are projected to decline. However, the total number of participants is projected to increase because the population growth more than compensates for the lower participation rates. The statement

presumes these same trends may hold for California or the CINMS.

129. *Comment:* There is no quantitative evidence to show that non-consumptive activities will increase in the new zones, especially because all of the non-consumptive use occurs nearshore.

Response: The establishment of the new marine zones is expected to result in benefits to nonconsumptive recreational users. While there is no data currently available to directly estimate the magnitude of these benefits, NOAA conducted a benefits transfer/policy analysis simulation to quantify potential benefits. In addition, a two year study is now underway to help quantify these benefits. Non-consumptive uses in the proposed new zones are a relatively small percentage of the total non-consumptive uses that are concentrated in the nearshore waters of the Sanctuary. See section 5.2.5 of the FEIS for further discussion.

130. *Comment:* It is not clear how closures will affect the marine zones or how they will benefit the intent of those closures. The DEIS indicates that the proposed action would supplement the closures by "establishing temporally permanent zones," but no details are given and the statement is confusing.

Response: The action partially supplements the existing fishery closures, such as the Cowcod Conservation Area. The designation of marine reserves in or near areas protected by fishery closures adds another layer of protection, further ensuring that no fishing will occur on targeted species in the fishery closures and the adjacent areas protected by the marine reserves. Protection of the water column and all biophysical characteristics of marine reserves likely will enhance the recovery of targeted species protected by fishery closures by eliminating bycatch and further protection of habitats. Synergistic effects may result from protection by marine reserves of species and ecological processes consistent and adjacent to fishery closures.

131. *Comment:* Alternative 2 may cause negative financial impacts to coastal communities, recreational and commercial boating, and specifically, the ability of a local agency to repay existing state loans that are used for the construction and improvement of small craft harbors.

Response: The state marine zones have been in place for over three years and there is no evidence that the ability of local agencies to repay small harbor construction and improvement loans has been exacerbated due to impacts on recreational and commercial boating from the state zones. Furthermore, there is a marginal increase in the estimated "maximum potential impact" to recreational and commercial boating with the extension of marine zones from the existing state marine zones into deeper waters of the Sanctuary with either Alternative 1 or 2.

132. *Comment:* The DEIS should specifically address Environmental Justice. The Council on Environmental Quality requires this inclusion, and the counties under consideration differ in income and social structure.

Response: See Section 6.7 of the FEIS for a discussion on Environmental Justice and all other required consultations.

133. *Comment:* The commercial fishing sector developed five alternatives that have lower economic impacts to both recreational and commercial fishermen than the preferred alternative, because a balance of marine conservation areas and marine reserves was used instead of marine reserves only.

Response: Marine conservation areas, where certain fishing activity and impacts to habitat and species still occurs, would not achieve the purpose and goals of the proposed project as well as marine reserves. However, NOAA has decided to establish one marine conservation area off of Anacapa Island to ensure consistency with the State of California's marine zone network, which also established a marine conservation area in that location. See section 3.1.2.2 of the FEIS. Also, see response #44 for the reason the one marine conservation area is included.

VI. Changes From Proposed Rule

NOAA made changes to the proposed rule issued on August 11, 2006 to respond to public comments. The changes are as follows:

In paragraphs (a) and (b) of § 922.73, the reference to the effective date of the final rule has been removed. The purpose of this provision was to ensure that changes made to NOAA's MSA regulations after the effective date of the final NMSA regulations would not affect the applicability of the NMSA regulations without public notice. NOAA has decided (1) to insert a reference to these NMSA regulations in NOAA's MSA regulations at 50 CFR part 660 as part of this final rulemaking, and (2) in future notices proposing to amend 50 CFR part 660, to advise the public and seek comment on any consequences as it relates to the regulations at 15 CFR 922.73 (*e.g.*, that because 50 CFR part 660 is being amended to prohibit fishing in the water column of the marine reserves, these activities would no longer be prohibited under 15 CFR 922.73; or because 50 CFR part 660 is being amended to allow the use of bottom contact gear, that activity would be prohibited under 15 CFR 922.73).

