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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

RIN 3206–AJ84

Information Security Responsibilities for Employees Who Manage or Use Federal Information Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations concerning information technology security awareness and training for agency personnel including contractors and other users of information systems that support the operations and assets of the agency. This regulation makes the rule clearer for expert and novice readers. It facilitates timely access to changes in information systems security awareness training guidelines and supplementary information systems training and standards resources through the use of the National Institute for Standards and Technology (NIST) website.

DATES: *Effective Date:* June 14, 2004.

FOR FURTHER INFORMATION CONTACT: LaVeen Ponds by phone at 202–606–1394, by TTY at (202) 418–3134, by fax at (202) 606–2329, or e-mail at *lmponds@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) issued proposed regulations at 68 FR 52528, on September 4, 2003, to revise the rules that govern the training of employees responsible for the management or use of Federal computer systems. We proposed streamlining the regulation where appropriate; removed text; and added a requirement for agencies to refer to the National Institute of Standards and Technology (NIST) website for the most current information on information systems security awareness and training guidelines. The 30-day comment period ended on October 6, 2003. We received comments from five Federal agencies.

One agency concurred with the proposed changes and stated that the changes are particularly beneficial.

Two agencies pointed out that the Federal Information Security Management Act (FISMA), title III of Public Law 107–347 (116 Stat 2948), and the E-Government Act of 2002, Public Law 107–347 (116 Stat 2899), repealed sections of the Computer Security Act of 1987, Public Law 100–235 (101 Stat 1724). We have changed the authority source accordingly.

One of these agencies noted that the language in the ''Regulatory Flexibility Act'' section of the proposed regulation did not include all individuals that the regulation will affect. We concur and have changed the language to reflect the individuals listed in Public Law 107–347 (116 Stat 2951) that are affected by this regulation.

One agency pointed out that Office of Management and Budget (OMB) Circular A–130, appendix III, also addressed OPM's responsibility to assure that its regulations concerning computer security training for Federal civilian employees are effective. Therefore, the agency suggested that OMB Circular A–130, appendix III, be referenced in the regulation. We believe the authority references are sufficient and establish the legal requirements for the regulation and that additional references are not necessary. Two agencies noted that the proposed regulation referenced a NIST website location that did not address the guidance for security awareness and training. A more direct link has been included in section 930.301(a). One of these agencies also suggested changing the word ''computer'' to ''information technology'' to better reflect the scope of the regulations and NIST guidance. We concur and have made the change where appropriate in the final regulation. Additionally, it is important to note the purpose of FISMA is to provide a comprehensive framework for ensuring the effectiveness of information security controls over any information resources that support Federal operations and assets. To that end, FISMA defines information system security to mean protecting any Federal information and information systems, which includes information technology (IT) systems, from unauthorized access, use, disclosure, disruption, modification, or destruction.

This agency also recommended that 5 CFR 903.301(a)(1) require all IT users be exposed to security awareness materials ''regularly'' versus ''at least annually.'' We do not concur. A standard and specified timeframe for training best serves the intent of the law and encourages agencies to ensure IT users' continual IT security vigilance. We did not adopt this agency's suggestion to address professionalization or certification to ensure a level of knowledge or competence because it is beyond the scope of this regulation.

The same agency recommended adding a section requiring agencies to provide training commensurate with IT systems criticality and level of risk imposed by the untrained user. We did not adopt this recommendation because this issue is addressed in the Act and covered in 5 CFR § 903.301(b) through (d). We have incorporated the agency's suggestion to change NIST ''policy'' to NIST ''guidelines'' throughout the regulation. The agency comment that NIST guidance is based on roles and responsibilities and not position titles, as indicated in the regulation, does not require a change. The regulation requires role-specific training. Identification of employees performing these roles by position title is illustrative only and does not differ from the role-specific training basis of NIST guidance.

Another agency suggested that the requirement to provide IT awareness material/exposure training to all new employees ''within 60-days of their appointment'' be changed to ''prior to the employee's use of IT systems.'' We concur and have changed the text pursuant to OMB Circular A–130, appendix III, part A, subsection A.

Waiver of 30-day delay in effectiveness

Pursuant to 5 U.S.C. 553(d)(3), good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The delay in the effective date is being waived because the program changes do not mandate substantive change but will provide users more timely access to the most current applicable definitions and guidelines for

information technology security awareness training.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal personnel including contractors and other users of information systems that support the operations and assets of the agency.

List of Subjects in 5 CFR part 930

Administrative practice and procedure; Computer technology; Government employees; Motor vehicles.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM revises 5 CFR part 930, subpart C, as follows:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

■ 1. Subpart C is revised to read as follows:

Subpart C—Information Security Responsibilities for Employees who Manage or Use Federal Information Systems

Authority: 5 U.S.C. 4118; Pub. L. 107–347, 116 Stat. 2899

§930.301 Information systems security awareness training program.

Each Executive Agency must develop a plan for Federal information systems security awareness and training and

(a) Identify employees with significant information security responsibilities and provide role-specific training in accordance with National Institute of Standards and Technology (NIST) standards and guidance available on the NIST Web site, *http://csrc.nist.gov/publications/nistpubs/,* as follows:

(1) All users of Federal information systems must be exposed to security awareness materials at least annually. Users of Federal information systems include employees, contractors, students, guest researchers, visitors, and others who may need access to Federal information systems and applications.

(2) Executives must receive training in information security basics and policy level training in security planning and management.

(3) Program and functional managers must receive training in information security basics; management and implementation level training in security planning and system/application security management; and management and implementation level training in system/application life cycle management, risk management, and contingency planning.

(4) Chief Information Officers (CIOs), IT security program managers, auditors, and other security-oriented personnel (e.g., system and network administrators, and system/application security officers) must receive training in information security basics and broad training in security planning, system and application security management, system/application life cycle management, risk management, and contingency planning.

(5) IT function management and operations personnel must receive training in information security basics; management and implementation level training in security planning and system/application security management; and management and implementation level training in system/application life cycle management, risk management, and contingency planning.

(b) Provide the Federal information systems security awareness material/exposure outlined in NIST guidance on IT security awareness and training to all new employees before allowing them access to the systems.

(c) Provide information systems security refresher training for agency employees as frequently as determined necessary by the agency, based on the sensitivity of the information that the employees use or process.

(d) Provide training whenever there is a significant change in the agency information system environment or procedures or when an employee enters a new position that requires additional role-specific training.

[FR Doc. 04–13319 Filed 6–10–04; 8:45 am]

BILLING CODE 6325–38–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AH31

Licensing Proceeding for a High-Level Radioactive Waste Geologic Repository; Licensing Support Network, Submissions to the Electronic Docket

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its Rules of Practice applicable to the use of the Licensing Support Network (LSN) and the electronic hearing docket in the licensing proceeding on the disposal of high-level radioactive waste at a geologic repository. The amendments establish the basic requirements and standards for the submission of adjudicatory materials to the electronic hearing docket by parties to the high-level radioactive waste licensing proceeding. The amendments also address the issue of reducing the unnecessary loading of duplicate documents on individual participant LSN document collection servers (Web sites); the continuing obligation of LSN participants to update their documentary material after the initial certification; the Secretary of the Commission's determination that the DOE license application is electronically accessible; and the provisions on material that may be excluded from the LSN.

DATES: *Effective Date:* July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–1642, e-mail *FXC@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's regulations in 10 CFR Part 2, Subpart J, provide for, among other things, the use of an electronic information management system to provide documents related to the high-level radioactive waste (HLW) repository licensing proceeding. Originally promulgated on April 14, 1989 (54 FR 14944), the information management system required by Subpart J is to have the following functions:

(1) The Licensing Support Network (LSN) provides full text search and retrieval access to the relevant documents of all parties and potential parties to the HLW repository licensing proceeding beginning in the time period before the U.S. Department of Energy (DOE) license application for the repository is submitted;

(2) The NRC Electronic Information Exchange (EIE) provides for electronic submission of filings by the parties, as well as the orders and decisions of the Atomic Safety and Licensing Board Panel (ASLBP), during the proceeding; and

(3) The Electronic Hearing Docket (EHD) provides for the development and

access to an electronic version of the HLW licensing proceeding docket.

The creation of the LSN (originally called the ''Licensing Support System'') was stimulated by the requirements of section 114(d) of the Nuclear Waste Policy Act of 1982 (NWPA). This provision sets as a goal Commission issuance of a final decision approving or disapproving issuance of the construction authorization for a geologic repository for HLW within three years of the docketing of the DOE license application. The Commission anticipated that the HLW proceeding would involve substantial numbers and volumes of documents created by well-informed parties on numerous and complex issues. The Commission believed that the LSN could facilitate the timely review of DOE's application by providing for electronic access to relevant documents via the LSN before the application is submitted, rather than the traditional, and potentially time-consuming, discovery process associated with the physical production of documents after an application is submitted. In addition, the Commission believed that early access to these documents in an electronically searchable form would allow for a thorough and comprehensive technical review of the license application by all parties and potential parties to the HLW licensing proceeding, resulting in better focused contentions in the proceeding.

The current requirements in 10 CFR 2.1003(a) require the DOE to make its documentary material available in electronic form no later than six months in advance of DOE's submission of its application to the NRC. The NRC must make its documentary material available in electronic form no later than thirty days after the DOE certification of compliance. All other participants must make their documents available in electronic form no later than ninety days after the DOE certification of compliance. Originally, the LSN was conceived as a large, centralized information management system administered by what was then called the Licensing Support System Administrator (now the LSN Administrator). To take advantage of the advances in technology that occurred since the promulgation of the original rule, the Commission revised the rule to use the Internet to link geographically dispersed sites rather than rely on a complex and expensive centralized system (63 FR 71729; December 30, 1998).

As noted, one of the objectives of the regulations in 10 CFR Part 2, Subpart J is to provide for electronic submission of filings by the parties, as well as the orders and decisions of the ASLBP, during the proceeding. The purpose of this function is to reduce the time that it takes to serve filings by substituting electronic transmission for the physical mailing of filings that is typically used in NRC licensing proceedings. Shortening the amount of time for certain activities during the hearing process will support the NRC's efforts to meet the schedule in the NWPA. 10 CFR 2.1013(c)(1) requires that all filings in the HLW adjudicatory proceeding be ''transmitted electronically'' (emphasis added) by the submitter to the Presiding Officer, the parties, and the Secretary of the Commission. The Commission believes that the majority of these filings will consist of simple documents that can be readily transmitted by EIE. However, after further considering the nature of some of the documents that may be submitted by the parties during the proceeding, the Commission believes that it is necessary to specify requirements for submitting large and/or complex documents. This need was the reason the Commission initiated the proposed rulemaking that is the subject of this final rule. The proposed rule was published in the **Federal Register** on November 26, 2003 (68 FR 66372).

The proposed amendments addressed a number of aspects of the current rules:

- The requirements and standards for a party's submissions to the electronic docket for the HLW repository licensing proceeding;
- Those provisions that could result in the loading of duplicate documents on individual participant LSN document collection servers;
- The provisions related to the Secretary of the Commission's determination that the DOE license application is electronically accessible; .
- Those provisions related to the continuing obligation of LSN participants to update their documentary material; and
- Those provisions on material that may be excluded from the LSN.

II. Public Comments

The Commission received nine comments on the proposed rule from the following entities:

(1) U.S. Department of Energy (DOE).
(2) State of Nevada.
(3) Nuclear Energy Institute (NEI).
(4) Nevada Nuclear Waste Task Force, Incorporated.
(5) Nye County, Nevada.
(6) Lincoln County and the City of Caliente, Nevada.
(7) White Pine County, Nevada.
(8) Eureka County, Nevada.
(9) Progress Energy.

These comments addressed the following categories of issues:

1. Rule or Guidance

Two commenters (DOE, NEI) recommended that the technical standards in proposed section 2.1013(c)(1) be incorporated into a guidance document rather than in the NRC regulations. These commenters noted that the proposed standards in section 2.1013(c)(1) were useful clarifications, but it was not necessary to formalize them in a rulemaking. The rationale for this recommendation was that technical capabilities can change significantly over the period of time that the HLW licensing proceeding will take place and that any needed changes to reflect new technical capabilities could more efficiently be implemented by revising guidance rather than by initiating a new rulemaking. In addition, NEI was concerned about the need for stability in the LSN regulatory framework as the date for submission of the DOE license application draws closer. NEI also recommended that, if the NRC decides to proceed with the rulemaking, it be done as expeditiously as possible. NEI also requested that the NRC provide some assurance to LSN participants on the stability of the LSN regulatory framework in the interim period while a rule was being finalized. Finally, NEI urged the Commission to issue the final revision to NRC Regulatory Guide 3.69 on the Topical Guidelines that were issued for public comment in June, 2002, *See* ''Draft Regulatory Guide DG–3022 (Proposed Revision 1 of Regulatory Guide 3.69).'' Another commenter, Progress Energy, expressed the same concerns as NEI.

Response

The Commission has tried to balance the need for flexibility, informality, and responsiveness, *i.e.*, using guidance for the technical standards, with the need to ensure that the fundamental compliance requirements for LSN participants are clear, *i.e.*, using a rule. Accordingly, the Commission has expressed what it believes to be the most important technical standards in Section 2.1013(c)(1) of the final rule, while including the majority of the detailed technical specifications in a guidance document, ''Guidance for the Submission of Electronic Docket Materials Under 10 CFR Part 2, Subpart J'', U.S. Nuclear Regulatory Commission, (Guidance Document). The Guidance Document is available on the NRC Web site, *http://www.nrc.gov.*

The Guidance document can also be found in the Commission's Agencywide Documents Access and Management

System (ADAMS) at Accession Number ML041560341. The Guidance Document contains essential information in regard to the proper implementation of the requirements of this rule.

In terms of providing an assurance of a stable regulatory framework, the Commission is not imposing any new requirements that would significantly alter the current regulatory framework. Furthermore, the Commission does not anticipate adding any additional requirements beyond those in this final rule before the repository license application is submitted. As explained by the NRC staff at the December 2003 meeting of the LSN Advisory Review Panel, the only revision to the scope of documents covered by the Topical Guidelines in Regulatory Guide 3.69, was a proposed new exclusion for ''congressional correspondence.'' Therefore, the Commission does not believe that the existing regulatory framework will in any way be ''destabilized.'' The final revision of the Topical Guidelines will be completed immediately after this rule is finalized.

2. Technical standards

DOE had several comments on the technical standards for the submission of electronic filings to the adjudicatory proceeding.

A. Complex Documents

Section 2.1013(c)(1)(iii) of the proposed rule would have required that those portions of ''complex documents'' that are amenable to being transmitted electronically as a filing in the HLW adjudicatory proceeding be transmitted electronically, while those parts of complex documents that were not amenable to electronic transmission be submitted on optical media. DOE, in its comment letter, questioned the advantage of electronically transmitting only some portions of a complex document. If a complex document is not amenable to submittal in its entirety via electronic transmission through the EIE, the advantage of submitting only portions of it is unclear because those portions may not be useful by themselves. DOE recommended that the entire document be submitted on optical storage media, with a transmittal letter submitted via the EIE providing notification of the submittal of that document.

Response

The final rule maintains the approach of the proposed rule to the submission of complex documents. In terms of the usefulness of submitting portions of the document by electronic transmittal, the Commission believes that this would serve several useful purposes. First, it provides early notification that a complex document is coming in and consequently allows other parties to plan their review and possible response. Second, there often will be substantial benefit in receiving the text portion of a complex document via electronic transmission, notwithstanding the delay in receiving the additional attachments. Various Atomic Safety and Licensing Boards have been issuing orders for several years that use this practice. This has allowed the parties and the Boards to review the text portion, which contains the arguments of the parties, while awaiting the rest of the pleading. However, for purposes of the service requirements in section 2.1013(c) or the computation of time requirements in section 2.1017, the filing of a complex document or a large document is not complete until all portions of the document have been submitted.

B. Image Resolution

Section 2.1013(c)(1)(iv) of the proposed rule would have required that all electronic submissions to the EHD have 300 dots per inch (dpi) minimum resolution for bi-tonal, color, and grayscale. DOE noted the inconsistency between these EHD requirements and the requirements in section 2.1011(b)(2)(iv) for documents placed on individual LSN participant Web sites. The LSN participant Web site documents are required to have 300 dpi for bi-tonal but 150 dpi minimum resolution for grayscale and color. DOE recommended that the final rule on the EHD be consistent with the LSN participant Web site requirements to avoid having to convert the color and grayscale parts of existing documents from 150 dpi to 300 dpi. According to DOE, this would not be ''an efficient use of resources.'' The Commission interprets this latter phrase to mean that the conversion would be not only costly, but unnecessary because 150 dpi color and gray scale would be fully readable. DOE also noted that the Guidance Document states that there is flexibility with respect to the minimum resolution as long as the integrity and quality of the document result in readable copies. The DOE suggests that this flexibility should be added to the rule if the technical requirements are to be retained in the rule.

Response

Records submitted to the NRC as part of the Electronic Hearing Docket are Federal ''official agency records.'' The National Archives and Records Administration (NARA) issued a standard that records scanned after December 23, 2002, must meet the minimum standard of 300 dpi for bi-tonal, color, and grayscale documents. The NRC adopted this standard on January 1, 2004, the effective date for the NRC final rule on the electronic maintenance and submission of information to the NRC (68 FR 58792; October 10, 2003). The NRC has considered the DOE's concern with regard to the ''efficient use of resources.'' In response, the NRC has modified language in the rule to: (1) require submitters to use the 300 dpi standard for documents created after the January 1, 2004 effective date of the electronic maintenance rule, except in limited circumstances in which (a) submitters may need to use an image scanned before January 1, 2004, in a document created after January 1, 2004 or (b) the scanning process for a large, one-page image may not successfully complete at the 300 dpi standard resolution; and (2) require that documents created or scanned before January 1, 2004, (or for those documents in 1(a) or (b) above), meet the standards for documents placed on LSN participant Web sites in section 2.1011(b)(2)(iv) which is 150 dpi for color and grayscale documents and 300 dpi for bi-tonal documents. The Commission is also assuming that this document image resolution requirement for LSN participant Web sites would meet the criterion of ''readability.''

C. Image Format

Section 2.1013(c)(1)(v) of the proposed rule would have required electronic submissions to be generated in Adobe Acrobat Portable Document Format (PDF). DOE noted that this PDF requirement was inconsistent with the requirement for LSN participant Web sites in section 2.1011(b)(2)(iv) that allows Tagged Image File Format (TIFF). DOE suggests that files on LSN participant Web sites that are submitted to the adjudicatory proceeding be allowed to be submitted in the TIFF format. Converting images in the LSN that are usable in TIFF format to PDF format for the EHD would again, according to DOE, ''not be an efficient use of resources.''

Response

The electronic documentary material submitted to the EHD will be entered as official agency records in ADAMS. The PDF became the NRC standard for official agency records on January 1, 2004, the effective date for the NRC final rule on the electronic maintenance and submission of information to the NRC (68 FR 58792; October 10, 2003). The NRC has adopted PDF as the NRC

standard for this official agency records system based on the following:

- PDF represents a ''generic'' format that behaves consistently across multiple hardware and operating systems;
- When files are distributed in PDF, the information is ''locked down'' for the general user, who can access the content through the use of PDF viewer software;
- The PDF standard, though it is proprietary to Adobe, has been published, is freely available, and the capability to create PDF documents has been integrated into many other software applications;
- PDF documents can be generated from any application that can generate Postscript printer files; thus anything that can be printed can be represented in PDF;
- PDF supports file generation options for text-oriented files produced on a word processing or publishing system;
- PDF supports file generation options for scanned image-oriented files; and
- PDF supports file generation options for scanned text-oriented files capable of full text search.