In paragraph (b)(3) of § 922.73, the exception to the prohibition on possessing Sanctuary resources has been broadened somewhat to ensure fish that were harvested in the marine conservation area are allowed to be in a person's possession regardless of the status of the person's vessel.

In paragraph (a)(1), (a)(3), (b)(1), and (b)(3), the phrase "any living or dead organism, historical resource, or other Sanctuary resource" has been replaced with "any Sanctuary resource, including living or dead organisms or historical resources" in each place it appears to clarify the application of the regulation to all Sanctuary resources.

The reference to the Painted Cave Marine Conservation Area in paragraph (b) of § 922.73 been removed. The Painted Cave Marine Conservation Area is completely within state waters of the Sanctuary, and is therefore (as discussed in the preamble) not subject to this rulemaking.

The coordinates for the marine reserves and marine conservation area in appendices B and C, respectively, have been modified so that only federal waters are included in this final rule. As discussed in the preamble, should NOAA decide to extend these marine reserves and marine conservation area into state waters of the Sanctuary, another final rulemaking action will further modify these coordinates as appropriate.

VII. Miscellaneous Rulemaking Requirements

A. National Marine Sanctuaries Act

Section 304 of the NMSA (16 U.S.C. 1434) requires the Secretary of Commerce in designating a sanctuary to submit Sanctuary designation documents to the United States Congress (Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate) and Governor of each state in which any part of the Sanctuary would be located. The designation documents are to be submitted on the same date the notice is published and must include the proposed terms of the designation, the proposed regulations, a draft environmental impact statement, and a draft management plan. The terms of designation may only be modified by the same procedures by which the original designation is made. In

accordance with Section 304, the appropriate documents have been submitted to the specified Congressional Committees and the Governor of California.

B. National Environmental Policy Act

In accordance with Section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)), and the provisions of NEPA (42 U.S.C. 4321–4370(a)), an FEIS has been prepared for the proposed action. Copies of the FEIS are available upon request to NOAA at the address listed in the **ADDRESSES** section. The FEIS notice of availability was published on April 20, 2007 (72 FR 19928). The 30-day period for the FEIS ended on May 21, 2007.

C. Executive Order 12866: Regulatory Impact

This rule has been determined to be not significant within the meaning of Executive Order 12866.

D. Executive Order 13132: Federalism

The Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, has consulted with appropriate elected officials in the State of California, as appropriate. Since 1999, NOAA has partnered with and supported the State in this effort. During the federal phase, NOAA has continually briefed the Secretary of Resources and the Director of the California Department of Fish and Game. NOAA also held numerous consultations with all California resource management agencies as required under section 303(b)(2) of the NMSA.

E. Regulatory Flexibility Act

In accordance with the requirements of section 604(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), NOAA has prepared a final regulatory flexibility analysis (FRFA) describing the impact of the proposed action on small businesses. Section 604(a) requires that each FRFA contain:

1. A succinct statement of the need for, and objectives of, the rule;

2. A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

3. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

4. A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. The FRFA is available upon request to NOAA at the address listed in the **ADDRESSES** section above. A summary of the FRFA follows.

Summary of the Final Regulatory Flexibility Act Analysis

1. *Statement of need.* A statement of why action by NOAA is being considered and the objectives of, and legal basis for, this final rule is contained in the preamble section of this final rule and is not repeated here.

2. *Summary of public comments.* Section V. in the preamble of this final rule contains a summary of all of the comments submitted to NOAA and NOAA's responses thereto. Some comments about the economic impact of the proposed action were submitted. Refer, for example, to comment numbers 86 through 133 for summaries of these comments and NOAA's responses thereto.

3. *Number of small entities affected.* The Small Business Administration has established thresholds on the designation of businesses as "small entities". A fish-harvesting business is considered a "small" business if it has annual receipts not in excess of $3.5 million (13 CFR 121.201). Sports and recreation businesses and scenic and sightseeing transportation businesses are considered "small" businesses if they have annual receipts not in excess of $6 million (13 CFR 121.201). According to these limits, each of the businesses listed below are considered small entities. (All analyses are based on the most recently updated and best available information.)

a. *Number of commercial fishing operations.* In 2003, there were 441 commercial fishing operations that reported catches from the CINMS. Total commercial fishing revenue from the CINMS was $17.3 million in 2003.

b. *Number of consumptive recreational operations.* In 1999, there were 18 recreational fishing charter/party boats operating in the CINMS. In 1999, there were 10 consumptive diving charter/party boats operating in the CINMS. Total reported 1999 gross revenue from these consumptive recreational activities was $8.8 million. Total costs for 1999 were reported at $8.4 million. After all costs were paid, the consumptive recreational activities resulted in $420,000 in profit.

c. *Number of non-consumptive recreational operations.* In 1999, there were 8 whale watching operations, 7 non-consumptive diving operations, 4 operations that offered kayaking or island sightseeing activities, and 8 sailing operations, within the CINMS. Total reported 1999 gross revenue from these non-consumptive recreational activities was $2.6 million. Total costs for 1999 were reported at $2.5 million. After all costs were paid, the non-consumptive recreational activities resulted in $82,000 in profit.

4. There are no new reporting, recordkeeping, or other compliance requirements.

5. Two alternatives plus a no-action alternative were considered. The no action (status quo) alternative would not establish marine reserves and marine conservation areas in the Sanctuary. Therefore there is no economic impact.

Alternative 1C, the proposed alternative, including both the existing state network and proposed extensions, would include approximately 110.5 square nautical miles of marine reserves and 1.7 square nautical miles of marine conservation areas for a total of 214.1 square nautical miles of the CINMS when combined with the existing state zones. The new proposed federal areas of Alternative 1C potentially impact 0.51% (approximately $124,000) of ex vessel value of commercial catch in the CINMS. The total maximum potential loss to the income of commercial fishing businesses is 0.61% ($440,000) and to the employment of commercial fishing businesses is 0.66% (13 jobs). For consumptive recreation in the CINMS, the estimated maximum potential loss associated with alternative 1 is $935,000 (3.5%) in annual income and about 42 full and part-time jobs (3.7%) in the local county economies. For non-consumptive recreation in the CINMS, the estimated range of potential increases in income generated in the local county economies associated with alternative 1 is between $337 and about $380,000. The estimated range of potential increases in employment in the local county economies is between 0.02 and 19 full- and part-time jobs. Alternative 1C was chosen as NOAA's preferred alternative because it best accomplished the purpose and need of

furthering the protection of Sanctuary biodiversity while complementing the existing State-designated network. Alternatives 1A and 1B were rejected because they involved the establishment of federal marine reserves and marine conservation areas in state waters of the Sanctuary; which was opposed by the State of California.

Alternative 2, including both the existing state network and proposed extensions, would encompass approximately 275.8 square nautical miles of marine reserves and 12.1 square nautical miles of marine conservation areas for a total of 287.8 square nautical miles of the CINMS. Alternative 2 is larger than alternative 1, and proposes some different reserve areas not proposed in alternative 1. The new proposed federal areas of alternative 2 potentially impact 0.82% (approximately $197,000) of ex vessel value of commercial catch in the CINMS. The total maximum potential loss to the income of commercial fishing businesses is 0.91% ($650,000) and to the employment of commercial fishing businesses is 0.97% (19 jobs). For consumptive recreation in the CINMS, the estimated maximum potential loss associated with alternative 2 is $1,300,000 (5.0%) in annual income and about 59 full and part-time jobs (5.2%) in the local county economies. For non-consumptive recreation in the CINMS, the estimated range of potential increases in income generated in the local county economies associated with alternative 2 is between $748 and about $841,000. The estimated range of potential increases in employment in the local county economies is between 0.04 and 44 full- and part-time jobs. Please refer to comment/response #1 for the reasons alternative 2 was rejected.

F. Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by OMB under control number 0648–0141. The public reporting burden for national marine sanctuary permits is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule would not modify the average annual number of respondents or the reporting burden for this information requirement, so a modification to this approval is not necessary. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, 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.