In contrast, adherence to the PDF standards for NRC official agency records is not required for purposes of individual LSN participant Web sites and therefore, TIFF is acceptable under section 2.1011(b)(2)(iv). The Commission also believes that TIFFs can readily be converted to PDF using features inherent in PDF-authoring software. In those rare circumstances where technical reasons would prevent the successful conversion to PDF, DOE or any other LSN participant, can submit the image in TIFF and include a detailed statement of the technical reasons that prevent conversion to PDF, in a transmittal letter to accompany the filing.

D. Hyperlinks

Section 2.1013(c)(1)(vi) of the proposed rule requires that documents be free of hyperlinks to other documents or Web sites other than within a single PDF file. DOE notes that some documents may have embedded hyperlinks that are difficult to remove. The DOE suggests that the requirement be revised to state that use of the document in the EHD should not depend on hyperlinks to other documents or Web sites. The Commission understands this comment to suggest that there should be no restriction in the rule on documents containing hyperlinks, but that the use of the document in the hearing may not depend on those hyperlinks.

Response

The Commission has considered the DOE comments and has revised the final rule to allow hyperlinks to be contained in documents submitted to the EHD. The Commission believes that it will be difficult and costly to remove these hyperlinks. Instead of prohibiting a document from being submitted with hyperlinks, section 2.1013(c)(1)(vi) of the final rule would prohibit reliance on the hyperlinks for purposes of providing additional evidentiary material or completing a submittal. This would require the submitter to review all documents submitted to the EHD for hyperlinks to the Internet or other documents. Any necessary material would need to be included in the filing or as an attachment to the filing.

However, the Commission is also concerned that hyperlinks in a filing that do not function, or that link a user to an external website that has changed or perhaps contains some type of offensive material, could create a negative perception of the integrity of the EHD database. Therefore, the final rule requires each electronic submission to contain a disclaimer that notifies the reader that the hyperlinks in the filing may not operate or may link the reader to material that is not intended to be necessary, or in some cases, even related, to the use of the filing in the proceeding. This disclaimer must either be in the transmittal memorandum required for filings over 50 MB or in the body of the pleading for filings under 50 MB. The single exception to the use of hyperlinks in a filing is when the hyperlink connects to another part of the same PDF file. The use of hyperlinks in this context is permissible. This also has implications for the minimum size of a file that is submitted to the EHD. The Commission encourages submitters to combine small files that are components of a larger document into one file to facilitate efficient distribution and use of the documentary material. For example, if a document consists of 15 separate 2 MB files, those 15 files should be combined to result in one 30 MB file. This will allow submitters to use hyperlinks in a larger file, *i.e.*, a single electronic file up to 50 MB.

E. Definitions

DOE noted that the definition of complex documents in section 2.1001 of the proposed rule could be viewed as inconsistent with the definition in the Supplementary Information for the proposed rule. Proposed section 2.1001 states that a complex document has substantial portions that are neither textual nor image. However, the Supplementary Information (68 FR 66374) states that complex documents can also include a textual or graphic file that cannot be segmented into 50 megabyte (MB) files. The DOE suggests that the description in the Supplementary Information be used as the definition in section 2.1001 of the rule.

Response

The Commission agrees and has revised the definition accordingly.

3. Docketing

Section 2.1012(a) provides that the DOE license application cannot be docketed unless the Secretary of the Commission determines that the license application can be effectively accessed through ADAMS. DOE is concerned that this establishes a requirement on DOE that is beyond its control. Entering documents into ADAMS is strictly a NRC function and ADAMS is under the sole control of the NRC. Any accessibility problems resulting from entering the license application into ADAMS would be the responsibility of the NRC. DOE notes that, in preparing its electronic license application, the DOE is responsible for meeting the NRC requirements, as well as addressing any guidance that has been issued by the NRC, and transmitting the license application to the proper address and in the proper format(s) specified by the NRC for these actions. If the DOE meets clearly defined specifications for such transmittals, the NRC should be able to make the document available through ADAMS.

The DOE recommends that section 2.1012(a) be revised to read: ''The Director may determine that the tendered application is not acceptable for docketing under this subpart if the application is not accompanied by an updated certification pursuant to section 2.1009(b) or if the application is not submitted on optical storage media in a format consistent with NRC regulations and guidance.''

Response

The Commission agrees with this suggestion and has revised the final rule accordingly. However, in addition to the above two criteria, the Commission has also added a third criterion on non-compliance with any other requirements in Subpart J.

4. The Continuing Need to Supplement Individual LSN Participant Web Sites

Proposed section 2.1003(e) would have required an LSN participant to

supplement its LSN Web site with any documentary material created after the time of initial certification. NEI was concerned that this requirement could continue indefinitely. It is NEI's opinion that the requirement to supplement ends when discovery, in the form of document production, is completed.

Response

The Commission agrees and has revised section 2.1003(e) to specify that the requirement to supplement ends when discovery is complete. The Commission anticipates that discovery will be complete by the time set for the second Pre-Hearing Conference at which issues for hearing will be finalized and schedules for prefiled testimony and hearing will be set. *See* Appendix D to 10 CFR Part 2. However, it should be emphasized that the Board could extend discovery beyond this time period. Moreover, although there is no obligation on an LSN participant to add new documents to its site after discovery closes, an LSN participant does have an obligation to maintain its existing LSN collection intact and available for the balance of the construction authorization proceeding. Parties will have a continuing need to search LSN participant databases during the evidentiary hearing and throughout the NRC appellate process.

5. The Scope of the Congressional Exclusion

Nye County, Nevada expressed the view that the exclusion for congressional correspondence in proposed section 2.1005(i) seems overly broad. The commenter believes that it is entirely conceivable that somewhere in correspondence with a member of Congress or with congressional staff, DOE, or any other party, may have made relevant and admissible statements about some technical issues affecting the licensibility of Yucca Mountain. To exclude all such correspondence categorically is unwarranted. According to Nye County, a better approach would be to limit the exclusion to correspondence involving such matters as budget, and program management.

Response

The Commission appreciates the thoughtful comments of Nye County on this matter. However, the Commission continues to believe that this type of material will not have a significant bearing on repository licensing issues. Much of this material either relates to budgetary issues and schedules or is merely a summary of information in an agency primary document. It would normally not be the source of material that a party would rely on for its case in the hearing or a source of material that would be contrary to such reliance information. However, most, if not all, of the material directed to Federal entities of concern to Nye County, would still be available as part of the normal Federal recordkeeping requirements. If a particular item of Congressional correspondence does become relevant to a contention admitted in the HLW proceeding, it can be made available at that time. The Commission does not anticipate that any disputes over this clearly and narrowly defined exclusion will be brought before the Pre-license Application Presiding Officer (PAPO).

6. The Trigger for Participant Certification

Three commenters, the Agency for Nuclear Projects in the State of Nevada's Governor's Office, the Nevada Nuclear Waste Task Force, and Eureka County's Yucca Mountain Information Office, all raised concerns on the timing of LSN participant certification in relation to DOE's certification. The current requirements in 10 CFR 2.1003(a) require the DOE to make its documentary material available in electronic form no later than six months in advance of DOE's submission of its license application to the NRC. The NRC must make its documentary material available in electronic form no later than thirty days after the DOE certification of compliance. All other participants must make their documents available in electronic form no later than ninety days after the DOE certification of compliance. However, these commenters noted that although DOE may have all of its documentary material available on its LSN document server by the time required for certification, it is possible that the DOE collection would not yet have been indexed and audited by the LSN Administrator. Therefore, the entire DOE collection would not yet be ''available'' to the public. The commenters recommended that the Commission add an additional certification by the LSN Administrator that the DOE collection had been indexed and audited. This LSN Administrator certification would then become the tolling event for the certification by all other LSN participants, rather than the DOE certification.

Response

At the outset, the Commission notes that an amendment such as that recommended by the commenters is outside the scope of this rulemaking. This issue was not raised in the proposed rule and was not intended to be part of this rulemaking effort. However, the Commission also recognizes the importance of this concern. The NRC is pursuing an approach with DOE to ensure that the DOE collection has been indexed and audited by the LSN Administrator in approximately the same time frame as the DOE certification. This should ensure that an indexed and baselined DOE collection will be available to other LSN participants well in advance of the point at which the NRC dockets an acceptable DOE license application.

7. Transportation Issues

Lincoln County and the City of Caliente, in their comments on the proposed rule, urged the Commission to clarify the extent to which Yucca Mountain repository system transportation related information will be considered during licensing and, therefore, be required for inclusion within the LSN. The County and the City believe that the Yucca Mountain licensing proceeding should encompass all aspects of the Yucca Mountain repository transportation system.

Response

The Commission recognizes that issues related to the transportation of High Level Waste (HLW) and Spent Nuclear Fuel (SNF) to the Yucca Mountain site in Nevada are of concern to members of the public. These issues are complicated by the multi-agency coordination that is required between DOE, the Department of Transportation (DOT), and the NRC. As a preliminary matter, it is important to distinguish the role of the NRC in matters related to transportation. The only role of the NRC in the licensing proceeding for Yucca Mountain with respect to transportation issues is to review the DOE Environmental Impact Statement (EIS), for adoption to the extent practicable.

The Nuclear Waste Policy Act of 1982, 42 U.S.C. 10101, *et seq.*, as amended (NWPA), provides the primary framework for issues related to the proposed Yucca Mountain repository, including transportation issues. Section 114(f) of the NWPA requires DOE to prepare an EIS, part of which may include an evaluation of transportation impacts. Additionally, section 114(f) mandates that the NRC, to the extent practicable, adopt the DOE EIS, including those parts of the EIS related to transportation. Such adoption shall be deemed to satisfy the responsibilities of the NRC under NEPA and ''no further consideration shall be required.'' *See* NWPA section 114(f)(4). The Topical

Guidelines in Regulatory Guide 3.69 specifically address those aspects of transportation that are included under documentary material for purposes of the LSN.

III. The Final Rule

Submissions to the Electronic Docket for the Hearing

As noted, one of the objectives of the regulations in 10 CFR Part 2, Subpart J is to provide for electronic submission of filings by the parties, as well as the orders and decisions of the Atomic Safety and Licensing Board, during the proceeding. The purpose of this function is to reduce the time that it takes to serve filings by substituting electronic transmission for the physical mailing of filings that is typically used in NRC licensing proceedings. Shortening the amount of time for certain activities during the hearing process will support the NRC's efforts to meet the schedule in the NWPA. 10 CFR 2.1013(c)(1) requires that all filings in the HLW licensing proceeding be *transmitted electronically* (emphasis added) by the submitter to the Presiding Officer, the parties, and the Secretary of the Commission. The Commission believes that the majority of these filings will consist of simple documents that can be readily transmitted by EIE. However, after further considering the nature of some of the documents that may be submitted by the parties during the proceeding, the Commission believes that it is necessary to specify requirements for submitting large and/or complex documents.

Large documents consist of electronic files that, because of their size, create challenges for both the NRC staff, potential parties and the public when transmitting, viewing, or downloading the document (*e.g.*, significant delays in transmission, uploading, or downloading times). The Commission anticipates that the potential license application and some filings in the HLW repository adjudicatory proceeding will be of a size that will create transmission, viewing, or downloading challenges. In electronic format, some of these files could be up to several hundreds of megabytes (MB) in size. Examples of potential large documents are:

- DOE Site Characterization Plan
- DOE License Application and supporting materials
- DOE Environmental Impact Statement
- Some adjudicatory documents (*e.g.*, motions, responses, transcripts, exhibits, and orders)

Additionally, any or all of these types of documents could contain embedded photographs, charts, tables, and other graphics.

Complex documents consist (entirely or in part) of electronic files having substantial portions that are neither textual nor image in nature, and graphic or other Binary Large Objects that exceed 50 MB and cannot be logically divided. For example, these types of specialized documents may include:

- Executable files, which can be opened (run) to execute a programmed series of instructions on a computer or network;
- Runtime executable software, which generally is operational upon demand without being installed on a computer or network;
- Viewer or printer executable software that causes images to be displayed on the computer monitor or pages to print on an attached printer;
- Files from a dynamic link library (.dll), which are a collection of small, bundled executable programs that each provide one or more distinctive functions used by application programs and operating systems and are available when needed by applications or operating systems;
- Large data sets associated with an executable; and
- Actual software code for analytical programs that a party may intend to introduce into the proceeding.

As part of complex document submittals, the NRC anticipates receiving files that—

(1) Due to their file size, may preclude easy transmission, retrieval, and use; or

(2) May require specialized software and/or hardware for faithful display and subsequent use; and

(3) May not be suitable for inclusion in a ''generic'' file format such as the Adobe'' Acrobat Portable Document Format (PDF).

Examples of files that could be part of a complex document are:

- Maps
- Databases
- Simulations
- Audio files
- Video files
- Executable programs

There are several potential problems presented by the electronic transmission of these large or complex documents, including the ''time out'' problems when submitting very large documents via the Internet, difficulty of use in the hearing room, and Federal records management considerations. These potential problems are evaluated in more detail in the regulatory analysis for this final rule.

In response to these potential problems, the Commission is revising the framework for the submission of filings during the HLW licensing proceeding. This revised framework is based on segmenting large documents using manageable file size units to reduce the potential for interruption or delay in transmission, uploading, or downloading. For example, large documents could be segmented into pieces, which correspond to the organization (chapters or sections) of the document, in order to address the transfer and retrieval performance problems discussed above. The author of the document would be in the best position to break up document files into usable segments without adversely impacting the organization or content of the document.

The electronic submission of filings in the HLW repository proceeding must be made via the Internet using the NRC EIE, when practicable. The EIE is an electronic transfer mechanism being established by the NRC for electronic transmission of documents to the agency via the Internet. EIE provides for the transmission of documents in a verifiable and certifiable mode that includes digital signatures.

The final amendments revise section 2.1001 to establish three categories of electronic filings for purposes of the HLW repository proceeding and would revise section 2.1013(c)(1) to specify the submission requirements for these three categories of electronic filings.

''Simple documents'' are textual or graphic oriented material that are less than 50 megabytes (MB) in size. These documents are transmitted electronically via EIE as contemplated by the current 10 CFR 2.1011. Test results have demonstrated that 50 MB is a reasonable size for downloading files across wide area networks or from the Internet via phone lines.

''Large documents'' are those that have textual or graphic oriented material larger than 50 MB in size. Under revised section 2.1013(c)(1)(ii), these documents must be submitted via the EIE in multiple transmissions of 50 MB or less each. The large document submission may also be supplemented with a courtesy copy on optical storage media to provide NRC staff, parties, and interested governmental participants in the HLW repository proceeding with a useful reference copy of the document. For purposes of the NRC staff review of the DOE license application, as opposed to an electronic submission to the adjudicatory docket, the requirements for DOE's submission of the license application are already specified in 10 CFR 63.22 of the Commission's regulations. 10 CFR 63.22(a) specifies that the application, any amendments to

the application, and an accompanying environmental impact statement and any supplements, must be signed by the Secretary of Energy or the Secretary's representative and must be filed with the Director in triplicate on paper and optical storage media. In addition, 10 CFR 63.22(b) requires that 30 additional copies of the license application be submitted on paper and optical storage media.

''Complex documents'' are any combination of the following:

- Textual or graphic-oriented electronic files
- Electronic files that cannot be segmented into 50 MB files
- Other electronic objects, such as computer programs, simulations, video, audio, data files, and files with special printing requirements.

Under final section 2.1013(c)(1)(iii), those portions of complex documents that can be electronically submitted through the EIE, again in 50 MB or less segments, will be transmitted electronically. Those portions that are not amenable to electronic transmission will be delivered on optical storage media. The optical storage media must include the complete document, *i.e.*, include the portions of the document that have been delivered via the EIE.

In addition to these revisions, section 2.1013 (c)(1) is amended to require the following:

- Electronic submissions of files created after January 1, 2004 must have 300 dots per inch (dpi) as the minimum resolution for bi-tonal, color, and grayscale, except in limited circumstances in which (a) submitters may need to use an image scanned before January 1, 2004, in a document created after January 1, 2004, or (b) the scanning process for a large, one-page image may not successfully complete at the 300 dpi standard resolution.
- Electronic submissions of files created before January 1, 2004, or electronic submissions created after January 1, 2004, which cannot meet the 300 dpi standard for color and grayscale, must meet the standard for documents placed on LSN participant Web sites (10 CFR Part 2.1011(b)(2)(iv)) which is 150 dpi for color and grayscale documents and 300 dpi for bi-tonal documents.
- Electronic submissions must be in the appropriate PDF output format. These formats and their use are:
- PDF—Formatted Text and Graphics—use for textualdocuments converted from native applications
- PDF—Searchable Image (Exact)—use for textual documents converted from scanned documents
- PDF—Image Only—use for graphic-, image-, and forms-oriented documents

Tagged Image File Format (TIFF) images and the results of spreadsheet applications will need to be converted to PDF, except in those rare instances, examples of which are described in the Guidance Document, where PDF conversion is not practicable. Spreadsheets may be submitted using Microsoft® Excel, Corel® Quattro Pro, or Lotus® 123.

- Electronic submissions to the hearing docket cannot rely on the use of any hyperlinks to other electronic files or websites to generate additional documentary material. Any such documentary material must be submitted either as an attachment to the filing or as a separate filing. If a submittal contains hyperlinks, then it must include a disclaimer to the effect that the hyperlinks may be inoperable or are not essential to the use of the filing.
- Electronic submissions to the EHD may rely on the use of hyperlinks within the same PDF file.
- Electronic submissions must be free of any security restrictions imposed by the author (proposed section 2.1013(c)(1)(vii)).

Additional information on the submission of these filings will be provided in the Guidance Document, discussed earlier. The Guidance Document is available on the NRC Web site (*http://www.nrc.gov*). The NRC expects parties, interested governmental participants, and potential parties to use the detailed instructions in the Guidance Document to ensure that their electronic filings are effectively submitted. Areas covered by the Guidance Document address the need for and format of the transmittal letter for electronic filings, file naming conventions, copyrighted information, and instructions on sensitive or classified information.

Docketing

The final revisions clarify the responsibility of the Secretary of the Commission, under section 2.1012(a), to determine whether the DOE license application for a HLW repository is in an electronic media form and format that is acceptable for docketing. Under section 2.1012(a), the DOE license application cannot be docketed unless the Secretary of the Commission determines that the DOE license application has been submitted on optical storage media in a format consistent with NRC regulations and guidance.

Documentary Material

Section 2.1003 of the current LSN rule requires a party, a potential party, or an interested governmental participant (hereinafter ''participant'') to make its documentary material available in electronic form. The definition of ''documentary material'' includes material prepared by an individual participant, for example, all reports or studies prepared by, or on behalf of, a participant. It also includes other material in the possession of the participant on which the participant intends to rely and/or cite in support of its position in the HLW repository proceeding or that doesn't support its position. This provision can be read to obligate a party who possesses a document prepared by another participant to make that document available on its LSN document collection server even though it is already available on the LSN document collection server of the party who had prepared the document. For example, under this interpretation a document prepared by DOE would not only need to be available through the centralized LSN Web site from the DOE LSN document collection server, but also from the LSN document collection server of other participants. Without compromising the objective of ensuring that all documentary material is available on the LSN, the Commission believes that it would be beneficial to eliminate or at least significantly reduce the loading of duplicate documents. Reducing duplication will not only alleviate burdens on the participants, but will also make search and retrieval of the LSN collection more efficient. Therefore, the final amendment to section 2.1003(a)(1) allows an LSN participant to avoid loading a document created by another LSN participant if that document has already been made available by the LSN participant who created the document or on whose behalf the document was created.

If, in the process of eliminating duplicate documents, an LSN participant identifies a document which the creator of that document has not included on its LSN document collection server, as a practical matter, the participant who identified the document should include it on its LSN document collection server, as well as notifying the creator of the document that it is taking that action. Moreover, in such circumstances, it is not apparent what purpose would be served by raising the issue before the PAPO unless the documentary material has some readily apparent significance as a Class 2 document (as delineated in the

discussion below) or a significant number of ''missing'' documents were identified with regard to a particular LSN participant, so as to raise the issue of a concerted, deliberate effort not to comply with the regulations.

The Commission is also amending section 2.1003 by adding a new paragraph (e) to this section. Section 2.1003(e) requires LSN participants to supplement the documentary material provided under section 2.1003(a) in its initial certification with documentary material produced after that event. While much of an LSN participant's documentary material will be made available early, it is reasonable to expect that additional material will be created after the initial compliance period specified in section 2.1003(a). In addition, the ongoing performance confirmation program required of DOE by section 63.131 of the Commission's regulations will generate additional documentary material after the license application is docketed. The Commission has revised section 2.1003(e) to specify that the requirement to supplement ends when discovery is completed. The schedule in Appendix D to 10 CFR Part 2 anticipates the close of discovery to occur near the time of the second pre-hearing conference held to finalize issues for hearing and schedules for prefiled testimony and hearing. However, during the proceeding, the Atomic Safety and Licensing Board can always direct that additional discovery or discovery supplementation must take place. Moreover, it should be added that while there is no obligation on an LSN participant to add new documents to its site after discovery closes, an LSN participant does have an obligation to maintain its existing LSN collection intact and available for the rest of the proceeding. Parties will have a continuing need to search LSN participant databases during the evidentiary hearing and throughout the NRC appellate process.

Finally, the Commission is providing further information and a clarification on the responsibilities of LSN participants in regard to the three classes of documentary material in section 2.1001. These three classes are:

1. Any information on which a party, potential party, or interested governmental participant intends to rely and/or cite in support of its position in the HLW repository proceeding;

2. Any information that is known to, and in the possession of, or developed by the party that is relevant to, but does not support, that information noted in item 1 or that party's position; and

3. All reports and studies prepared by or on behalf of a potential party, interested governmental participant, or party, including all related ''circulated drafts'' relevant to the application and the issues set forth in the Topical Guidelines, regardless of whether they will be relied upon or cited by a party.

The first two classes of documentary material are tied to a ''reliance'' criterion. Reliance is fundamentally related to a position that a party in the HLW repository proceeding will take in regard to compliance with the Commission regulations on the issuance of a construction authorization for the repository. These compliance issues take the form of ''contentions'' of law or fact that a party has successfully had admitted for litigation in the HLW repository proceeding under the rules of practice in 10 CFR Part 2. The third class of material, ''reports and studies prepared for or on behalf of the potential party'' has meaning independent of any contentions that might be offered. The material in this class must be available on the LSN regardless of whether it has any relation to a contention offered at the hearing. It is also a likely source of the material that a party would use to develop its contentions. ''Reports'' and ''studies'' will also include the basic documents relevant to licensing such as the DOE EIS, the NRC Yucca Mountain Review Plan, as well as other reports or studies prepared by a LSN participant or its contractor.

To fall within the definition of ''documentary material'', reports or studies must have a nexus to both the *license application* (emphasis added) and the Topical Guidelines contained in NRC Regulatory Guide 3.69. This dual requirement is designed to ensure that LSN participants do not have to identify, and include as documentary material, reports or studies that have no bearing on the DOE license application for a geologic repository at the Yucca Mountain site, such as reports or studies on other potential repository sites or on issues outside of the NRC licensing criteria. In addition, § 63.21 of the Commission's regulations requires that the DOE Environmental Impact Statement (EIS) must accompany the license application. Therefore, reports and studies relevant to issues addressed by the DOE EIS must also be made available as Class 3 documentary material. This is also consistent with the coverage of the Topical Guidelines.

To assist participants in identifying documentary material that may be relevant to the license application in the time period before it is submitted, the Commission is recommending that LSN participants use the NRC Yucca Mountain Review Plan (NUREG–1804, Rev. 2, July, 2003) as a guide. The Yucca Mountain Review Plan provides guidance to the NRC staff on evaluating the DOE license application. As such, it anticipates the form and substance of the DOE license application and can be used as a reliable guide for identifying documentary material.

The Commission also notes that the history of the LSN and its predecessor, the Licensing Support System, makes it apparent it was the Commission's expectation that the LSN, among other things, would provide potential participants with the opportunity to frame focused and meaningful contentions and to avoid the delay potentially associated with document discovery, by requiring parties and potential parties to the proceeding to make all their Subpart J-defined documentary material available through the LSN prior to the submission of the DOE application. These objectives are still operational. Nonetheless, the Commission is clarifying that, because the full scope of coverage of the reliance concept will only become apparent after proffered contentions are admitted by the Presiding Officer in the proceeding, an LSN participant would not be expected to identify specifically documents that fall within either Class 1 or Class 2 documentary material in the pre-license application phase.

In this regard, the Commission still expects all participants to make a good faith effort to have made available all of the documentary material that may eventually be designated as Class 1 and Class 2 documentary material by the date specified for initial compliance in section 2.1003(a) of the Commission's regulations. Thereafter, in conjunction with its license application submission, DOE would be required to supplement its Class 1 and Class 2 documents to the degree the application makes it apparent the scope of the DOE documentary material in those classes had changed, a process that might well be repeated by all parties following the admission of contentions. Finally, as part of the regular post-contention admission discovery process under section 2.1018, a party could be required to identify the specific documents that comprise its Class 1 and Class 2 documentary material. As a consequence, while it is not possible to say there are no special circumstances that would necessitate a ruling by the PAPO on the availability of a particular document in the pre-license application stage based on its Class 1 or Class 2 status, disputes over Class 1 and Class 2 documentary material generally would be of a type that would be more appropriately raised before the Presiding Officer designated

during the time following the admission of contentions when the NRC staffis working to complete the Safety Evaluation Report in its entirety.

Exclusions

The Commission has reviewed its procedural rules for the HLW repository licensing proceeding, including the LSN requirements, to assess whether they appropriately reflect the evolution of the relevant technology, law, and policy since the rules were originally promulgated in 1987, being mindful of a recent report by the House Committee on Appropriations (Committee), issued July 2003, expressing concern on the extent of documentation that DOE may be required to provide as part of the LSN. The Committee encouraged the Commission to review its regulatory requirements regarding the LSN to ensure that they do not require the duplication of information otherwise easily obtainable, focus on information that is truly relevant to the substantive decisions that will have to be made, and establish a time frame in accord with the traditional conduct of an adjudicatory proceeding.[1] Based on our review, the Commission has determined that the LSN rule could be further revised to address the Committee's concerns, while still maintaining the overall purpose and functionality of the LSN.

The Commission is revising section 2.1005 of the rule to specify an additional category of documents, ''congressional correspondence,'' that may be excluded from the LSN. Section 2.1005 of the Commission's regulations establishes several categories of documents that do not have to be entered into the LSN, either under the documentary material requirements of section 2.1003, or under the derivative discovery provisions of section 2.1019. These include materials that are either widely available or do not have any significant relevance to the issues that might be litigated in the HLW licensing proceeding. The Commission is adding ''correspondence between a party, potential party, or interested governmental participant and the Congress of the United States' to these exclusions. This reflects the Commission's current judgment that this type of material will not have a significant bearing on repository licensing issues. Much of this material either relates to budgetary issues and schedules or is merely a summary of an entity's primary document. It would normally not be the source of material that a party would rely on for its case in the hearing or as a source of material that would be contrary to such reliance information. However, the correspondence generated by Federal entities will still be available as part of the normal Federal recordkeeping requirements. If a particular item of Congressional correspondence does become relevant to a contention admitted in the HLW proceeding, it can be made available at that time. The Commission does not anticipate that any disputes over this clearly and narrowly defined exclusion would be brought before the PAPO.

Plain Language

The Presidential memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In light of this directive, editorial changes have been made in these proposed revisions to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requested comment on the proposed rule specifically with respect to the clarity of the language used. The Commission did not receive any comments on this aspect of the proposed rule.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This final rule would establish requirements and standards for the submission of filings to the electronic docket for the HLW licensing proceeding. Although the specific standards in the final rule are unique to the Commission's HLW repository proceeding, they are based on industry-wide standards such as Portable Document Format (PDF).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared.

Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

The Commission did not receive any specific comments on the regulatory analysis for the proposed rule. The regulatory analysis for the final rule has not been changed.

The following regulatory analysis identifies several alternatives to the rule set forth in the final rule. Subpart J of 10 CFR Part 2 establishes an electronic environment for the adjudicatory proceeding for consideration of a potential license application by the U.S. Department of Energy (DOE) for a proposed HLW repository at Yucca Mountain, Nevada. The NRC expects to begin receiving and processing a significant volume of electronic documents associated with the adjudicatory proceeding in the near future. Some of these filings will consist of large or complex documents. Examples of material in these large electronic files include maps, charts, video presentations, computer modeling or simulation programs with their associated databases, and narrative reports with extensive embedded graphic objects. Consistent with 10 CFR Part 2, Subpart J:

- The NRC has established the Licensing Support Network (LSN) so that all parties, potential parties, and participants in the proceeding will be able to make their documentary material electronically available to meet document discovery requirements.
- The NRC will direct all participants in the adjudicatory proceeding to use the agency's EIE capabilities to submit their filings electronically to the NRC when practicable.
- After processing, documents submitted in the HLW repository proceeding would be available in the Electronic Hearing Docket (EHD), which is accessible via the Internet; electronic objects that cannot be made directly accessible via the EHD Web site, such as computer simulation models, will be described in the EHD and made available on optical storage media.

The assessment of existing and anticipated technology capabilities identified a number of potential issues that may make it difficult to meet the challenges of electronic submission of large documents as specified in 10 CFR Part 2, Subpart J. Those challenges are driven by the following fundamental issues:

[1] H.R. Rep. No. 108, 108th Cong. 1st Sess. (2003).

• Technology limitations of current electronic document and records transmission and management systems.
• Maintaining document and object fidelity, integrity, and authenticity.
• Receiving source document formats in an acceptable resolution.
• Management of and access to non-textual information.
• Federal recordkeeping requirements.
• General usability of the electronic submittals.
• Potential limitations of information technology (hardware, software, or Internet service provider) used by the general public.

The Nature of the Documents

Documents may be large, complex, or a combination of both, as follows:
• Large documents consist of electronic files that, because of their size, create challenges for both the NRC and the public when transmitting, viewing, or downloading the document (*e.g.*, significant delays in transmission, uploading, or downloading times). The NRC anticipates that the potential license application and some filings in the HLW repository adjudicatory proceeding will be of a size that will create transmission, viewing, or downloading challenges. In electronic format, some of these files could contain several hundred megabytes.
• Complex documents consist (entirely or in part) of electronic files having substantial portions that are neither textual nor image in nature, and graphic or other Binary Large Objects that exceed 50 MB and cannot be logically divided. For example, specialized exhibits may include computer software programs and their operating components, large data files, and actual software code for analytical programs that a party may intend to introduce into the proceeding.

Articulation of the Issues

Large and/or complex documents may pose challenges in any or all of the following general areas:

• *Electronic Submission Process*

When submitted via the Internet, very large documents or files can cause ''time-out'' problems for computers at either end of the transfer, resulting in a failed or canceled transfer. Transmission times are dependent on the speed of the sender's communication device and the technology used by the Internet service provider. Very large documents or files require lengthy transmission times during which the potential for error conditions or other service interruptions increases in direct proportion to the time the communication link must be maintained. The time-out problems could affect each party who receives the documents as part of the service of a filing. The actual transfer times for very large documents or files may approach 24 hours using standard Internet File Transfer Protocol (FTP) routines. In terms of ensuring timeliness, this may not be a significant improvement over the use of an overnight courier to send the files on optical storage media (*e.g.*,CD–ROM).

• *Access to Large, Complex Documents in the Electronic Hearing Docket (EHD)*

Keeping a large document together in one very large file may allow users to easily search for, retrieve, and analyze the document in its entirety, but may result in service interruption problems similar to those described above. This is particularly true if a user wants to download the image file of one of these large documents. Retrieval time will be unacceptably slow, or will result in a time-out problem with the user's Internet connection.

Users of the EHD may encounter comparable download delays because of the file size of large or complex documents and, depending on the nature of the file, the file may not be executable on a user's desktop personal computer because of configuration, memory, display, or other technical problems.

• *Use of Large, Complex Documents in a Hearing Room*

Large documents may be pre-filed as potential exhibits in the docket; however, in a hearing room, it is possible that only portions of such documents, *e.g.*, specified chapters, pages, or paragraphs will be offered. In a dynamic and fast-paced hearing room environment, it would not be desirable to delay the proceeding to wait for a large file to load; navigate to the desired chapters, pages, or paragraphs; and then extract the appropriate selection for use in the proceeding. Complex documents may also require specialized hardware and/or software to execute software program files and access their associated data.

• *Official Record and Federal Records Management Considerations*

For both large and complex documents, the NRC must consider the need to generate an official record of the proceeding for use in potential appellate environments, *see* 10 CFR 2.1013(a), and for generating an Official Agency Record (OAR) version of the docketed materials for retirement to the National Archives and Records Administration (NARA). Each of these situations requires the ability to reassemble the record version of the documentary material (excluding software executables), independent of the media or software initially used to create it.

Coupled with the project objectives and technical requirements (discussed in the next section), these issues represent the framework for potential solutions. The NRC analysis distilled and assessed the objectives, technical requirements, and issues and developed four designs.

Technical Requirements

Given the anticipated size and complexity of individual documents, and the quantity of submittals, the need to transmit, manage, and retrieve electronic documents and objects challenges both the NRC's current processes and its information technology/information management (IT/IM) infrastructures, and the information technology (hardware, software, Internet service provider) in use by the general public. Examples of potential large documents are:
• The DOE Site Characterization Plan;
• The DOE License Application and supporting materials;
• The DOE Environmental Impact Statement;
• Adjudicatory documents (*e.g.*, motions, responses, transcripts, exhibits, and orders).

Any or all of these types of documents may contain embedded photographs, charts, tables, and other graphics that contribute to the understanding of the narrative.

The NRC also anticipates receiving files that could be part of complex document submittals that:

(1) Due to their file size, may preclude easy transmission, retrieval, and use; or

(2) May require specialized software and/or hardware for faithful display and subsequent use; and

(3) May not be suitable for inclusion in a ''generic'' file format such as PDF. The PDF standard, though it is proprietary to Adobe®, has been published and is available for use by software vendors. Users can access the content of a PDF format file through the use of the Adobe Reader® viewer software.

Examples of files that could be part of complex documents include maps, databases, simulations, audio files, video files, and executable programs.

The analysis of the challenges of handling large documents in the NRC and public IT environments considered the following functional areas:

• *Transmit* activities entail sending a submittal from the submitter to the NRC, either via electronic format (through transmission or media) or as a physical object (*e.g.*, video or audio).

• *Capture* relates to the receipt of electronic objects, with notifications provided according to an approved service list, preferably through e-mail. Upon receipt at the NRC, each submittal is staged for additional processing.

• *Index & Cross-Reference* are two distinct processes. Each submittal must be indexed based on prescribed profile templates. In addition, as part of the cataloging process, a submittal may be identified (or cross-referenced) as part of a package or compound document.

• *Store* manages the storage location of a submittal, *i.e.*, within a folder or larger collection for electronic submittals, or the physical media location for submittals provided on optical storage media (*e.g.*, CD-ROM) containing text, data, and objects. This process involves applying security and audit controls, as well as the appropriate retention schedule.

• *Search & Retrieve* operations involve querying the bibliographic header and content, displaying the pertinent object(s), and, if desired, printing all or part of the displayed object(s).

• *Create & Revise* activities facilitate the creation or revision of new documents using content that has been extracted (copied and pasted) from original submittals.

• *Copy & Distribute* activities involve maintaining distribution (service) lists and providing the means to copy or download an individual document or a collection of documents.

These activities may also involve reproduction when the need arises to generate a hard copy of a submittal (*e.g.*, ''8.5″×''11″ paper'', drawings, etc.).

Finally, there was an assessment of the existing NRC document and records management systems environment as well as requirements for enhancements to support the large document business requirements.

Assessment and Alternatives

The NRC assessed a number of alternatives to the existing technology infrastructure, current and planned operating procedures for processing documents, and regulatory requirements to determine how the identified objectives, issues, and technical requirements can be addressed while ensuring that—

• Document fidelity and integrity is preserved (*e.g.* organization, accuracy, completeness);

• Documents are accessible to users via commonly used computer configurations;

• The information is available on reliable and controllable media; and

• Unique submittals with special software/hardware components can be handled.

The assessment also considered that the NRC should provide guidance to participants in the proceeding well in advance of when large, complex filings are reasonably anticipated. The guidance, as well as the underlying technology and procedures, would address matters such as processes, file sizes, file formats, document organization overviews to facilitate reconstruction of the complete filing, labeling formats, and alternative transfer media.

This section presents general concepts and four alternatives for handling large, complex electronic submittals in the HLW repository proceeding.

General Concept

The overall information infrastructure for receiving and managing HLW-related documents involves several existing agency information systems. Participants in the proceeding will primarily send submittals to the NRC in the preferred PDF format via EIE, which provides a Web-form (an entry form similar to that of an overnight express mail carrier shipping form) for the submitter to accurately identify what is being transmitted. Upon receipt, each submittal would be entered into the Agencywide Document and Management System (ADAMS). Once captured within ADAMS, the submittal would be available for internal use by agency staff, and the information would be made publicly available (as appropriate) via the EHD. Variations on this general process and issues associated with large, complex documents are described in the following sections.

Alternative 1

Description: Documents, images, and other submittal components are submitted through the EIE as a single file, and the EIE Web-form serves as the transmittal letter. The NRC captures large files as single units, without the need for any manual manipulation, such as breaking a submission into workable pieces. Based on the service list, an e-mail is sent to provide notification of receipt and a link from the EIE server to the file for immediate access by parties and participants to the proceeding. In addition, the file is made available (as appropriate) to the EHD. Interested parties can search on the bibliographic header information, the content, or a combination of the two. Retrieval of a document is directly to the user's desktop.

Positives: This alternative would satisfy the electronic transmission requirements of 10 CFR Part 2, Subpart J. This alternative primarily benefits and is less restrictive to the submitter. That is, the submitter dictates the form and format of the content, and the submittal comes in as a single optimized PDF format file.

Negatives: Submittal file size could be very large (potentially several hundred MB), particularly if graphics are widely used. The transmission may be problematic because of service interruptions or time-outs attributable to the very long transfer times required for large files. File sizes could also make this alternative unfeasible for subsequent users of a file, primarily because of download delays and time-outs. In addition, although any executables contained in the submittal could be stored in the EHD, they could not be indexed for search and retrieval or accessed online. The executable file would need to be downloaded and run locally.

Alternative 2

Description: The only object transmitted through the EIE is the transmittal letter for the large, complex document, which notifies the NRC of an impending package submittal. All other electronic files pertaining to the submittal are sent on optical storage media (*e.g.*, CD–ROM), which is delivered to the NRC via an overnight express mail carrier. Based on the service list, the NRC sends an e-mail containing links from the EIE server to the transmittal letter for immediate access by parties and participants to the proceeding. All text-based components (*e.g.*, narrative with embedded graphics) are rendered as optimized PDF format files. The NRC extracts each file from the optical storage media (*e.g.*, CD–ROM) and makes the files available (as appropriate) to the EHD as either individual objects or a compound document, depending on the document organization. The NRC also links a bibliographic header to the appropriate optical storage media (*e.g.*, CD–ROM) for files or objects that are not candidates for extraction (because of some technical constraint). Interested parties can search the EHD on the bibliographic header, the content, or a combination of the two. Retrieval of a document or specified component(s) is directly to the user's desktop. Additionally, the NRC provides copies (upon request and for a fee) of the

optical storage media (*e.g.*, CD–ROM) for public access.

Positives: The NRC provides guidance to the submitter to facilitate processing and use within the agency. This alternative also avoids potential problems associated with submitting large files via the EIE.