G. Unfunded Mandates Reform Act of 1995

This final rule contains no federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

List of Subjects

15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: May 18, 2007

John H. Dunnigan,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Dated: May 17, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries.

■ For the reasons stated in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 922—[AMENDED]

■ 1. The authority for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. Revise § 922.70 to read as follows:

§ 922.70 Boundary.

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of the waters off the coast of California of approximately 1,128 square nautical miles (nmi) adjacent to the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (collectively the Islands) extending seaward to a distance of approximately six nmi. The boundary coordinates are listed in appendix A to this subpart.

■ 3. Redesignate §§ 922.71 and 922.72 as §§ 922.72 and 922.74, respectively.

■ 4. Add § 922.71 to subpart G of part 922 to read as follows:

§ 922.71 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Pelagic finfish are defined as: northern anchovy (*Engraulis mordax*), barracudas (*Sphyraena spp.*), billfishes (family *Istiophoridae*), dolphinfish (*Coryphaena hippurus*), Pacific herring (*Clupea pallasi*), jack mackerel (*Trachurus symmetricus*), Pacific mackerel (*Scomber japonicus*), salmon (*Oncorhynchus spp.*), Pacific sardine (*Sardinops sagax*), blue shark (*Prionace glauca*), salmon shark (*Lamna ditropis*), shortfin mako shark (*Isurus oxyrinchus*), thresher sharks (*Alopias spp.*), swordfish (*Xiphias gladius*), tunas (family *Scombridae*), and yellowtail (*Seriola lalandi*).

Stowed and not available for immediate use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

■ 5. Add § 922.73 to subpart G to read as follows:

§ 922.73 Marine reserves and marine conservation area.

(a) *Marine reserves.* Unless prohibited by 50 CFR part 660 (Fisheries off West Coast States), the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within a marine reserve described in Appendix B to this subpart:

(1) Harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, including living or dead organisms or historical resources, or attempting any of these activities.

(2) Possessing fishing gear on board a vessel unless such gear is stowed and not available for immediate use.

(3) Possessing any Sanctuary resource, including living or dead organisms or historical resources, except legally harvested fish on board a vessel at anchor or in transit.

(b) *Marine conservation area.* Unless prohibited by 50 CFR part 660 (Fisheries

off West Coast States), the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the marine conservation area described in Appendix C to this subpart:

(1) Harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, including living or dead organisms or historical resources, or attempting any of these activities, except:

(i) Recreational fishing for pelagic finfish; or

(ii) Commercial and recreational fishing for lobster.

(2) Possessing fishing gear on board a vessel, except legal fishing gear used to fish for lobster or pelagic finfish, unless such gear is stowed and not available for immediate use.

(3) Possessing any Sanctuary resource, including living or dead organisms or historical resources, except legally harvested fish.

■ 6. In § 922.74, as redesignated, revise paragraph (a) introductory text to read as follows:

§ 922.74 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and § 922.48 may conduct any activity within the Sanctuary prohibited under §§ 922.72 or 922.73 if such activity is either:

* * * * *

■ 7. Revise Appendix A to subpart G to read as follows:

Appendix A to Subpart G of Part 922—Channel Islands National Marine Sanctuary Boundary Coordinates