Negatives: This alternative does not meet the electronic service requirements of 10 CFR Part 2, Subpart J. There may also be a delay in parties and participants receiving documents. As compared with Alternative 1, additional processing will be required to extract, profile, and store files in a timely manner. In addition, use of this alternative could adversely affect document fidelity and integrity (*e.g.* organization, accuracy, or completeness) which could affect the efficient conduct of an adjudication, as well as for agency recordkeeping and eventual turnover to NARA.

Alternative 3

Description: Documents, images, and other components (including the transmittal letter and enhanced Web-form) are transmitted through the EIE as multiple segmented files (''chunks'') of a single submittal. All text-based components (*e.g.*, narrative with embedded graphics) are rendered as optimized PDF format files. Based on the service list, the NRC sends an e-mail containing links from the EIE server to the transmittal letter and the various segmented files for immediate access by parties and participants to the proceeding. Upon receipt and subsequent processing, the NRC makes the segmented files available (as appropriate) to the EHD as a ''package'' or ''compound document.'' Interested parties can search on the bibliographic headers, or content, or a combination of both. Retrieval of selected components is direct to the user's computer.

Positives: This alternative satisfies electronic transmission requirements of 10 CFR Part 2 and allows submission via the EIE. It also allows the NRC to provide guidance to have precisely defined segments and bibliographic header information associated with each segment. The segmentation facilitates later use and access.

Negatives: This alternative requires the EIE to facilitate the transfer, segregate component content from bibliographic header information and the transmittal letter, and make that information available to the EHD. A possible fatal flaw is that some file types may not be able to be segmented into manageable sizes (*e.g.*, graphic-oriented materials showing subsurface geology in color or computer modeling information and/or software), and some materials may not be accessible via the EHD.

Alternative 4

Description: All text-based components (*e.g.* narrative with embedded graphics) are rendered as optimized PDF files and transmitted in manageable segments. All non-text components that are not suitable for an optimized PDF file are submitted on optical storage media (*e.g.*, CD–ROM). When necessary, due to the nature of the submittal, a submittal letter identifies all electronic files that comprise the submission, clearly indicating which components are submitted via EIE, and which are submitted on optical storage media (*e.g.*, CD–ROM). The submittal letter, enhanced Web-forms, and all segmented text files are sent through the EIE. The optical storage media (*e.g.*, CD–ROM) containing the complete submission (*i.e.*, text-based segments submitted via EIE and any files submitted only on optical storage media) are delivered to the NRC and other parties via an overnight mail carrier or other overnight delivery service. The NRC links a bibliographic header to the optical storage media (*e.g.*, CD–ROM) component of the submission.

Based on the service list, the NRC sends an e-mail containing links from the EIE server to the transmittal letter and the various components submitted through the EIE for immediate access by parties and participants to the proceeding. The NRC indexes the text-based components sent via EIE and makes them available to the EHD as a ''package'' or ''compound document.'' Additionally, the NRC provides copies (upon request and for a fee) of the optical storage media (*e.g.*, CD–ROM) for the public. Interested parties can search on the bibliographic header information, content, or a combination of both. Retrieval of text-based components is directly to the user's computer, and non-text components are retrievable from the optical storage media (*e.g.*, CD–ROM).

Positives: This alternative combines the best features and advantages of Alternatives 2 and 3, including text-based component submission through the EIE and non-text component submissions via optical storage media (*e.g.*, CD–ROM). This alternative provides several means to optimize a submission and allows the NRC to process the submission appropriately; provide access to end-users (*i.e.*, adjudicatory proceeding participants and the general public); and prepare for the eventual transfer to NARA.

Negatives: Processing will need to be closely coordinated to maintain the integrity of the various submittal components (segmented files stored in ADAMS with the bibliographic header records that point to optical storage media, such as a CD–ROM).

Documentary material submitted on optical storage media and sent by overnight mail (or other expedited delivery services) would not meet the electronic transmission requirements of 10 CFR Part 2, Subpart J. There may be a delay in parties and participants receiving document components contained only on the optical storage media (*e.g.*, CD–ROM).

Planned Actions

Alternative 4 is the recommended approach for the NRC to meet the identified objectives. The NRC believes that this alternative provides the best means for transferring the wide variety of file types and sizes received from parties and participants in the proceeding, as well as the most practical means for delivering electronic information to parties and participants in the HLW repository adjudicatory proceeding, the presiding officer, and the Office of the Secretary (SECY), under the requirements of 10 CFR Part 2, Subpart J.

Toward that end, the agency will take the following steps:

- Develop guidance for use in generating HLW proceeding submissions that specifies the size, file characteristics, and method (either EIE or optical storage media) for different submittal types (*i.e.* simple, large, or complex). This guidance will also provide direction concerning the information the agency requires to ensure proper identification of each segment.
- Implement enhancements to the agency's existing IT/IM systems (such as an improved EIE capability) in anticipation of storage, search, and retrieval needs, as they pertain to Alternative 4.
- Implement enhancements to the agency's current document processing work flows in anticipation of the receipt, indexing, and distribution of information, as they pertain to Alternative 4.
- Develop a rule change to implement the recommended alternative. The final rule reflects this approach.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission has evaluated the impact of the final rule on small entities. The NRC has established standards for

determining who qualifies as small entities (10 CFR 2.810). The Commission certifies that this final rule, if adopted, would not have a significant economic effect on a substantial number of small entities. The amendments would modify the NRC's rules of practice and procedure in regard to the HLW repository licensing proceeding. Parties to the HLW repository licensing proceeding will be required to submit their filings during the proceeding according to the standards in the proposed rule. Some of the participants affected by the final rule, for example, DOE, NRC, the State of Nevada, would not fall within the definition of ''small entity'' under the NRC's size standards. Other parties and potential parties may qualify as ''small entities'' under these size standards. However, the required standards will overall make it easier for those parties who are small entities to participate in the HLW repository licensing proceeding.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because these amendments would not include any provisions that require backfits as defined in 10 CFR Chapter I.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the Nuclear Regulatory Commission is adopting the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 1. The authority citation for Part 2 continues to read as follows:

Authority: Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(O)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under secs. 102, 104, 105, 163, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.754, 2.712 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart N also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–550, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.1001, definitions of ''Complex document,'' ''Large document,'' and ''Simple document'' are added in alphabetical order to read as follows:

§ 2.1001 Definitions.

* * * * *

''Complex document'' means a document that consists (entirely or in part) of electronic files having substantial portions that are neither textual nor image in nature, and graphic or other Binary Large Objects that exceed 50 megabytes and cannot logically be divided. For example, specialized submissions may include runtime executable software, viewer or printer executables, dynamic link library (.dll) files, large data sets associated with an executable, and actual software code for analytical programs that a party may intend to introduce into the proceeding.

* * * * *

''Large document'' means a document that consists of electronic files that are larger than 50 megabytes.

* * * * *

''Simple document'' means a document that consists of electronic files that are 50 megabytes or less.

* * * * *

■ 3. In § 2.1003, the introductory text of paragraph (a) and paragraph (a)(1) are revised, and paragraph (e) is added, to read as follows:

§ 2.1003 Availability of material.

(a) Subject to the exclusions in § 2.1005 and paragraphs (b), (c), and (e) of this section, DOE shall make available, no later than six months in advance of submitting its license application for a geologic repository, the NRC shall make available no later than thirty days after the DOE certification of compliance under § 2.1009(b), and each other potential party, interested governmental participant or party shall make available no later than ninety days after the DOE certification of compliance under § 2.1009(b)—

(1) An electronic file including bibliographic header for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, a potential party, interested governmental participant or party; provided, however, that an electronic file need not be provided for acquired documentary material that has already been made available by the potential party, interested governmental participant or party that originally created the documentary material. Concurrent with the production of the electronic files will be an authentication statement for posting on the LSN Web site that indicates where an authenticated image copy of the documents can be obtained.

* * * * *

(e) Each potential party, interested governmental participant or party shall continue to supplement its documentary material made available to other participants via the LSN with any additional material created after the time of its initial certification in accordance with paragraph (a)(1) through (a)(4) of this section until the discovery period in the proceeding has concluded.

■ 4. In § 2.1005, paragraph (i) is added to read as follows:

§ 2.1005 Exclusions.

* * * * *

(i) Correspondence between a potential party, interested governmental participant, or party and the Congress of the United States.

■ 5. In § 2.1012, paragraph (a) is revised to read as follows:

§ 2.1012 Compliance.

(a) If the Department of Energy fails to make its initial certification at least six months prior to tendering the application, upon receipt of the tendered application, notwithstanding the provisions of § 2.101(f)(3), the Director of the NRC's Office of Nuclear Material Safety and Safeguards will not docket the application until at least six months have elapsed from the time of the certification. The Director may determine that the tendered application is not acceptable for docketing under this subpart if the application is not accompanied by an updated certification pursuant to § 2.1009(b), or if the Secretary of the Commission determines that the application is not submitted on optical storage media in a format consistent with NRC regulations and guidance, or for non-compliance with any other requirements identified in this subpart.

* * * * *

■ 6. In § 2.1013, paragraphs (a)(2) and (c)(1) are revised to read as follows:

§ 2.1013 Use of the electronic docket during the proceeding.

(a) * * *

(2) The Secretary of the Commission will establish an electronic docket to contain the official record materials of the high-level radioactive waste repository licensing proceeding in searchable full text, or, for material that is not suitable for entry in searchable full text, by header and image, as appropriate.

* * * * *

(c)(1) All filings in the adjudicatory proceeding on the application for a high-level radioactive waste geologic repository under part 60 or 63 of this chapter shall be transmitted by the submitter to the Presiding Officer, parties, and Secretary of the Commission, according to the following requirements—

(i) ''Simple documents'' must be transmitted electronically via EIE;

(ii) ''Large documents'' must be transmitted electronically in multiple transmissions of 50 megabytes or less each via EIE;

(iii) ''Complex documents'':

(A) Those portions that can be electronically submitted through the EIE, in 50 MB or less segments, must be transmitted electronically, along with a transmittal letter; and

(B) Those portions that are not capable of being transmitted electronically must be submitted on optical storage media which must also include those portions of the document that had been or will be transmitted electronically.

(iv) Electronic submissions must have the following resolution—

(A) Electronic submissions of files created after January 1, 2004 must have 300 dots per inch (dpi) as the minimum resolution for bi-tonal, color, and grayscale, except in limited circumstances where submitters may need to use an image scanned before January 1, 2004, in a document created after January 1, 2004, or the scanning process for a large, one-page image may not successfully complete at the 300 dpi standard resolution.

(B) Electronic submissions of files created before January 1, 2004, or electronic submissions created after January 1, 2004, which cannot meet the 300 dpi standard for color and grayscale, must meet the standard for documents placed on LSN participant Web sites in § 2.1011(b)(2)(iv) of this subpart, which is 150 dpi for color and grayscale documents and 300 dpi for bi-tonal documents.

(v) Electronic submissions must be generated in the appropriate PDF output format by using:

(A) PDF—Formatted Text and Graphics for textual documents converted from native applications;

(B) PDF—Searchable Image (Exact) for textual documents converted from scanned documents; and

(C) PDF—Image Only for graphic-, image-, and forms-oriented documents. In addition, Tagged Image File Format (TIFF) images and the results of spreadsheet applications must to be converted to PDF, except in those rare instances where PDF conversion is not practicable.

(vi) Electronic submissions must not rely on hyperlinks to other documents or Web sites for completeness or access except for hyperlinks that link to material within the same PDF file. If the submittal contains hyperlinks to other documents or Web sites, then it must include a disclaimer to the effect that the hyperlinks may be inoperable or are not essential to the use of the filing. Information contained in hyperlinks to a Web site on the Internet or to another PDF file, that is necessary for the completeness of a filing, must be submitted in its entirety in the filing or as an attachment to the filing.

(vii) All electronic submissions must be free of author-imposed security restrictions.

* * * * *

Dated at Rockville, Maryland, this 4th day of June, 2004.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 04–13113 Filed 6–10–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM280; Special Conditions No. 25–264–SC]

Special Conditions: Raytheon Aircraft MU–300 Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Raytheon Aircraft Company Model MU–300 airplanes modified by Elliott Aviation Technical Products Development, Inc. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a Honeywell AZ–252 Advanced Air Data Computer and optional BA–250 and AM–250 Altimeters. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 3, 2004. Comments must be received on or before July 14, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM280, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM280. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew

Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment hereon is unnecessary as the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance; however, we invite interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments received.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On March 22, 2004, Elliott Aviation Technical Products Development, Inc., Quad City Airport, P.O. Box 100, Moline, Illinois 61266–0100, applied for a supplemental type certificate (STC) to modify Raytheon Aircraft Company Models MU–300 (Diamond I and IA) airplanes. The Raytheon MU–300 airplanes are small transport category airplanes powered by two turbojet engines, with maximum takeoff weights of up to 14,630 pounds. These airplanes operate with a 2-pilot crew and can seat up to 9 passengers. The proposed modification incorporates the installation of a Honeywell AZ–252 Advanced Air Data Computer with optional pilot's BA–250 Altimeter and Co-pilot's AM–250 Altimeter. The information this equipment presents is flight critical. The avionics/electronics and electrical systems to be installed on these airplanes have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Elliott Aviation must show that the Raytheon Aircraft Company Model MU–300 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A14SW, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The regulations incorporated by reference in Type Certificate No. A14SW include 14 CFR part 25, as amended by Amendments 25–1 through 25–40; §§ 25.1351(d), 25.1353(c)(5), and 25.1450, as amended by Amendment 25–41; §§ 25.1353(c)(6), and 25.255, as amended by Amendment 25–42; § 25.361(b) as amended by Amendment 25–46; and 14 CFR part 36 as amended by Amendment 36–1 through 36–12.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for modified Model MU–300 airplanes, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Raytheon Model MU–300 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Elliott Aviation apply at a later date for supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The modified Model MU–300 airplanes will incorporate avionics/electrical systems that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Model MU–300 airplanes. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance is shown with either HIRF protection special condition paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the following table for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz–700 MHz ...	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Raytheon Aircraft Company Model MU–300 airplanes. Should Elliott Aviation Technical Products Development, Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of 14 CFR 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Raytheon Aircraft Company Model MU–300 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Raytheon Aircraft Company Model MU–300 airplanes modified by Elliott Aviation Technical Products Development, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on June 3, 2004.

Franklin Tiangsing,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13306 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM279; Special Conditions No. 25–263–SC]

Special Conditions: Gulfstream Aerospace LP Model Gulfstream 200 (Galaxy) Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Gulfstream Aerospace LP Model Gulfstream 200 (Galaxy) airplanes modified by Gulfstream Aerospace Corporation of Dallas, Texas. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a new electronic laser inertial reference system that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of this system from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 3, 2004. Comments must be received on or before July 14, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM279, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM279.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2796; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance. However, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go the address in the **ADDRESSES** section of this preamble between 7:30 a.m., and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the postcard and mail it back to you.

Background

On March 23, 2004, Gulfstream Aerospace Corporation of Dallas, Texas, applied for a Supplemental Type Certificate (STC) to modify Model Gulfstream 200 (Galaxy) airplanes. These airplanes are low-wing, pressurized transport category airplanes with two fuselage-mounted jet engines. They are capable of seating up to 19 passengers, depending upon the configuration. The modification incorporates the installation of a new electronic laser inertial reference system, which interfaces with the Automatic Flight Control System (AFCS), Flight Management System (FMS), and Electronic Flight Instrumentation (EFIS), providing attitude, heading and position data. This system has a potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (CFR) 21.101, Gulfstream Aerospace Corporation must show that the Model Gulfstream 200 (Galaxy) airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A53NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The regulations incorporated by reference in Type Certificate No. A53NM include 14 CFR part 25, as amended by Amendments 25–1 through 25–82.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* part 25, as amended) do not contain adequate or appropriate safety standards for the modified Model Gulfstream 200 (Galaxy) airplanes, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model Gulfstream 200 (Galaxy) airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Gulfstream Aerospace Corporation apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The modified Model Gulfstream 200 (Galaxy) airplanes will incorporate a new electronic laser inertial reference system that will perform critical functions. This system may be vulnerable to high-intensity radiated fields external to the airplane.

Discussion

There is no specific regulation that addresses requirements for protection of electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for Model Gulfstream 200 (Galaxy) airplanes. These special conditions require that installation of a new electronic laser inertial reference system that performs critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths is identified in the following table for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz—100 kHz	50	50
100 kHz—500 kHz	50	50
500 kHz—2 MHz	50	50
2 MHz—30 MHz	100	100
30 MHz—70 MHz	50	50
70 MHz—100 MHz	50	50
100 MHz—200 MHz	100	100
200 MHz—400 MHz	100	100
400 MHz—700 MHz	700	50
700 MHz—1 GHz	700	100
1 GHz—2 GHz	2000	200
2 GHz—4 GHz	3000	200
4 GHz—6 GHz	3000	200
6 GHz—8 GHz	1000	200
8 GHz—12 GHz	3000	300
12 GHz—18 GHz	2000	200
18 GHz—40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Model Gulfstream 200 (Galaxy) airplanes. Should Gulfstream Aerospace Corporation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Model Gulfstream 200 (Galaxy) airplanes modified by Gulfstream Aerospace Corporation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Model Gulfstream 200 (Galaxy) airplanes modified by Gulfstream Aerospace Corporation.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on June 3, 2004.

Franklin Tiangsing,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13308 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM284; Special Conditions No. 25–268–SC]

Special Conditions: Sabreliner Corporation Model NA–265–65; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Sabreliner Corporation Model NA–265–65 airplanes modified by Garrett Aviation Services. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of two Honeywell N1 Digital Electronic Engine Controls (DEEC) that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the

Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 3, 2004. Comments must be received on or before July 14, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM284, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Directorate at the above address. All comments must be marked: Docket No. NM284. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment are impracticable, because these procedures would significantly delay certification of the airplane and, thus, delivery of the affected airplanes. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA finds, therefore, that good cause exists for making these special conditions effective upon issuance. However, the FAA invites interested persons to participate in this rulemaking by submitting comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday thru Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late, if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On December 4, 2003, Garrett Aviation Services, 1200 North Airport Drive, Capital Airport Springfield, IL 62707, applied for a Supplemental Type Certificate (STC) to modify Sabreliner Corporation Model NA–265–65 airplanes approved under Type Certificate No. A2WE. The Sabreliner Corporation model NA–265–65 is a transport category airplane, powered by two AiResearch Mfg. Co. TFE731–3–1D turbofans. The airplane operates with a 2-pilot crew and can hold up to 10 passengers. Its maximum takeoff weight is 24,000 pounds.

The modification incorporates the installation of Honeywell N1 Digital Electronic Engine Controls (DEEC). The DEEC replaces the existing Analog Electronic Engine Control (EEC) and provides additional functional capability in the system. The digital avionics/electronics and electrical systems to be installed under this project are vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Garrett Aviation Services must show that the Sabreliner Corporation model NA–265–65 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the modified Sabreliner Corporation Model NA–265–65 airplanes include 14 CFR part 25, dated February 1, 1964, as amended by Amendment 25–1 through 25–20, except for special conditions and exceptions noted in Type Certificate Data Sheet (TDCS) A2WE.

If the Administrator finds that the applicable airworthiness regulations (that is, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Sabreliner Corporation Model NA–265–65 airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Sabreliner Corporation model NA–265–65 airplanes must comply with the noise certification requirement of part 36, including Amendment 36–1.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The Sabreliner Corporation model NA–265–65 airplanes modified by Garrett Aviation Services will incorporate Honeywell N1 Digital Electronic Engine Controls (DEEC) which will perform critical functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effect of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference; special conditions are needed for Sabreliner Corporation model NA–265–65 airplanes modified by Garrett Aviation Services. These special conditions require that new electrical and

electronic systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical electrical and electronic systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 khZ	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Sabreliner Corporation Model NA–265–65 airplanes modified by Garret Aviation Services. Should Garrett Aviation Services apply at a later date for design change approval to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Sabreliner Corporation Model NA–265–65 airplanes modified by Garrett Aviation Services. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Sabreliner Corporation Model NA–265–65 modified by Garrett Aviation Services.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on June 3, 2004.

Franklin Tiangsing,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13311 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–48–AD; Amendment 39–13669; AD 2004–12–10]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Corporation (Formerly Hamilton Standard Division) Model 568F Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain serial-numbered propeller blades installed in Hamilton Sundstrand Corporation (formerly Hamilton Standard Division) 568F propellers. This AD requires replacement of propeller blades, part numbers (P/Ns) R815505–3 and R815505–4 that have a serial number (SN) of FR1699 to FR20021010, with serviceable blades. This AD results from reports of these composite propeller blades found at inspection, with random areas of

missing adhesive under the compression wrap, which exposed the steel tulip part of the blade. We are issuing this AD to prevent propeller blade failure due to corrosion-induced fatigue, which could result in blade separation and possible loss of airplane control.

DATES: This AD becomes effective July 19, 2004.

ADDRESSES: You can get the service information identified in this AD from Hamilton Sundstrand, A United Technologies Company, Publications Manager, Mail Stop 2AM–EE50, One Hamilton Road, Windsor Locks, CT 06096.

You may examine the AD docket, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with a proposed airworthiness directive (AD). The proposed AD applies to certain serial-numbered propeller blades installed in Hamilton Sundstrand Corporation (formerly Hamilton Standard Division) 568F propellers. We published the proposed AD in the **Federal Register** on December 2, 2003 (68 FR 67385). That action proposed to require replacement of propeller blades, P/Ns R815505–3 and R815505–4 that have a SN of FR1699 to FR20021010, with serviceable blades.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

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

One commenter requests that the Cost of Compliance statement be clarified to indicate that the blade removal cost is for AD compliance only. The commenter has concerns regarding potential liabilities for the worldwide fleet if the AD does not distinguish between the removals for normally scheduled maintenance and unscheduled removals for AD compliance.

The FAA agrees in part. We have clarified the Cost of Compliance statement in the AD to reflect removals for this AD. We do not agree with including worldwide costs in this AD because worldwide costs are not within the scope of the FAA authority.

Conclusion

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

Costs of Compliance

We estimate that 24 Hamilton Sundstrand Corporation 568F propellers with suspect blades installed on airplanes of U.S. registry would be affected by this AD. We estimate it will take about 4 work hours per propeller to remove and replace suspect blades, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total labor cost of the AD to U.S. operators to be $6,240.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–48–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–12–10 Hamilton Sundstrand Corporation (formerly Hamilton Standard Division): Amendment 39–13669. Docket No. 2003–NE–48–AD.

Effective Date

(a) This AD becomes effective July 19, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hamilton Sundstrand Corporation (formerly Hamilton Standard Division) 568F propellers with propeller blades, part numbers (P/Ns) R815505–3 and R815505–4, serial numbers (SNs) FR1699 through FR2625 inclusive (877 blades), and SNs FR20010610 through FR20021010 inclusive (713 blades), installed. These composite propeller blades are installed on, but not limited to, Aerospatiale ATR42–400, ATR42–500, ATR72–212, and ATR72–500 airplanes.

Unsafe Condition

(d) This AD results from reports of propeller blades found at inspection, with random areas of missing adhesive under the compression wrap, which exposed the steel tulip part of the blade. We are issuing this AD to prevent propeller blade failure due to corrosion-induced fatigue, which could result in blade separation and possible loss of airplane 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.

Removal From Service of Affected Propeller Blades

(f) Remove propeller blades, P/Ns R815505–3 and R815505–4 from service as follows:

(1) Blades listed by SN in the following Table 1 of this AD must be removed no later than the date listed in Table 1 of this AD. See Table 2 of this AD for blade SNs that are excluded from the compliance times specified in Table 1 of this AD.

(2) Remove the blades that are listed by SN in Table 2 of this AD no later than December 31, 2007.

(3) In some instances, an ''RT'' reference immediately follows the numeric portion of the serial number on the blade. For purposes of this AD, the ''RT'' reference has been

omitted when specifying affected serial numbers.

TABLE 1.—PROPELLER BLADE REMOVAL SCHEDULE

For propeller blades SNs:	Remove propeller blades from service for rework, no later than:
FR1699 through FR1765.	December 31, 2003.
FR1766 through FR1776.	March 31, 2004.
FR1777 through FR1855.	June 30, 2004.
FR1856 through FR1956.	September 30, 2004.
FR1957 through FR2132.	December 31, 2004.

TABLE 1.—PROPELLER BLADE REMOVAL SCHEDULE—Continued

For propeller blades SNs:	Remove propeller blades from service for rework, no later than:
FR2133 through FR2230.	March 31, 2005.
FR2231 through FR2315.	June 30, 2005.
FR2316 through FR2390.	September 30, 2005.
FR2391 through FR2433.	December 31, 2005.
FR2434 through FR2553.	March 31, 2006.
FR2554 through FR2625.	June 30, 2006.
FR20010610 through FR20010729.	June 30, 2006

TABLE 1.—PROPELLER BLADE REMOVAL SCHEDULE—Continued

For propeller blades SNs:	Remove propeller blades from service for rework, no later than:
FR20010730 through FR20011018.	September 30, 2006.
FR20011019 through FR20011218.	December 31, 2006.
FR20011219 through FR20020511.	March 31, 2007.
FR20020512 through FR20020757.	June 30, 2007.
FR20020758 through FR20020842.	September 30, 2007.
FR20020843 through FR20021010.	December 31, 2007.

TABLE 2.—BLADE SNS EXCLUDED FROM TABLE 1

FR1720	FR1887	FR1962	FR2163
FR1740	FR1888	FR1963	FR2164
FR1742	FR1889	FR2013	FR2165
FR1752	FR1892	FR2022	FR2166
FR1777	FR1893	FR2032	FR2167
FR1791	FR1927	FR2037	FR2168
FR1796	FR1928	FR2038	FR2173
FR1841	FR1929	FR2039	FR2177
FR1843	FR1930	FR2047	FR2179
FR1858	FR1931	FR2058	FR2180
FR1860	FR1932	FR2059	FR2183
FR1865	FR1933	FR2060	FR2204
FR1869	FR1934	FR2063	FR2205
FR1871	FR1935	FR2064	FR2206
FR1872	FR1936	FR2067	FR2207
FR1873	FR1937	FR2068	FR2208
FR1874	FR1938	FR2099	FR2233
FR1875	FR1942	FR2108	FR2234
FR1877	FR1943	FR2134	FR2467
FR1878	FR1957	FR2135	FR20010626
FR1879	FR1960	FR2136	FR20010936
FR1880	FR1961	FR2137	FR20011218

Installation of Propeller Blades that have a SN Listed in Table 1 or Table 2 of this AD

(g) After the effective date of this AD, do not install any blade that has P/N R815505–3 or R815505–4 and SN listed in Table 1 or Table 2 of this AD, and that has exceeded the date for replacement.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(i) None.

Related Information

(j) Hamilton Sundstrand Service Bulletin No. 568F–61–A45, Revision 1, dated October 7, 2003, provides information to rework and remark the affected blades for return to service.

Issued in Burlington, Massachusetts, on June 1, 2004.

Francis A. Favara,

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

[FR Doc. 04–13145 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–SW–05–AD; Amendment 39–13665; AD 2004–12–06]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 155 B and B1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model EC 155 B and B1 helicopters. This action requires inspecting each main

rotor blade (blade) for a crack in the blade tip cap mounting bracket (tenon), measuring the vertical clearance between each blade assembly and a straight edge at the blade-to-tip cap junction, and replacing the blade if a crack is found or if the measured distance is not within certain specifications. This amendment is prompted by the discovery of a crack in a tenon. This condition, if not detected, could result in loss of the tip cap, which could lead to severe vibration and loss of control of the helicopter.

DATES: Effective June 29, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 29, 2004.

Comments for inclusion in the Rules Docket must be received on or before August 13, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2004–SW–05–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5128, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for the Eurocopter Model EC 155 B and B1 helicopters. This action requires:

- For blades with 100 or less hours time-in-service (TIS), prior to reaching 110 hours TIS, inspecting the tenon for a crack, and replacing the blade if a crack is found in the tenon;
- For blades with more than 100 hours TIS, within the next 10 hours TIS, inspecting the tenon for a crack, and replacing the blade if a crack is found in the tenon;
- After accomplishing the initial inspection for a crack as described above, before further flight, establishing the baseline clearance (''DO'') between a straight edge and the upper surface of the blade assembly at the blade-to-tip cap junction; and
- Thereafter, before the first flight of each day and on or before reaching each 10 hours TIS interval during the day, measuring the clearance between the straight edge and the upper surface of the blade assembly of the blade-to-tip cap junction. If the measured distance is equal to or greater than ''DO'' + 2mm, replacing the blade is required.

This amendment is prompted by a report of a crack that was discovered on a tenon. This condition, if not detected, could result in loss of the blade tip cap, which could lead to severe vibration and loss of control of the helicopter.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter EC 155 B and B1 helicopters. The DGAC advises of the discovery of a crack in a blade tenon, the growth of which could lead to the loss of the tip cap and make the helicopter impossible to control.

Eurocopter has issued Alert Telex No. 05A004, dated November 3, 2003, which specifies checks on each blade to ensure that there is no crack in the tenon to which the blade tip is attached. The DGAC classified this alert telex as mandatory and issued AD No. F–2003–418, dated December 24, 2003, adopting the actions contained in the manufacturer's alert telex to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, this AD is being issued to detect a crack in a tenon, which could result in loss of the tip cap, causing severe vibration and loss of control of the helicopter. This AD requires, for Eurocopter Model EC 155 B and B1 helicopters:

- For blades with 100 or less hours TIS, prior to reaching 110 hours TIS, an initial inspection of each tenon for a crack;
- For blades with more than 100 hours TIS, within the next 10 hours TIS, an initial inspection of the tenon for a crack;
- Replacing any blade if a crack is found in the tenon; and
- After accomplishing the initial inspection for a crack as described above, before further flight, measuring the clearance between the lower edge of the straight edge to the upper surface of the blade assembly at the blade-to-tip cap junction (''DO'') to establish the baseline clearance and then, before the first flight of each day (not to exceed 10 hours TIS), measuring the clearance between the lower edge of the straight edge and the upper surface of the blade assembly at the blade-to-tip cap junction for each blade, and if the distance is equal to or greater than ''DO'' + 2mm, replacing the blade with an airworthy blade.

The actions must be done in accordance with the alert telex described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, inspecting each blade for a crack in the tenon within the short compliance time is required, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that this AD will affect 6 helicopters. The initial inspection will take approximately 1.5 work hours, and the repetitive inspections will take 0.5 work hours to accomplish. It will take approximately 1 work hour to replace all 5 blades. The average labor rate is $65 per work hour. Required parts will cost approximately $97,000 per blade. Based on these figures, the total estimated cost impact of the AD on U.S. operators is $586,563, assuming one blade per helicopter will need to be replaced each year and that 20 repetitive inspections will be needed per helicopter each year.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not

preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2004–SW–05–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2004–12–06 Eurocopter France: Amendment 39–13665. Docket No. 2004–SW–05–AD.

Applicability: Model EC 155 B and B1 helicopters, with main rotor blade (blade), part number (P/N) 365A11–0080–00, installed, certificated in any category.

Compliance: Required as indicated.

To detect a crack in a blade tip cap mounting bracket (tenon), which could result in loss of the tip cap, severe vibration, and loss of control of the helicopter, accomplish the following:

(a) Unless accomplished previously, remove each blade and each tip cap, and inspect both the upper and lower side of the tenon for a crack using a 10× or higher magnifying glass while applying light manual upward and then downward pressure on the tenon as depicted in Figure 3 of Eurocopter Alert Telex No. 05A004, dated November 3, 2003 (Alert Telex) as follows:

(1) For blades with more than 100 hours time-in-service (TIS), inspect each blade within the next 10 hours TIS.

(2) For blades with 100 or less hours TIS, inspect each blade before it reaches 110 hours TIS.

(3) If a crack is found, replace the blade with an airworthy blade before further flight.

(b) After inspecting each blade as required by paragraph (a) of this AD:

(1) Unless accomplished previously, before further flight, using a 24″ (500mm) straight edge, measure the clearance between the lower edge of the straight edge and the upper surface of the blade assembly at the blade-to-tip cap junction by following the Accomplishment Instructions, paragraph 2.B.2. of the Alert Telex, except contacting the manufacturer is not required. This initial clearance distance is called ''DO''.

(2) Thereafter, before the first flight of each day and on or before reaching each 10-hour TIS interval during the day, measure the clearance between the lower edge of the straight edge and the upper surface of the blade assembly at the blade-to-tip cap junction for each blade as required by paragraph (b)(1) of this AD. If the measured clearance is equal to or greater than ''DO'' + 2mm, replace the blade with an airworthy blade before further flight.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(d) Special flight permits will not be issued.

(e) The inspections and measurement shall be done in accordance with Eurocopter Alert Telex No. 05A004, dated November 3, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(f) This amendment becomes effective on June 29, 2004.

Note: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. F–2003–418, dated December 24, 2003.

Issued in Fort Worth, Texas, on June 1, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–12905 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14849; Airspace Docket No. 03–AWP–7]

Establishment of Class E Airspace; Beckwourth, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Beckwourth, CA. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedure (IAP) RNAV (GPS) Runway (RWY) 25,

and two RNAV Departure Procedures (DP's) at Beckwourth-Nervino Airport, Beckwourth, CA has made this action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these RNAV procedures. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules operations at Beckwourth-Nervino Airport, Beckwourth, CA.

DATES: *Effective Date:* 0901 UTC August 5, 2004.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

History

On April 7, 2004, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Beckwourth, CA (69 FR 18309). Additional controlled airspace extending upward from 700 feet or more above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 25 IAP and RNAV DP's at Beckwourth-Nervino Airport. This action will provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 25 IAP and RNAV DP's to Beckwourth-Nervino Airport, Beckwourth, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes a Class E airspace area at Beckwourth, CA. The establishment of a RNAV (GPS) RWY 25 and two RNAV DP's to Beckwourth-Nervino Airport has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the RNAV (GPS) RWY 25 and RNAV DP's at Beckwourth-Nervino Airport, Beckwourth, CA.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

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

* * * * *

AWP CA E5 Beckwourth, CA [NEW]

Beckwourth-Nervino Airport, CA
(Lat. 39°49′07″ N, long. 120°21′10″ W)
Reno-Tahoe International Airport, NV
(Lat. 39°29′56″ N, long. 119°46′05″ W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Beckwourth-Nervino Airport and within 4 miles north and 2 miles south of the 100° bearing from the Beckwourth-Nervino Airport extending from 6.5-miles to 12 miles southeast of the Beckwourth-Nervino Airport and within 2 miles each side of the 250° bearing from the Beckwourth-Nervino Airport extending from 6.5 miles to 10 miles west of the Beckwourth-Nervino Airport, and that airspace bounded by a line beginning at lat. 40°00′00″N, long. 120°06′00″ W; to lat. 40°00′00″ N, long. 119°54′00″ W; to lat. 39°52′00″ N, long. 119°45′00″ W; thence counterclockwise via the 21.7-mile radius of the Reno/Tahoe International Airport to lat. 39°48′00″ N, long. 120°00′00″ W; to lat. 39°40′00″ N, long. 120°00′00″ W; to lat. 39°40′00″ N, long. 120°06′00″ W; to the point of beginning.

* * * * *

Issued in Los Angeles, California, on June 2, 2004.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 04–13298 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17420; Airspace Docket No. 04–ACE–21]

Modification of Class E Airspace; Moberly, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Moberly, MO.

DATES: *Effective Date*: 0901 UTC, August 5, 2004.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 3, 2004 (69 FR 24064) and subsequently published a correction to the direct final rule on May 6, 2004 (69 FR 25467). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 5, 2004. No adverse comments

were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on June 3, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–13299 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17421; Airspace Docket No. 04–ACE–22]

Modification of Class E Airspace; Chappell, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Chappell, NE.

DATES: *Effective Date:* 0901 UTC, August 5, 2004.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 26, 2004 (69 FR 22396.). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 5, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on June 3, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–13300 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17912; Airspace Docket No. 04–ACE–38]

Modification of Class E Airspace; Wayne, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Wayne, NE. One area navigation (RNAV) global positioning system (GPS) standard instrument approach procedure (SIAP) and three nondirectional radio beacon (NDB) SIAPs have been developed to serve Wayne Municipal Airport. Class E airspace extending upward from 700 feet above the surface at Wayne, NE does not adequately protect for diverse departures. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing and executing SIAPs to Wayne Municipal Airport. It brings the Wayne, NE Class E airspace area and legal description into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, September 30, 2004.

Comments for inclusion in the Rules Docket must be received on or before July 28, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. You must identify the docket number FAA–2004–17912/ Airspace Docket No. 04–ACE–38, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace are extending upward from 700 feet above the surface at Wayne, NE RNAV (GPS) RWY 22, ORIGINAL SIAP; NDB RWY 17, ORIGINAL SIAP; NDB RWY 22, ORIGINAL SIAP and NDB RWY 35, ORIGINAL SIAP have been developed to serve Wayne Municipal Airport. The dimensions of the Wayne, NE Class E airspace are modified to accommodate all SIAPs serving the airport and to provide adequate controlled airspace for diverse departures. The radius of the airspace area is increased from 6.5 to 7.5 miles. The current extension to the airspace are is totally contained within the expanded airspace radius and no other extensions are required. This action brings the airspace area and its legal description into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–17912/Airspace Docket No. 04–ACE–38.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

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

* * * * *

ACE NE E5, Wayne, NE

Wayne Municipal Airport, NE
(Lat. 42°14′31″ N., long. 96°58′53″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Wayne Municipal Airport.

* * * * *

Issued in Kansas City, MO, on May 21, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–13302 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16707; Airspace Docket No. 2003–ANE–104]

Establishment of Class E Airspace; Manchester, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace area at Manchester, NH (KMHT) to provide for controlled airspace upward from the surface during the times when the air traffic controller tower at Manchester will be closed.

DATES: *Effective Date:* August 5, 2004.

ADDRESSES: Jon Harris, Acting Manager, Airspace Branch, ANE–520, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7520; fax (781) 238–7596.

SUPPLEMENTARY INFORMATION:

Background

On February 5, 2004, the FAA published in the **Federal Register** a Notice of Proposed Rulemaking (69 FR 5479) that proposed to establish a Class E airspace area extending upward from the surface in the vicinity of the Manchester, NH airport. The purpose of the proposal was to provide controlled airspace from the surface to 700 feet above the ground to accommodate aircraft executing instrument approaches and departures from the airport during times when the air traffic control town at Manchester is closed. Interested persons were invited to participate in this rulemaking proceeding by submitting written data, views, or arguments. We have carefully considered the one comment we received. The comment asked if the Manchester airport tower operating hours would actually change based on this airspace action. In response, the FAA confirms that the Manchester tower operating hours will not change solely because of this airspace action. Any change in the operating hours will be based on the operational requirements of the Manchester airport. The present Manchester Class C airspace area remains an essential safety measure in support of the present operational requirements. This action merely puts in place the necessary controlled airspace to support instrument flight operations in the event that the FAA changes the operating hours of the Manchester ATCT. No additional comments were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulation (14 CFR part 71) establishes a Class E airspace area at Manchester, NH. The Class E airspace area extends upward from the surface at Manchester Airport, Manchester, NH. The purpose of this controlled airspace will be to provide for controlled airspace from the surface to accommodate aircraft executing instrument approaches and departures from the airport during times when the air traffic control town at Manchester is closed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace extending upward from the surface of an airport are published in paragraph 6002 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves a body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated effect on these routine matters will is so minimal. Since this proposal will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows;

PART 71—[Amended]

■ 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.

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6002 Class E airspace areas extending upward from the surface of an airport.