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

Point	Latitude (N)	Longitude (W)
1	33.94138	−119.27422
2	33.96776	−119.25010
3	34.02607	−119.23642
4	34.07339	−119.25686
5	34.10185	−119.29178
6	34.11523	−119.33040
7	34.11611	−119.39120
8	34.11434	−119.40212
9	34.11712	−119.42896
10	34.11664	−119.44844
11	34.13389	−119.48081
12	34.13825	−119.49198
13	34.14784	−119.51194
14	34.15086	−119.54670
15	34.15450	−119.54670
16	34.15450	−119.59170
17	34.15142	−119.61254
18	34.13411	−119.66024
19	34.14635	−119.69780
20	34.15988	−119.76688
21	34.15906	−119.77800
22	34.15928	−119.79327
23	34.16213	−119.80347
24	34.16962	−119.83643
25	34.17266	−119.85240
26	34.17588	−119.88903
27	34.17682	−119.93357
28	34.17258	−119.95830
29	34.13535	−120.01964
30	34.13698	−120.04206
31	34.12994	−120.08582
32	34.12481	−120.11104
33	34.12519	−120.16076
34	34.11008	−120.21190
35	34.11128	−120.22707
36	34.13632	−120.25292
37	34.15341	−120.28627
38	34.16408	−120.29310
39	34.17704	−120.30670
40	34.20492	−120.30670
41	34.20492	−120.38830
42	34.20707	−120.41801
43	34.20520	−120.42859
44	34.19254	−120.46041
45	34.20540	−120.50728
46	34.20486	−120.53987
47	34.18182	−120.60041
48	34.10208	−120.64208
49	34.08151	−120.63894
50	34.05848	−120.62862
51	34.01940	−120.58567
52	34.01349	−120.57464
53	33.98698	−120.56582
54	33.95039	−120.53282
55	33.92694	−120.46132
56	33.92501	−120.42170
57	33.91403	−120.37585
58	33.91712	−120.32506
59	33.90956	−120.30857
60	33.88976	−120.29540
61	33.84444	−120.25482
62	33.83146	−120.22927
63	33.81763	−120.20284
64	33.81003	−120.18731
65	33.79425	−120.13422
66	33.79379	−120.10207
67	33.79983	−120.06995
68	33.81076	−120.04351
69	33.81450	−120.03158
70	33.84125	−119.96508
71	33.84865	−119.92316
72	33.86993	−119.88330
73	33.86195	−119.88330
74	33.86195	−119.80000
75	33.86110	−119.79017
76	33.86351	−119.77130
77	33.85995	−119.74390
78	33.86233	−119.68783
79	33.87330	−119.65504
80	33.88594	−119.62617
81	33.88688	−119.59423
82	33.88809	−119.58278
83	33.89414	−119.54861
84	33.90064	−119.51936
85	33.90198	−119.51609
86	33.90198	−119.43311
87	33.90584	−119.43311
88	33.90424	−119.42422
89	33.90219	−119.40730
90	33.90131	−119.38373
91	33.90398	−119.36333
92	33.90635	−119.35345
93	33.91304	−119.33280
94	33.91829	−119.32206
95	33.48250	−119.16874
96	33.44235	−119.16797
97	33.40555	−119.14878
98	33.39059	−119.13283
99	33.36804	−119.08891
100	33.36375	−119.06803
101	33.36241	−119.04812
102	33.36320	−119.03670
103	33.36320	−118.90879
104	33.47500	−118.90879
105	33.48414	−118.90712
106	33.52444	−118.91492
107	33.53834	−118.92271
108	33.58616	−118.99540
109	33.59018	−119.02374
110	33.58516	−119.06745
111	33.58011	−119.08521
112	33.54367	−119.14460
113	33.51161	−119.16367

■ 8. Add Appendix B to subpart G to read as follows:

Appendix B to Subpart G of Part 922—Marine Reserve Boundaries

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

B.1. Richardson Rock (San Miguel Island) Marine Reserve

The Richardson Rock Marine Reserve (Richardson Rock) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–1, and the following textual description.

The Richardson Rock boundary extends from Point 1 to Point 2 along a straight line. It then extends from Point 2 to Point 3 along a straight line. The boundary then extends along a straight line from Point 3 to the 3 nmi State boundary established under the Submerged Lands Act (3 nmi State boundary) where a line defined by connecting Point 3 and Point 4 with a straight line intersects the 3 nmi State boundary. The boundary then extends northwestward and then eastward along the 3 nmi State boundary until it intersects the line defined by connecting Point 5 and Point 6 with a straight line. At that intersection, the boundary extends from the 3 nmi SLA boundary to Point 6 along a straight line.