* * * * *

ANE NH E2 Manchester, NH [New]

Manchester Airport, NH (Lat. 42°55′57″ N., long. 71°26′8″ W)

Within a 5-mile radius of the Manchester Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be Continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, MA, on June 1, 2004.

William C. Yuknewicz,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 04–13310 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 110

[Docket No. 2004N–0230]

Food; Current Good Manufacturing Practice Regulations; Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of rescheduling of public meetings.

SUMMARY: The Food and Drug Administration (FDA) previously announced three public meetings intended to obtain comments about FDA's current good manufacturing practice (CGMP) in manufacturing, packing, or holding human food regulations; these comments will be useful in determining appropriate revisions to these regulations. President Bush subsequently issued an Executive order closing all executive departments of the Federal Government on Friday, June 11, 2004, as a mark of respect for former President Ronald Reagan. Accordingly, FDA is announcing the rescheduling of the public meeting planned for June 11, 2004, in College Park, MD. The College Park meeting will be rescheduled to be held on July 19, 2004. FDA is also announcing the cancellation of the public meeting originally scheduled for July 2, 2004, in Monterey, CA. A new date and location for that meeting will be announced in a subsequent notice. The public meeting scheduled for July 21, 2004, in Chicago, IL, will occur as originally planned.

DATES: The rescheduled public meeting will be rescheduled to be held in College Park, MD, on Monday, July 19, 2004, from 9 a.m. to 12 p.m.; the meeting originally scheduled in Monterey, CA, on Friday July 2, 2004, from 1 p.m. to 4 p.m., is now cancelled; and the meeting in Chicago, IL, on Wednesday, July 21, 2004, from 2 p.m. to 5 p.m. will occur as originally scheduled.

ADDRESSES: The public meeting on Monday, July 19, 2004, will be held at the Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD. The public meeting on Wednesday, July 21, 2004, will be held at the Marriott Chicago Downtown, 540 North Michigan Ave., Chicago, IL. The location, date, and time of the third public meeting will be announced in a subsequent **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Peter J. Vardon, Center for Food Safety and Applied Nutrition (HFS–726), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD, 301–436–1830 or FAX: 301–436–2626 or e-mail: *pvardon@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 21, 2004 (69 FR 29220), FDA announced three public meetings intended to obtain comments about FDA's CGMP in manufacturing, packing, or holding human food regulations (21 CFR part 110). FDA believes that these comments may be useful in determining appropriate revisions to the CGMP regulations. The meetings were planned for June 11, 2004, in College Park, MD; July 2, 2004, in Monterey, CA; and July 21, 2004, in Chicago, IL. The notice included information about how to register for a meeting, how to request an opportunity to make oral comments at a meeting, and how to submit written comments. The notice also included a set of questions to help focus oral and written comments to FDA.

On June 6, 2004, President Bush issued an Executive order closing all executive departments of the Federal Government on Friday, June 11, 2004, as a mark of respect for former President Ronald Reagan. Accordingly, the FDA is announcing the rescheduling of the public meeting planned for June 11, 2004, in College Park, MD. The College Park meeting will now be held on July 19, 2004. FDA is also announcing the cancellation of the public meeting originally scheduled for July 2, 2004, in Monterey, CA. A new location, date, and time for that meeting will be announced in a subsequent notice. The public meeting scheduled for July 21, 2004, in Chicago, IL, will occur as originally planned.

For information about registering for a meeting, about requesting an opportunity to make oral comments at a meeting, or about submitting written comments, please refer to the **Federal Register** notice of May 21, 2004 (69 FR 29220), announcing the meetings.

Dated: June 8, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–13429 Filed 6–9–04; 1:14 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[USCG–2002–13147]

RIN 1625–AA51 [Formerly 2115–AG50]

Penalties for Non-Submission of Ballast Water Management Reports

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard finalizes regulations for vessels equipped with ballast water tanks bound for ports or places within the United States. These regulations establish penalty provisions for vessels that fail to submit a ballast water management (BWM) report. Penalty provisions are also established for vessels bound for the Great Lakes or portions of the Hudson River who violate the mandatory BWM requirements. These regulations also widen the reporting and recordkeeping requirements. This will increase the Coast Guard's ability to prevent the introduction of nonindigenous species as required by the Nonindigenous Aquatic Nuisance Prevention and Control Act and the National Invasive Species Act.

DATES: This final rule is effective August 13, 2004.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2001–13147 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Bivan Patnaik, Project Manager, Environmental Standards Division, Coast Guard, telephone 202–267–1744, email: *bpatnaik@comdt.uscg.mil.* If you have questions on viewing the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Legislative and Regulatory History

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) [Pub. L. 101–646], enacted by Congress on November 29, 1990, established the Coast Guard's regulatory jurisdiction over BWM. To fulfill the directives of NANPCA, the Coast Guard published a final rule on April 8, 1993, entitled ''Ballast Water Management for Vessels Entering the Great Lakes'' in the **Federal Register** (58 FR 18330). This rule established mandatory BWM procedures for the Great Lakes in 33 CFR part 151, subpart C.

A subsequent final rule entitled, ''Ballast Water Management for Vessels Entering the Hudson River,'' was published on December 30, 1994, in the **Federal Register** (59 FR 67632), which amended 33 CFR part 151 to extend the BWM requirements into portions of the Hudson River.

The National Invasive Species Act (NISA) [Pub. L. 104–332] enacted by Congress on October 26, 1996, reauthorized and amended NANPCA. NISA reemphasized the significant role of ships' ballast water in the introduction and spread of nonindigenous species (NIS). NISA authorized the development of a voluntary, national BWM program and mandated the submission of BWM reports without penalty provisions. The Coast Guard implemented this voluntary program in the interim rule entitled, ''Implementation of the National Invasive Species Act of 1996'' on November 17, 1999, (64 FR 26672) and finalized it on November 21, 2001 (66 FR 58381).

NISA also instructed the Secretary of the Department of Transportation to submit a Report to Congress evaluating the effectiveness of the voluntary BWM program. Congress anticipated that the Secretary might determine that either compliance with the voluntary guidelines was inadequate, or the rate of reporting was too low to allow for a valid assessment of compliance. In either case, Congress stipulated the development of additional regulations to make the voluntary guidelines a mandatory BWM program. The Secretary of the Department of Transportation's report to Congress, signed June 3, 2002, concluded that compliance with the voluntary guidelines, found in 33 CFR part 151, subpart D, was insufficient to allow for an accurate assessment of the voluntary BWM regime. Accordingly, the Secretary of the Department of Transportation stated his intention to make the voluntary BWM requirements mandatory. (A copy of this Report to Congress can be found in the USCG 2002–13147 at *http://dms.dot.gov*).

On March 1, 2003, the Coast Guard became a component of the Department of Homeland Security. As a result, the Secretary of the Department of Homeland Security assumed all duties once bestowed on the Secretary of the Department of Transportation with respect to this final rule. The Secretary of the Department of Homeland Security concurs with the Coast Guard's determination regarding the mandatory ballast water program.

On January 6, 2003, we published a notice of proposed rulemaking entitled, ''Penalties for Non-submission of Ballast Water Management Reports,'' in the **Federal Register** (68 FR 523). We received 26 letters commenting on the proposed rule. No public hearing was requested and none was held.

Related Projects

The Coast Guard is currently working on three other projects related to addressing the NIS problems in U.S. waters.

The first project proposes mandatory BWM practices for all vessels bound for ports or places within the U.S. and for vessels entering waters of the U.S. This proposed rulemaking would increase the Coast Guard's ability to protect U.S. waters against the introduction of NIS via ballast water discharges. A notice of proposed rulemaking entitled, ''Mandatory Ballast Water Management Program for U.S. Waters'' was published on July 30, 2003 (68 FR 44691), and proposes to revise 33 CFR part 151 to implement the requirements of NISA. Specifically, subpart D of 33 CFR part 151 would be revised to require a mandatory BWM program for all vessels equipped with ballast water tanks operating within, or entering U.S. waters. The mandatory BWM requirements for vessels entering the Great Lakes and Hudson River from outside the Exclusive Economic Zone (EEZ) would remain unchanged.

The second project involves encouraging the installation and testing of ballast water treatment technologies on board vessels. A notice, entitled ''Approval for Experimental Shipboard Installations of Ballast Water Treatment Systems'' (66 FR 282131), published on May 22, 2001, requested comments on a possible means of providing incentives for ship owners to assist in the development and testing of ballast water treatment technologies. The Coast Guard has established a program through which vessel owners can apply for acceptance of experimental ballast water treatment systems installed and tested on board their operating vessels. This program facilitates the development of effective ballast water treatment technology, thus creating more options for vessels seeking alternatives to ballast water exchange. A

Navigation Inspection Circular detailing the Shipboard Technology Evaluation Program (STEP) is available at *http://www.stage.uscg.mil/hq/g-m/mso/step.htm.*

The third project involves establishing water quality standards for ballast water discharged into U.S. waters. A notice entitled, ''Potential Approaches to Setting Ballast Water Treatment Standards'' (66 FR 21807), published May 1, 2001, requested comments on approaches to setting, implementing, and enforcing ballast water standards. It was followed by an advanced notice of proposed rulemaking (ANPRM) entitled ''Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters'' (67 FR 9632), published on March 4, 2002. This ANPRM sought comments on the development of a ballast water treatment goal and an interim ballast water treatment standard. The comment period on the ANPRM closed on June 3, 2002, and the Coast Guard is currently analyzing comments. We have also begun the process of preparing a Programmatic Environmental Impact Statement, as stated in a Notice of Intent published in the **Federal Register** on September 26, 2003 (68 FR 55559).

Background and Purpose

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA), as amended by the National Invasive Species Act of 1996 (NISA), directed the Coast Guard to issue regulations and guidelines to prevent the introduction and dispersal of nonindigenous species (NIS) to U.S. waters via ballast water discharges. In carrying out Congress' intent of a stepped approach, the Coast Guard, as the Secretary's delegate, is moving forward with the promulgation of regulations that establish penalty provisions and widen the range of vessels required to submit and keep, respectively, BWM reports and records. This rule finalizes regulations that will—

- Establish penalty provisions for vessels bound for ports or places within the United States who fail to submit ballast water reporting forms;
- Establish penalty provisions for vessels bound for the Great Lakes or portions of the Hudson River who violate the mandatory BWM requirements; and
- Widen the reporting and recordkeeping requirements for vessels bound for ports or places within the United States.

Discussion of Comments

The Coast Guard received comments from 26 sources on the notice of proposed rulemaking. We received comments from vessel owners, industry associations, non-governmental associations, and Federal and State agencies. Overall, we received general comments as well as comments on specific sections of the proposed rulemaking.

General Comments

The Coast Guard received five comments that supported the penalty provisions of non-submission of ballast water reporting forms as well as mandatory reporting, regardless of whether or not vessels operate outside, or within U.S. waters.

Four commenters supported the collection of data regarding volumes and uptake/discharge locations of vessels' ballast water, but did not support imposing penalties for the voluntary BWM program. These comments suggested imposing penalties when the program becomes mandatory.

The Coast Guard disagrees with this comment. Although the BWM guidelines are voluntary, submittal of ballast water reporting forms has been mandatory since 1999. Due to industry's low compliance rate of submitting reporting forms, the Coast Guard is authorized by NISA to enforce penalties to increase compliance.

One commenter suggested that the Department of Defense (DoD) agencies and the Coast Guard should sign a Memorandum of Agreement that will allow DoD vessels to provide summary ballast water activity information on a periodic basis.

The Coast Guard disagrees with this comment. Ballast water discharges from these vessels will be regulated under the Uniform National Discharge Standards program via the Clean Water Act as directed by NISA.

One commenter asked that this rule become applicable under the National Aquatic Invasive Species Act (NAISA) once it is enacted.

This rule is authorized under NANPCA and NISA and will stay authorized when NANPCA is reauthorized, and amended by NAISA or by some other legislation.

Five commenters said that the $25,000 penalty for non-submission of BWM reports is excessive. They said that California assesses between $500 and $5,000 for those who intentionally fail to comply, and after 3 years, the State has had a 95 percent compliance rate.

Although, the penalty amount of $25,000 was discussed in the notice of proposed rulemaking, the Coast Guard recently published a final rule on December 23, 2003, entitled, ''Civil Monetary Penalties—Adjustments for Inflation'' (68 FR 74189). Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, the Coast Guard is authorized to adjust penalties for violating Federal laws set by Congress long ago whereas the deterrent value of the penalties have weakened with time due to inflation. As such, we have changed the monetary amount authorized by NISA, from $25,000 to $27,500. With respect to the commenters concern about the penalty amount, we believe there is some confusion regarding the penalty amount. The penalty is not $27,500; rather, the penalty is not to exceed $27,500. We have the discretion to issue a penalty of up to $27,500, depending on the facts of each individual case.

Three commenters said the ballast water reporting form needs to be redesigned and updated.

The Coast Guard, in conjunction with the National Ballast Information Clearinghouse (NBIC) is currently examining the possibility of redesigning and updating the ballast water reporting form. If the Coast Guard determines that the form will be updated, this will be the subject of future rulemaking project. In this regard, we have determined that the reporting form, as currently designed, does not allow for vessels to make multiple or consecutive voyage reports on a single form in a way that is useful to either the Coast Guard or the NBIC. As a result, we have deleted that option from the regulation in section 151.2041. Our economic analysis accounted for all arrivals in U.S. ports or places, therefore, removing this option does not affect our cost analysis, and should not have a substantial effect on the public.

The Coast Guard received eight comments that stated it should coordinate its national BWM program with State programs, citing California and the West Coast Ballast Water Working Group as a good example. The commenters claimed that this would eliminate duplicative reporting requirements and allow States access to Federal ballast water reporting data.

We consider this comment to be outside the scope of this rulemaking. When this rule is finalized, each State is authorized under NISA to develop their own regulations if they feel that Federal regulations are not stringent enough. Additionally, we note that States may access Federal ballast water reporting data by utilizing NBIC, found

at *http://www.invasions.si.edu/NBIC/ballast.html.*

One commenter supported the quick and aggressive development of ballast water discharge standards.

We consider this comment to be outside the scope of this rulemaking. Ballast water discharge standards will be addressed in a separate rulemaking.

We received four comments suggesting there be a 2-year grace period to provide coastwise vessels time for crews to learn and comply with the mandatory ballast water reporting requirements. According to the commenters, this would be consistent with the 2 years it took to finalize the rule on voluntary guidelines from the interim rule (1999–2001).

The Coast Guard disagrees with this comment. There was no ''2-year grace period'' between the interim rule on voluntary guidelines and when the rule was finalized. An interim rule is used when it is in the public interest to promulgate an effective rule while keeping the rulemaking open for further refinement. The preamble to the interim rule clearly indicated that a rule was being issued rather than just being proposed. It took 2 years to address comments from the public and incorporate them into the final rule. Therefore, there will be no 2-year grace period for this rule.

Three commenters stated that the summary table of requirements should be consistent with the intended regulatory requirements, citing, the table heading in the Appendix of Subpart D.

The Coast Guard agrees with this comment and will change the table heading in the Appendix of Subpart D for consistency.

One commenter stated that in § 151.2045, the phrase ''entering waters after operating beyond the EEZ'' was replaced with the phrase, ''bound for a port or place in the U.S.,'' but that this change was not made to the section heading.

We agree with this comment and have changed the title of this section.

One commenter suggested changing the reporting deadline to 48 hours after a vessel's departure from a port, citing data from California that shows greater accuracy on reporting prior to arrivals. The commenter noted that ballasting may change from port to port, and also stated that any concerns regarding pre-emptive control of ballast water operations be addressed by collecting minimal ballast operation information at the 96 hours Notice of Arrival (NOA), with more detailed data within 48 hours after departure.

The Coast Guard disagrees with this comment. We believe it is advantageous for vessels to submit their ballast water reporting forms 24 hours prior to arrival, as this provides a more accurate picture of BWM practices. Cargo operations are already accurately planned, very few amendments need to be made to the reporting forms. In reviewing initial ballast water reporting data, the Coast Guard found very few amendments. Additionally, if a vessel submits a report 48 hours after departure from a port, the Coast Guard will be unable to determine whether or not that vessel was in compliance with ballast water regulations at the departure port. This creates a possibility that BWM data submitted with the NOA form would be incomplete.

The Coast Guard received one comment stating that procedures should be established to allow for submission of reporting forms in a non-paper form method.

The Coast Guard agrees with this comment and encourages all vessels to submit forms electronically. Procedures are already in place for vessel owners to email, fax, or otherwise submit forms electronically. We recognize not all vessels have the capability to email their ballast water reporting forms or submit electronic forms via the NBIC Web site. Please note that the email address to send forms has changed to *nbic@ballastreport.org.*

Comments Regarding Submission

Nine commenters asked the Coast Guard to allow tug and barge operators that carry ballast water and serve domestic coastwise trade to submit reports every 30 days, rather than 24 hours prior to arrival at the first U.S. port. These commenters argued that monthly reporting would ease the administrative burden on the vessel operator.

The Coast Guard disagrees with this comment. To change the submission requirements of ballast water reports for tugs and barges from 24 hours to 30 days would delay the accounting of BWM practices, thus denying the Coast Guard the means of enforcing compliance of mandatory ballast water reporting requirements.

Two commenters asked that vessels be denied entry into the Great Lakes if they do not submit a ballast water reporting form.

The Coast Guard disagrees with this comment. Compliance for submission of ballast water reporting forms in the Great Lakes is quite high, and therefore, the Coast Guard does not intend to deny vessels entry into the Great Lakes, or delay their voyages.

We received three comments asking who is responsible for submitting ballast water reporting forms when vessels are under repair. Is it the responsibility of the vessel owner, tugboat operator, or the dry-dock manager?

Section 151.2045(a) states, ''The master, owner, operator, or person in charge of a vessel * * * must keep written records.'' Therefore, the vessel owner, tugboat operator, and the dry-dock manager should discuss and decide who will submit the ballast water reporting forms. The responsibility is on the vessel owner to ensure that the form is submitted.

Comments Regarding Enforcement and Verification

Two commenters wanted to know how the Coast Guard would enforce penalties if there are several different ways to submit ballast water reporting forms. They argued that allowing submission of reporting forms by several methods would add to the amount of time someone would have to spend to track down a reporting form in order to impose a penalty. The commenters suggested the use of a single database.

Currently, vessels have several choices in submitting ballast water reporting forms because not all vessels have the capability to submit forms electronically. As vessels increase their access to email and the Internet, we anticipate more forms will be sent electronically. The Coast Guard is currently working with NBIC to streamline the submittal of ballast water reporting forms and to have all BWM data in the NBIC database.

One commenter stated that verification procedures should be established so that NBIC can let vessel owners know it has received their reports.

The Coast Guard agrees and is currently working with NBIC on a wide range of issues to assist vessel owners in their submission of ballast water reporting forms, including verification procedures to let vessel owners know that NBIC has received their reports.

Comments Regarding Exemptions

We received six comments that asked the Coast Guard not to require reporting on BWM for vessels that have tanks or voids, but are not carrying ballast water. These commenters argued that it is capricious for the penalty provisions not to make a distinction between vessels with full or empty tanks.

The Coast Guard disagrees with this comment. The reporting data gathered on whether or not vessels operating in U.S. waters are carrying ballast water is important in understanding BWM practices. The Coast Guard is directed

by NISA to have a complete picture of BWM practices for U.S. waters.

The Coast Guard received seven comments that requested inland towing vessels and barges be exempt from ballast water reporting requirements.

The Coast Guard disagrees with this comment. As stated previously, the Coast Guard is required by NISA to assess the complete picture of BWM practices for U.S. waters. Therefore, the Coast Guard requires BWM data from inland towing vessels and barges if they are equipped with ballast tanks or even occasionally carry ballast water onboard.

One commenter stated that reporting requirements on ballast water should apply to all vessels without any exemptions.

NISA requires exemptions from BWM reporting requirements for certain types of vessels. Therefore, these exemptions will remain in place unless Congress authorizes the Coast Guard to remove them.

The Coast Guard received four comments supporting the inclusion of coastwise vessels in the ballast water reporting requirements with exemptions for: Unmanned vessels, vessels with No Ballast On Board (NOBOBs), and vessels solely within one Coast Guard district.

The Coast Guard disagrees that exemptions should be provided for unmanned vessels, NOBOBs, and vessels operating within one Coast Guard district. The reporting data gathered on these vessels is important in understanding BWM practices of vessels operating in U.S. waters. Some Coast Guard districts encompass a large area; therefore, it does not make sense to exempt them as we are attempting to stop the spread of NIS in U.S. waters.

Two commenters suggested that NOBOBs operating within the Great Lakes be required to submit ballast water reporting forms.

As there are large numbers of NOBOB vessels that traverse the Great Lakes, it is important to understand their BWM practices as directed by NISA. Therefore, the Coast Guard will require NOBOBs to submit ballast water reporting forms, and § 151.1516 has been clarified to reflect this. NOBOBs will still be exempt from conducting BWM practices.

We received one comment asking for clarification on the reporting exemption for crude oil tankers to ensure that the exemption does not apply to shipments in the Great Lakes.

Section 151.2041 states that vessels must comply with the mandatory submittal of ballast water reporting forms unless exempted in §§ 151.2010 or 151.2015. This exemption includes crude oil tankers engaged in coastwise trade for BWM in U.S. waters. However, this exemption does not apply to crude oil tankers traversing the Great Lakes. Section 151.1502 states all vessels carrying ballast water and operating outside the EEZ, must comply with Subpart C, ''Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River,'' regardless of other port calls in the U.S. or Canada during that voyage.

Two commenters asked the Coast Guard to give consideration to Mobile Offshore Drilling Units (MODUs) as they differ operationally from traditional merchant shipping.

The Coast Guard believes that MODUs are already given consideration because most of them operate within one Captain of the Port (COTP) zone. Those MODUs that operate within one COTP zone will be exempt from the mandatory ballast water reporting requirements. MODUs that move from one COPT zone to another will be required to submit ballast water reporting forms.

The Coast Guard received two comments stating that it is not clear if § 151.2010(c) intends to include offshore supply vessels (OSVs) operating out of a single COTP zone in terms of voyages that are to and from sites in the EEZ. The commenters also asked if COTP zones extend to the EEZ.

Section 151.2010(c) covers all vessels, including OSVs that operate within a single COTP zone. As stated in 33 CFR part 151 § 3.01(f), COTP zones, include and extend into the EEZ.

Two commenters suggested adding subparagraph (d) to § 151.2010 to read: ''OSVs operating exclusively in the EEZ from U.S. ports that do not take ballast water from the sea or discharge ballast water overboard in the course of their operations''.

The Coast Guard disagrees with this comment. If an OSV operates within one COTP zone, that vessel will be exempt. At this time, under the direction of NISA, the Coast Guard must evaluate the BWM operations of all vessels operating within U.S. waters. Therefore, OSVs operating in more than one COTP zone will be required to submit ballast water reporting forms. If, after a period of time we determine that we are receiving data that does not benefit our evaluation, we will then revisit the program and adjust it accordingly.

Comments on Definitions

Three commenters stated that in § 151.2025, the term ''ports and places'' needs to be clearly defined. They suggested that the term be defined to exclude ports or places that lie outside the 12 nautical miles territorial sea. They further stated that the preamble for the final rule on NOA states that MODUs moving from one location to another on the Outer Continental Shelf (OCS) are not required to submit a NOA form. The commenters suggested MODUs should be exempt from the ballast reporting requirements.

The Coast Guard disagrees with this comment. ''Ports and places'' are defined in § 151.2025 and are defined in the exact way as in 33 CFR 160.204 of, ''Notification of Arrivals, Departures, Hazardous Conditions, and Certain Dangerous Cargoes.'' The Coast Guard must evaluate the BWM operations of all vessels operating within U.S. waters. Therefore, MODUs or OSVs servicing OCS facilities, moving from one COTP zone to another, must submit ballast water reporting forms. If, after a period of time we determine that we are receiving data that does not benefit our evaluation, we will then revisit the program and adjust it accordingly.

These three commenters also stated that in § 151.2025, it is not clear why the definition of EEZ is added. They stated that the definition of EEZ in § 151.1504 is indistinguishable with the one referenced in § 151.2025.

Although the definition of the EEZ is in § 151.1504 (Subpart C, ''Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River), it was added to § 151.2025 to create a more complete set of regulations within Subpart D ''Ballast Water Control for Nonindigenous Species in Waters of the United States.'' The Coast Guard hopes in the future, to develop a single set of regulations that will apply nationwide, including the Great Lakes and the Hudson River. Duplications and redundancies would be eliminated during that rulemaking project.

Additional Editorial Change

We have made a minor editorial change in section 151.2045, by redesignating paragraphs (a)(8)(ii), (a)(8)(iii), and (a)(8)(iv) as (a)(9), (a)(10), and (a)(11), respectively. This was done to clarify the organization of this section.

Regulatory Evaluation

This rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, regulatory Planning and Review. The Office of Management and Budget has reviewed it under that order. It requires an evaluation of potential costs and benefits under section 6(a)(3) of that Order. It is ''significant'' under the regulatory policies and procedures of the Department of Homeland

Security. A summary of the Assessment follows:

This Regulatory Evaluation estimates the costs and benefits of the rule for civil penalties and new reporting requirements for vessels arriving from domestic ports of origin. The costs of collecting and reporting ballast water information for vessels arriving from foreign ports of origin have already been accounted for in previous Regulatory Assessments and an OMB-approved collection of information (OMB 2115–0598). Therefore, in this Regulatory Evaluation, we account only for the costs of reporting that will be incurred by vessels arriving in U.S. ports from other U.S. ports (*i.e.*, domestic voyages).

We received one comment regarding the estimated number of ballast water reports that will be submitted annually, stating that our estimate did not appear to include arrivals from OSVs. We agree and have amended our estimate accordingly.

According to data from the Coast Guard, the U.S. Customs Service, and the U.S. Maritime Administration, there are approximately 70,000 arrivals in U.S. ports annually. Of these, 50,000 have a foreign port of origin and the remaining 20,000 have a domestic port of origin. Additionally, there are about 40,000 arrivals from OSVs that do not currently report. Vessels arriving from foreign ports of origin are required to report BWM practices under existing regulations. Under this final rule, the 20,000 arrivals from domestic ports plus the 40,000 arrivals from OSVs will now be required to submit ballast water reports.

Based on the current collection, we estimate that each ballast water report takes 40 minutes (0.666 hours) to complete the form and submit it to the Coast Guard. We estimate that it costs $35 per hour for the labor to complete and submit each form. If there are 60,000 arrivals from domestic ports annually, this means the annual cost of the final rule is $1.4 million ($35 × 0.666 hours × 60,000 ballast water reports).

The benefit of the rule is an increase in the amount and quality of BWM information provided to the Coast Guard. This will allow the Coast Guard to more accurately analyze and assess the BWM practices and delivery patterns of vessels navigating in U.S. waters and take appropriate programmatic action.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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.

We do not expect that a substantial number of small businesses will be significantly affected by this rule. The final rule implementing NISA, published in November of 2001 (66 FR 58381), was able to certify that a significant number of small entities were not substantially affected by that rule. We do not expect that this will change by increasing the number of vessels subject to the reporting requirements, to cover all vessels equipped with ballast water tanks that are bound for ports or places within the United States, because the cost per ballast water report is only $23 (40 minutes × $35/hour).

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule modifies an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

As required by 44 U.S.C. 3507(d), we submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB approved the change to the collection on September 9, 2003. OMB Control Number 1625–0069, expiring on September 30, 2006.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

We have analyzed this rule under Executive Order 13132. The National Aquatic Nuisance Prevention and Control Act contains a ''savings provision'' that saves to the States their authority to ''adopt or enforce control measures for aquatic nuisance species, [and nothing in the Act will] diminish or affect the jurisdiction of any States over species of fish and wildlife.'' It also requires that ''all actions taken by Federal agencies in implementing the provisions of [the Act] be consistent with all applicable Federal, State and local environmental laws.'' Thus, the congressional mandate is clearly for a Federal-State cooperative regime in combating the introduction of NIS into U.S. waters from ship's ballast tanks. This makes it unlikely that preemption, which would necessitate consultation with the States under Executive Order 13132, will occur.

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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will 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 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 rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 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.

Energy Effects

We have analyzed this 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 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.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this rule is categorically excluded under paragraph 6(b) of the Appendix to ''National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48244, July 23,2002) from further environmental documentation. This rule falls under congressionally mandated regulations. Analyses of these types of regulations and their respective environmental reviews have determined these actions do not normally have significant effects either individually or cumulatively on the human environment. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

Subpart C—Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River

■ 1. Revise the authority citation for part 151 subpart C continues to read as follows:

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

§ 151.1516 [Amended]

■ 2. In § 151.1516(a), remove the phrase ''subject to this subpart'' and add, in its place, the phrase ''equipped with ballast tanks''.

■ 3. Add § 151.1518 to read as follows:

§ 151.1518 Penalties for failure to conduct ballast water management.

(a) A person who violates this subpart is liable for a civil penalty in an amount not to exceed $27,500. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subpart for that violation.

(b) A person who knowingly violates the regulations of this subpart is guilty of a class C felony.

Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States.

■ 4. Revise the authority citation for part 151 subpart C continues to read as follows:

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

■ 5. Revise § 151.2005 to read as follows:

§ 151.2005 To which vessels does this subpart apply?

Unless exempted in § 151.2010 or § 151.2015, this subpart applies to all vessels, U.S. and foreign, equipped with ballast tanks, that operate in the waters of the United States and are bound for ports or places in the United States.

■ 6. Add § 151.2007 to read as follows:

§ 151.2007 What are the penalties for violations of the mandatory provisions of this subpart?

(a) A person who violates this subpart is liable for a civil penalty not to exceed $ 27,500. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subpart for that violation.

(b) A person who knowingly violates the regulations of this subpart is guilty of a class C felony.

■ 7. In § 151.2010:

■ a. In the introductory text, remove the word ''Four'' and add, in its place, the word ''Three'';

■ b. Remove paragraphs (b) and (d);

■ c. Redesignate paragraph (c) as paragraph (b); and

■ d. Add new paragraph (c) to read as follows:

§ 151.2010 Which vessels are exempt from the mandatory requirements?

* * * * *

(c) A vessel that operates exclusively within one Captain of the Port (COTP) Zone.

§ 151.2015 [Amended]

■ 8. In § 151.2015 remove the text ''151.2040'', and add in its place, the text ''151.2041''.

§ 151.2025 [Amended]

■ 9. In § 151.2025(b), in the definition for ''Exchange,'' redesignate paragraph (a) as (1); revise the definitions of ''Captain of the Port (COTP)'' and ''Voyage''; and add, in alphabetical order, the definitions for ''Exclusive Economic Zone (EEZ)'', ''Port or place of departure'' and ''Port or place of destination'' to read as follows:

§ 151.2025 What definitions apply to this subpart?

* * * * *

(b) * * *

Captain of the Port (COTP) means the Coast Guard officer designated as the COTP, or a person designated by that officer, for the COTP zone covering the U.S. port of destination. These COTP zones are listed in 33 CFR part 3.

* * * * *

Exclusive Economic Zone (EEZ) means the area established by Presidential Proclamation Number 5030, dated March 10, 1983 (48 FR 10605, 3 CFR, 1983 Comp., p. 22) which extends from the base line of the territorial sea of the United States seaward 200 miles, and the equivalent zone of Canada.

* * * * *

Port or place of departure means any port or place in which a vessel is anchored or moored.

Port or place of destination means any port or place to which a vessel is bound to anchor or moor.

* * * * *

Voyage means any transit by a vessel destined for any United States port or place.

* * * * *

■ 10. Revise § 151.2040 and its section heading to read as follows:

§ 151.2040 What are the mandatory ballast water management requirements for vessels equipped with ballast tanks that operate in the waters of the United States and are bound for ports or places in the United States?

(a) A vessel bound for the Great Lakes or Hudson River, which has operated beyond the EEZ (which includes the equivalent zone of Canada) during any part of its voyage regardless of intermediate ports of call within the waters of the United States or Canada, must comply with §§ 151.2041 and 151.2045 of this subpart, as well as with the provisions of subpart C of this part.

(b) A vessel engaged in the foreign export of Alaskan North Slope Crude Oil must comply with §§ 151.2041 and 151.2045 of this subpart, as well as with the provisions of 15 CFR 754.2(j)(1)(iii). Section 15 CFR 754.2(j)(1)(iii) requires a mandatory program of deep water ballast exchange unless doing so would endanger the safety of the vessel or crew.

(c) A vessel not covered by paragraphs (a) or (b) of this section and is bound for ports or places in the United States must comply with §§ 151.2041 and 151.2045 of this subpart.

(d) This subpart does not authorize the discharge of oil or noxious liquid substances (NLS) in a manner prohibited by United States or international laws or regulations. Ballast water carried in any tank containing a residue of oil, NLS, or any other pollutant must be discharged in accordance with applicable regulations.

(e) This subpart does not affect or supercede any requirement or prohibition pertaining to the discharge of ballast water into the waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 to 1376).

§ 151.2041 [Redesignated as § 151.2043]

■ 11. Redesignate § 151.2041 as § 151.2043.

■ 12. Add new § 151.2041 to read as follows:

§ 151.2041 What are the mandatory ballast water reporting requirements for all vessels equipped with ballast tanks bound for ports or places in the United States?

(a) Ballast water reporting requirements exist for each vessel bound for ports or places in the United States regardless of whether a vessel operated outside of the EEZ (which includes the equivalent zone of Canada), unless exempted in §§ 151.2010 or 151.2015.

(b) The master, owner, operator, agent, or person-in-charge of a vessel to whom this section applies must provide the information required by § 151.2045 in electronic or written form (OMB form Control No. 1625–0069) to the Commandant, U.S. Coast Guard or the appropriate COTP as follows:

(1) For any vessel bound for the Great Lakes from outside the EEZ (which includes the equivalent zone of Canada).

(i) You must fax the required information at least 24 hours before the vessel arrives in Montreal, Quebec to either the USCG COTP Buffalo, Massena Detachment (315–769–5032), or the St. Lawrence Seaway Development Corporation (315–764–3250); or

(ii) If you are not a U.S. or Canadian Flag vessel, you may complete the ballast water information section of the St. Lawrence Seaway required ''Pre-entry Information from Foreign Flagged Vessels Form'' and submit it in accordance with the applicable Seaway Notice in lieu of this requirement.

(2) For any vessel bound for the Hudson River north of the George Washington Bridge entering from outside the EEZ (which includes the equivalent zone of Canada). You must fax the information to the COTP New York (718–354–4249) at least 24 hours before the vessel enters New York, New York.

(3) For any vessel not addressed in paragraphs (b)(1) and (b)(2) of this section, which is equipped with ballast water tanks and bound for ports or places in the United States. If your voyage is less than 24 hours, you must report before departing your port or place of departure. If your voyage exceeds 24 hours, you must report at least 24 hours before arrival at your port or place of destination. All required information is to be sent to the National Ballast Information Clearinghouse (NBIC) using only one of the following means:

(i) Internet at: *http://invasions.si.edu/NBIC/bwform.html;*

(ii) E-mail to *NBIC@BALLASTREPORT.ORG;*

(iii) Fax to 301–261–4319; or

(iv) Mail to U.S. Coast Guard, c/o SERC (Smithsonian Environmental Research Center), P.O. Box 28, Edgewater, MD 21037–0028.

(c) If the information submitted in accordance with this section changes, you must submit an amended form before the vessel departs the waters of the United States.

§ 151.2043 [Amended]

■ 13. In newly designated § 151.2043:

■ a. In the section heading, after the words ''Hudson River,'' add the words ''after operating outside the EEZ or Canadian equivalent''; and

■ b. In paragraphs (a) and (a)(1), remove the text ''§ 151.2040(c)(4)'' and add, in its place, the text, ''§ 151.2041''.

■ 14. In § 151.2045:

■ a. Revise the section heading as set out below;

■ b. In paragraph (a), remove the words ''entering the waters of the United States after operating beyond the EEZ'' and add, in their place, the words ''bound for a port or place in the United States''; and

■ c. Remove the designation for paragraph (a)(8)(i) and redesignate paragraphs (a)(8)(ii), (a)(8)(iii), and (a)(8)(iv) to (a)(9), (a)(10), and (a)(11), respectively.

§ 151.2045 What are the mandatory recordkeeping requirements for vessels equipped with ballast tanks that are bound for a port or place in the United States?

■ 15. In Subpart D, in Section 6 of the Appendix, revise the text beginning with the heading ''Where to send this form'' to read as follows:

Appendix to Subpart D of Part 151—Ballast Water Reporting Form and Instructions for Ballast Water Reporting Form

* * * * *

Where to send this form.

Vessels equipped with ballast water tanks bound for all ports or places within the waters of the United States after operating outside the EEZ (which includes the equivalent zone of Canada).

Bound for	You must submit your report as detailed below.
The Great Lakes	Fax the information at least 24 hours before the vessel arrives in Montreal, Quebec, to the USCG COTP Buffalo, Massena Detachment (315–769–5032) or to the Saint Lawrence Seaway Development Corporation (315–764–3250). In lieu of faxing, vessels that are not U.S. or Canadian flagged may complete the ballast water information section of the St. Lawrence Seaway ''Pre-entry Information from Foreign Flagged Vessel Form''.

Vessels equipped with ballast water tanks bound for all ports or places within the waters of the United States after operating outside the EEZ (which includes the equivalent zone of Canada).

Bound for	You must submit your report as detailed below.
Hudson River north of the George Washington Bridge.	Fax the information to the COTP New York at (718–354–4249) at least 24 hours before the vessel arrives at New York, New York. *NOTE: Vessels entering COTP New York Zone which are not bound up the Hudson River north of George Washington Bridge should submit the form in accordance with the instructions in the following block.
All other U.S. Ports	Report before departing the port or place of departure if voyage is less than 24 hours, or at least 24 hours before arrival at the port or place of destination if the voyage exceeds 24 hours; and submit the required information to the National Ballast Information Clearinghouse (NBIC) by one of the following means: Via the Internet at *http://invasions.si.edu/NBIC/bwform.html;* E-mail to *NBIC@BALLASTREPORT.ORG*; Fax to 301–261–4319; or Mail the information to U.S. Coast Guard, c/o SERC. P.O. Box 28, Edgewater, MD 21037–0028.

Vessels that have not operated outside the EEZ, which are equipped with ballast water tanks and are bound for all ports or places within the waters of the United States.

Bound for	You must submit your report as detailed below:
All U.S. ports including the Great Lakes and Hudson River North of George Washington Bridge.	Report before departing the port or place of departure if voyage is less than 24 hours, or at least 24 hours before arrival at the port or place of destination if the voyage exceeds 24 hours; and submit the required information to the National Ballast Information Clearinghouse (NBIC) by one of the following means: Via the Internet at *http://invasions.si.edu/NBIC/bwform.html*; E-mail to *NBIC@BALLASTREPORT.ORG;* Fax to 301–261–4319; or Mail to U.S. Coast Guard, c/o SERC, P.O. Box 28, Edgewater, MD 21037–0028.

If any information changes, send an amended form before the vessel departs the waters of the United States.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The Coast Guard estimates that the average burden for this report is 35 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (G-MSO), U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593–0001, or Office of Management and Budget, Paperwork Reduction Project (2115–0598), Washington, DC 20503.

Dated: June 4, 2004.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 04–13173 Filed 6–10–04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD23

Canyonlands National Park—Salt Creek Canyon

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is amending its regulations for Canyonlands National Park by prohibiting motor vehicles in Salt Creek Canyon above Peekaboo campsite, in the Needles district. This action implements the selected alternative of the Middle Salt Creek Canyon Access Plan Environmental Assessment (EA).