TABLE B–1.—RICHARDSON ROCK (SAN MIGUEL ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	34.17333 °N	120.60483 °W
2	34.17333 °N	120.47000 °W
3	34.12900 °N	120.47000 °W
4	34.03685 °N	120.52120 °W
5	34.03685 °N	120.60483 °W
6	34.17333 °N	120.60483 °W

B.2. Harris Point (San Miguel Island) Marine Reserve

The Harris Point Marine Reserve (Harris Point) boundary is defined by the 3 nmi State

boundary, the coordinates provided in Table B–2, and the following textual description.

The Harris Point boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary then follows the 3 nmi State boundary northwestward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–2.—HARRIS POINT (SAN MIGUEL ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	34.20492 °N	120.38830 °W
2	34.20492 °N	120.30670 °W
3	34.10260 °N	120.30670 °W
4	34.15200 °N	120.38830 °W
5	34.20492 °N	120.38830 °W

B.3. South Point (Santa Rosa Island) Marine Reserve

The South Point Marine Reserve (South Point) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–3, and the following textual description.

The South Point boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary southeastward until it intersects the line defined by connecting Point 4 and Point 5 along a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–3.—SOUTH POINT (SANTA ROSA ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	33.84000 °N	120.10830 °W
2	33.84000 °N	120.16670 °W
3	33.86110 °N	120.16670 °W
4	33.84700 °N	120.10830 °W
5	33.84000 °N	120.10830 °W

B.4. Gull Island (Santa Cruz Island) Marine Reserve

The Gull Island Marine Reserve (Gull Island) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–4, and the following textual description.

The Gull Island boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary then follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–4.—GULL ISLAND (SANTA CRUZ ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	33.86195 °N	119.80000 °W
2	33.86195 °N	119.88330 °W
3	33.92690 °N	119.88330 °W
4	33.90700 °N	119.80000 °W
5	33.86195 °N	119.80000 °W

B.5. Scorpion (Santa Cruz Island) Marine Reserve

The Scorpion Marine Reserve (Scorpion) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–5, and the following textual description.

The Scorpion boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary then follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–5.—SCORPION (SANTA CRUZ ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	34.15450 °N	119.59170 °W
2	34.15450 °N	119.54670 °W
3	34.10140 °N	119.54670 °W
4	34.10060 °N	119.59170 °W
5	34.15450 °N	119.59170 °W

B.6. Footprint Marine Reserve

The Footprint Marine Reserve (Footprint) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–6, and the following textual description.

The Footprint boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary northeastward and then southeastward until it intersects the line defined by connecting Point 4 and Point 5 along a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–6.—FOOTPRINT MARINE RESERVE

Point	Latitude	Longitude
1	33.90198 °N	119.43311 °W
2	33.90198 °N	119.51609 °W
3	33.96120 °N	119.51609 °W

TABLE B–6.—FOOTPRINT MARINE RESERVE—Continued

Point	Latitude	Longitude
4	33.95710 °N	119.43311 °W
5	33.90198 °N	119.43311 °W

B.7. Anacapa Island Marine Reserve

The Anacapa Island Marine Reserve (Anacapa Island) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–7, and the following textual description.

The Anacapa Island boundary extends from Point 1 to Point 2 along a straight line. It then extends to the 3 nmi State boundary where a line defined by connecting Point 2 and Pont 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–7.—ANACAPA ISLAND MARINE RESERVE

Point	Latitude	Longitude
1	34.08330 °N	119.41000 °W
2	34.08330 °N	119.35670 °W
3	34.06450 °N	119.35670 °W
4	34.06210 °N	119.41000 °W
5	34.08330 °N	119.41000 °W

B.8. Santa Barbara Island Marine Reserve

The Santa Barbara Island Marine Reserve (Santa Barbara) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–8, and the following textual description.

The Santa Barbara boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary northeastward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line. The boundary then extends from Point 5 to Point 6 along a straight line.

TABLE B–8.—SANTA BARBARA ISLAND MARINE RESERVE

Point	Latitude	Longitude
1	33.36320 °N	118.90879 °W
2	33.36320 °N	119.03670 °W
3	33.41680 °N	119.03670 °W
4	33.47500 °N	118.97080 °W
5	33.47500 °N	118.90879 °W
6	33.36320 °N	118.90879 °W

Appendix C to Subpart G of Part 9222—Marine Conservation Area Boundary

C.1. Anacapa Island Marine Conservation Area

The Anacapa Island Marine Conservation Area (AIMCA) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table C–1, and the following textual description.

The AIMCA boundary extends from Point 1 to Point 2 along a straight line. It then extends to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE C–1.—ANACAPA ISLAND MARINE CONSERVATION AREA

Point	Latitude	Longitude
1	34.08330 °N	119.44500 °W
2	34.08330 °N	119.41000 °W
3	34.06210 °N	119.41000 °W
4	34.06300 °N	119 44500 °W
5	34.08330 °N	119.44500 °W

50 CFR CHAPTER VI

PART 660—[AMENDED]

■ 10. The authority for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 11. Revise § 660.2 to read as follows:

§ 660.2 Relation to other laws.

(a) NMFS recognizes that any state law pertaining to vessels registered under the laws of that state while operating in the fisheries regulated under this part, and that is consistent with this part and the FMPs implemented by this part, shall continue in effect with respect to fishing activities regulated under this part.

(b) Fishing activities addressed by this Part may also be subject to regulation under 15 CFR part 922, subpart G, if conducted in the Channel Islands National Marine Sanctuary

[FR Doc. E7–10096 Filed 5–23–07; 8:45 am]

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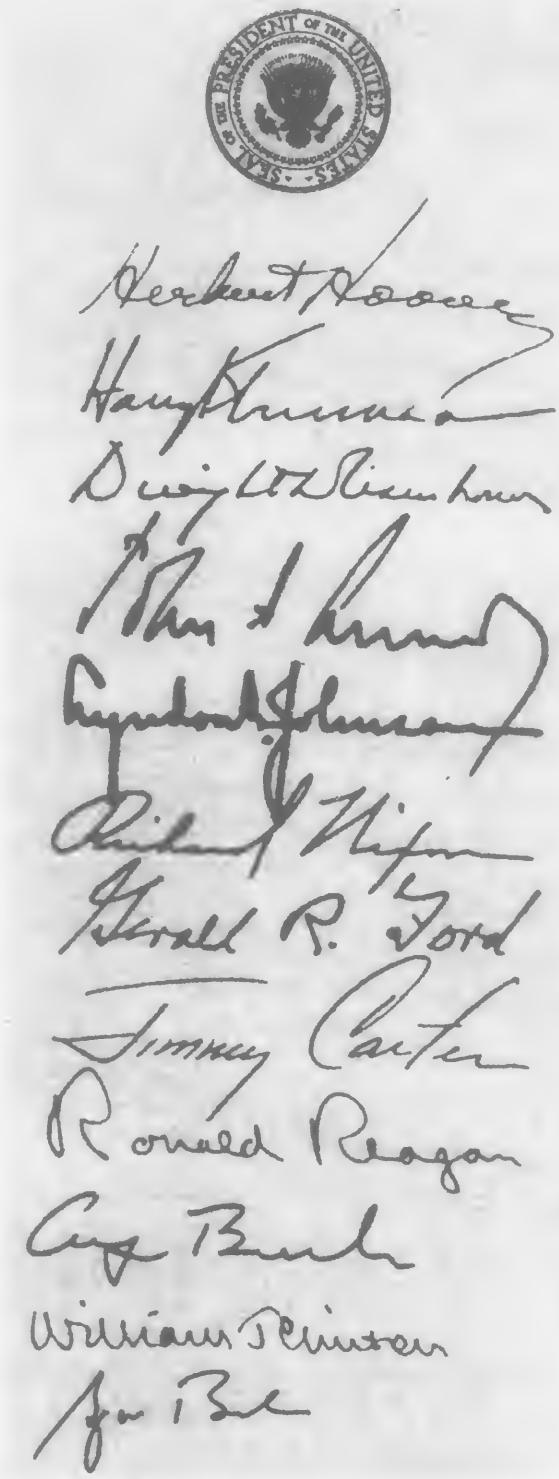

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