DATES: Effective July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Superintendent, Canyonlands National Park, 2282 SW Resource Boulevard, Moab, Utah 84532; Telephone: (435) 719–2101.

SUPPLEMENTARY INFORMATION:

Congress created Canyonlands National Park in 1964 in order to preserve its ''superlative scenic, scientific, and archeologic features for the inspiration, benefit, and use of the public.'' 16 U.S.C. 271. The Park is to be administered subject to the NPS Organic Act, as amended, which states in part that the ''authorization of activities shall be construed and the protection, management, and administration of these areas [parks] shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various [park] areas have been established, except as may have been or shall be directly and specifically provided by Congress.'' 16 U.S.C. 1a–1.

Salt Creek is the most extensive perennial water source and riparian ecosystem in Canyonlands National Park, other than the Green and Colorado Rivers. The Salt Creek ''road'' is an unpaved and ungraded jeep trail that runs in and out of Salt Creek and, at various locations, the trail's path is in the creek bed. It requires a four-wheel-drive vehicle to drive, and previous vehicle use of the trail periodically resulted in vehicles breaking down or becoming stuck and requiring NPS assistance for removal. Salt Creek is also the heart of the Salt Creek Archeological District, the area with the highest recorded density of archeological sites in the Park. A tributary canyon to Salt Creek contains the spectacular Angel Arch. Until 1998, street-legal motor vehicles were permitted to travel in Middle Salt Creek Canyon along and in the Salt Creek streambed for approximately 7.2 miles above the Peekaboo campsite, and an additional one mile up the Angel Arch tributary canyon. The Salt Creek trail does not provide a route for motorized transit through the Park or to any inholdings within the Park.

The previous management plan affecting Salt Creek, the Canyonlands National Park Backcountry Management Plan, was completed in January 1995. This plan, among other things, established a permit system and a daily limit on the number of motorized vehicles authorized to use the Salt Creek trail above Peekaboo Springs. The Southern Utah Wilderness Alliance (SUWA) challenged the Backcountry Management Plan in Federal district court. Among other things, SUWA

alleged that continued vehicular use of Salt Creek would cause impairment of unique park resources and thus would violate the 1916 National Park Service Organic Act (16 U.S.C. 1–4) and Canyonlands National Park enabling act (16 U.S.C. 271).

In its June 1998 decision, the U.S. District Court for the District of Utah interpreted the Organic Act unambiguously to prohibit activities in national parks that would permanently impair unique park resources, and concluded that the NPS's decision to allow vehicle travel in Salt Creek would cause significant permanent impairment. The court consequently enjoined the NPS from permitting motorized vehicle travel in Salt Creek Canyon above Peekaboo Spring.

Off-highway vehicle groups, intervenors in the case, appealed the district court ruling, and in August 2000 the United States Court of Appeals for the Tenth Circuit reversed the district court decision and remanded it for further consideration. The circuit court ruled that the district court had applied the wrong standard in its interpretation of the Organic Act and should have more fully considered whether the agency's interpretation of the Act, as applied to Salt Creek, was ''based on a permissible construction of the statute.'' The circuit court determined that the administrative record was not clear concerning whether motorized travel in Salt Creek would cause permanent impairment to park resources. The circuit court agreed with the district court that the Organic Act prohibited the NPS from permitting ''significant, permanent impairment.'' However, the circuit court noted that the Organic Act may also prohibit negative impacts that do not rise to the level of ''significant, permanent impairment.'' The circuit court remanded the case to the district court, with instructions to re-examine the record to determine whether the agency's conclusion that there was no significant impact on Salt Creek Canyon from the decision to allow limited vehicular traffic in Salt Creek Canyon was adequately supported. The circuit court also instructed the district court to consider the new NPS Management Policies in regard to ''impairment of park resources or values,'' the central issue in the case, and vacated the district court's injunction on motorized vehicle use in Salt Creek Canyon above Peekaboo Spring.

Since the Canyonlands backcountry planning effort in the mid-1990s, several important changes have occurred. The National Park Service revised its Management Policies to clarify its interpretation of the statutory provision prohibiting impairment of park resources and values (see *www.nps.gov/policy/mp/policies.pdf*, chapter 1). The vehicle prohibition in Middle Salt Creek Canyon that began in 1998 with the district court's injunction has been the only period of significant length without vehicle traffic in that area since the 1964 creation of the Park. This restriction made it possible to gather information on riparian conditions without the effects of vehicles, through the Park's ongoing monitoring program and independent research efforts. In 2001, the U.S. Fish and Wildlife Service designated critical habitat for the threatened Mexican spotted owl, which includes Salt Creek Canyon. In addition, in the absence of motor vehicle traffic, vegetation has returned to the vehicle tracks and water flows have moved sections of the stream channel.

To take these changes into account and to address the impairment question following the remand, the NPS initiated an environmental assessment process in accordance with the National Environmental Policy Act (NEPA). The district court subsequently stayed its proceedings on remand until completion of this environmental assessment. The environmental assessment process took advantage of additional scientific information and applied the revised Management Policies on impairment to analyze, in more depth than had previously been possible, the impacts of a range of access alternatives for Middle Salt Creek Canyon. The environmental assessment was released for public review and comment in June 2002 and a Finding of No Significant Impact (FONSI) was issued in September 2002.

The environmental assessment analyzed four alternatives, including three alternatives which would have permitted vehicle access. Each of these three alternatives would have allowed vehicle travel on the Salt Creek trail under the permit system and daily vehicle limits of the 1995 Canyonlands/Orange Cliffs Backcountry Management Plan (BMP). Alternative A would have allowed motor vehicle access on the current alignment of the trail year-round. Alternative B would have allowed vehicle access on the current alignment of the trail each year from October 1 until ice makes the creek impassable, or January 31 of the following year at the latest; vehicles would have been prohibited the remainder of the year. Alternative C would have realigned sections of the trail to avoid the streambed and riparian area where feasible, and would have allowed year-round vehicle access.

The fourth alternative analyzed in the EA, Alternative D, would prohibit motor vehicle access in Middle Salt Creek Canyon year-round. Hiking and pack/saddle stock would continue to be permitted, under the provisions of the backcountry management plan.

Under each of the three vehicle alternatives, the use of motorized vehicles was found to cause impairment to park resources and values because of adverse impacts to the Salt Creek riparian/wetland ecosystem. Alternative D, prohibiting vehicle access, was found not to cause impairment to park resources and values. Consequently, Alternative D was selected in the FONSI for implementation.

Because each of the three alternatives for vehicle traffic in Middle Salt Creek Canyon would have caused impairment of park resources and values, allowing motor vehicles under any one of these alternatives is not permissible under the NPS Organic Act. Roads elsewhere in the Needles District, as well as elsewhere in Canyonlands National Park, remain open to motorized vehicles. Salt Creek above Peekaboo remains open to foot and pack/saddle stock travel.

San Juan County and the State of Utah have asserted that they hold a right-of-way over the Salt Creek trail pursuant to R.S. 2477. R.S. 2477 was a Federal law passed in 1866 providing that ''the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.'' R.S. 2477 was repealed in 1976, subject to valid existing rights. The NPS has sought and examined information relevant to the claim that this route is an R.S. 2477 right-of-way. Based on this review, the NPS concluded that it has not been shown that a valid right-of-way was constructed during the period when the lands were unreserved. Promulgation of this rule will not affect the ability of the County or State to pursue in an appropriate forum the claim that this is a valid R.S. 2477 right-of-way.

This final rule would prohibit motorized public use in Salt Creek Canyon above Peekaboo Spring. Although this rule does not apply to motor vehicle use for administrative purposes, the Park as a matter of policy has previously chosen to forgo all such motorized use unless necessary for emergency rescue purposes.

Discussion of Comments

The proposed rule was published in the **Federal Register** on August 11, 2003, for public review and comment. The NPS received comments on the proposed rule from over 2800

individuals and 25 organizations. The comments were generally similar to those previously submitted on the EA (which prompted over 7000 comment letters). The majority (over 97 percent) of the commenters supported the proposed rule. Of this 97 percent, nearly 95 percent sent letters with wording similar to that suggested by constituency groups. Of the less than 3 percent of commenters that did not support the rule, approximately one-third sent letters with wording similar to that suggested by constituency groups. Comments on the rule, and National Park Service responses, follow.

Comment: The rule is needed to alleviate the impacts of vehicle traffic through the creek and riparian area. These impacts on streambanks, water quality, vegetation, and wildlife are not acceptable, particularly on one of the most important water sources and riparian areas in a national park. The rule would not substantially restrict the public's opportunity to enjoy Canyonlands, and would ensure that a high-quality experience would continue to be available for future generations.

Response: These ideas are generally consistent with the findings of the Middle Salt Creek EA.

Comment: The jeep trail is a highway right-of-way under R.S. 2477, so the NPS cannot prohibit motorized vehicle traffic on it.

Response: Though San Juan County has made various statements claiming that the route is an R.S. 2477 right-of-way, it has only recently indicated its intention to commence legal proceedings for a determination on whether such claims are valid. Promulgation of this rule will not affect the ability of the County or State to pursue such a determination in an appropriate forum. Should it be subsequently determined that the State and/or County do hold a valid R.S. 2477 right-of-way, the regulation will be revisited to ensure that it is consistent with the rights associated with such a right-of-way.

Comment: The EA finding (on which the rule is based) that vehicle travel in Salt Creek causes impairment of park resources is inconsistent with the determination in a 1995 Finding of No Significant Impact (FONSI) that parkwide backcountry management actions, which included limited vehicle traffic in Salt Creek, would have ''minor and temporary'' environmental impacts. The previous Salt Creek permit system provided reasonable balance between the two responsibilities contained in the NPS Organic Act, to provide for conservation and enjoyment of park resources by means that leave them unimpaired for the enjoyment of future generations.

Response: The Tenth Circuit Court of Appeals, in *SUWA* v. *NPS*, noted that the level of impact caused by vehicle travel in Salt Creek was the source of conflicting statements in the administrative record for the 1995 Backcountry Management Plan. The 1995 decision was an interim action, intended to be revisited in approximately five years after the actual impacts of the backcountry plan were monitored, and subject to change if the impacts were unacceptable. This monitoring data, as well as other information not available when the 1995 decision was made, informed the 2002 decision. Based on this additional information, the NPS found that alternatives permitting vehicle traffic would cause significant impacts as well as impairment of park resources, and thus were not permissible.

Comment: The NPS gave inadequate consideration to the importance of Angel Arch and the recreational opportunity provided by Salt Creek Road.

Response: The EA recognized that Salt Creek Canyon is ''a unique recreational experience, whether accessed on foot or by vehicle.'' It characterized ''the opportunity to view Angel Arch,'' as well as ''the opportunity to experience the mix of other resources found in Salt Creek Canyon,'' as ''unique.'' (A ''unique'' experience was defined as ''only available at a single location,'' such as ''visiting Delicate Arch or some one-of-a-kind feature,'' as opposed to ''uncommon'' or ''common.'') It evaluated the impacts of four alternatives, three involving vehicle access, on accessibility as well as on hiking/backpacking. The three vehicle-access alternatives had positive effects on accessibility but mostly negative impacts on hiking, while the foot and pack animal access alternative (which is now being promulgated as the final rule) had negative impacts on accessibility but mostly positive impacts on hiking. While vehicle access to Angel Arch and Salt Creek is important to many visitors, a nonmotorized experience and a desert creek that is not impacted by vehicle traffic are equally important to many other visitors.

Comment: The proposed rule limits viewing Angel Arch to those able to hike to it (about 18 miles round trip), eliminating this opportunity for the ''vast majority'' of Park visitors.

Response: The Park does not have overall statistics on the transportation mode(s) of every visitor (two-wheel driving, four-wheel-driving, hiking, etc.), but each mode makes up a significant contingent of total visitation. Vehicle use of the jeep trails in Salt Creek and Horse Canyon (accessed via Salt Creek) decreased after vehicle travel above Peekaboo was prohibited, but increases in vehicle camping use at Peekaboo and backpack use of the Salt Creek/Horse Canyon and Upper Salt Creek zones offset this decline. (The NPS does not formally count the visitors that actually travel to Angel Arch, but visitors in these areas are the ones actually counted that are most likely to visit the arch.) Vehicle day use of the Salt Creek and Horse Canyon routes dropped from 3737 people in 1998, when vehicles could travel to within one-half mile of Angel Arch for about half the year, to 2814 people in 2001, after vehicles were prohibited above Peekaboo, a decrease of 913 people, but backpacking and vehicle camping use increased by 1007 people over the same period. The vehicle prohibition does not appear to have decreased overall visitor use in this area. Whether or not vehicles are permitted above Peekaboo, visitation to Salt Creek and tributary canyons has accounted for only about 1 percent of total annual park visitation. Visitors also continue to have the option to access Angel Arch on horseback. Over 240 miles of four-wheel-drive roads, plus an additional 42 miles of two-wheel-drive roads, remain available for vehicles in Canyonlands National Park and the adjacent Orange Cliffs unit of Glen Canyon National Recreation Area.

Comment: The proposed rule violates the Canyonlands General Management Plan (GMP), which lists ''Proposed Uses'' for the ''Salt Creek Canyons subunit'' as ''Interpretation, Four-wheel Driving, Marked Routes and Cross Country Hiking, Four-wheel-drive camping, and Backpacking.''

Response: The National Park Service recognizes that GMPs need to be updated periodically, and that changing conditions, use, or other circumstances may necessitate changes in management. NPS policies require managers to eliminate existing activities ''as soon as reasonably possible'' if they find that they cause impairment. The policies direct that ''Even in parks with strong traditions and established patterns of use and development, managers will be responsible for assessing whether resources are threatened with impairment, the visitor experience has been degraded, or the park's built environment is difficult to sustain * * * An approved GMP may be amended or revised, rather than a new plan prepared, if conditions and management prescriptions governing most of the area covered by the plan

remain essentially unchanged from those present when the plan was originally approved.'' As stated in the Finding of No Significant Impact for the Middle Salt Creek Canyon Access Plan, the proposed action amends the Canyonlands GMP and Backcountry Management Plan. Within the Salt Creek Canyons subunit, four-wheel driving remains available in Salt Creek from Cave Springs to Peekaboo and in Horse Canyon, while four-wheel-drive camping remains available at the Peekaboo campsite.

Comment: Implementation of the rule would frustrate Congress' intent in establishing Canyonlands National Park.

Response: The Tenth Circuit Court of Appeals, in *SUWA* v. *NPS*, found this argument ''without merit,'' noting that ''nothing in the statutory language indicates that a jeep trail cannot be closed if the closure is deemed necessary for preservation. The legislative history is inconclusive at best on the issue, and thus carries little weight.'' The rule for Salt Creek is consistent with both the act establishing Canyonlands (passed ''* * * in order to preserve an area in the State of Utah possessing superlative scenic, scientific, and archeologic features for the inspiration, benefit and use of the public'') and the NPS Organic Act, as amended, which sets basic direction for the national parks and gives the NPS authority to manage accordingly.

Comment: Wildlife in Salt Creek Canyon would be more disturbed by pedestrians than by vehicles.

Response: The National Park Service disagrees. The impact analysis considered various types of impacts (*e.g.*, direct physical injury or mortality, stress/startling/flushing, habitat and conditions, avoidance of or displacement from key habitat) and species or groups affected (listed threatened or endangered species, birds, small and large mammals, amphibians and reptiles). While the National Park Service does agree that pedestrian activity may cause some species to stress/startle/flush more than would be the case with motor vehicles, we do not agree that wildlife in Salt Creek Canyon would be more disturbed by pedestrians than by vehicles. Our analysis concluded that total adverse impacts for the range of effects considered on all species would be greater from vehicles than from pedestrians.

Comment: Impacts from hiking use under the proposed rule were not analyzed: new trails, associated cryptobiotic crust impacts, water quality, wildlife reactions to hikers, cultural resource impacts, etc.

Response: Most if not all of the trails now present in Salt Creek Canyon were there before vehicles were prohibited in 1998. Informal ''social'' trails do not appear to have increased during the period vehicles have been prohibited. Trails around wet areas were used by drivers scouting the pools before driving through them as well as by hikers. Some trails may vary somewhat as stream location or water level changes. Disturbance effects of hikers on wildlife are discussed in various places in the EA, including pages 57, 58, 61, 64, 65, and 69. Water quality effects from increased backpacking use under the final rule are analyzed on pages 101–102 in the EA. Cultural resource impacts of the final rule are analyzed on pages 83–84 of the EA.

Comment: The proposed rule violates the Americans with Disabilities Act.

Response: The Federal government is under the authority of the Architectural Barriers Act of 1968 (Pub. L. 90–480) and the Rehabilitation Act of 1973 (Pub. L. 93–112). The Americans with Disabilities Act (ADA) extended the coverage of these two acts to state and local governments and the private sector. The Interior Department also uses the ADA Accessibility Guidelines in its construction projects. The primary focus of these laws and guidelines is architectural accessibility (buildings and facilities).

The NPS accessibility goal (Director's Order 42) is to ensure the highest reasonable level of accessibility, with the accessibility level largely determined by the nature of the area and program, and consistent with the obligation to conserve park resources and preserve the quality of the park experience. The NPS also follows ''universal design'' principles. In the outdoor setting, universal design means not adding barriers when developing an area that is inherently full of barriers, and not creating developments that compromise the integrity of the environment in order to make that environment accessible. NPS Management Policies for park facilities direct that undeveloped areas will not normally be modified, nor will special facilities be provided, for the sole purpose of providing access to all segments of the population.

Under the final rule, the Salt Creek Canyon jeep trail below Peekaboo will remain open to motor vehicles. Horseback access up Middle Salt Creek Canyon will provide alternative access opportunities for some individuals unable to hike the portion of the canyon closed to motor vehicles. Viewing Angel Arch is not possible from the end of the jeep trail; an uphill hike from the end of the trail was always necessary to reach a point where the arch can be seen. None of the Salt Creek alternatives would meet the ADA Accessibility Guidelines, if they applied in this context, because of various characteristics of the backcountry setting and the primitive trail leading from the end of the jeep trail to Angel Arch. The major trail alterations required to meet accessibility guidelines would be inappropriate for the backcountry setting. Opportunities to view arches of similar size from in or near a vehicle are available elsewhere in the region. Photos and other information about Angel Arch are available in the Needles visitor center, and in various publications and interpretive media.

Comment: The impacts of vehicle traffic are no worse than those of flooding.

Response: This issue is analyzed at length in the EA. In short, vehicle traffic destabilizes the stream channel and floodplain, and magnifies flood damage. Flood damage in Salt Creek, shortly before and since the completion of the EA, has demonstrated the vehicle-streambed impacts discussed in the EA. The Salt Creek streambed is normally a meandering channel. The four-wheel-drive route runs in the streambed itself for extended distances; in other places it ''shortcuts'' across meander bends. These shortcuts can capture stream flow and become the primary or secondary channels. These channels, formed initially or altered by vehicle traffic, are shorter, straighter, less vegetated, and smoother than the normally-meandering channel. Water flowing down them has higher velocity and more erosive force, so that floods cause more damage than they would under normal conditions. In 2001, 2002, and 2003, Salt Creek had floods resulting from estimated two- to ten-year-recurrence (*i.e.*, fairly commonplace) precipitation events. Each of these floods caused substantial damage to parts of the jeep trail still traveled by vehicles, resulting from water flowing down the vehicle-channelized streambed sections, or following the vehicle tracks across terraces above the normal streambed. In one section, flood flows followed the vehicle tracks across a previously unflooded terrace, eroding a gully up to four feet below the previous road level. Vegetated stream channel sections not traveled by vehicles received little erosion damage from these floods.

Comment: Only permanent impacts constitute impairment of park resources, and vehicle travel in Salt Creek does not cause impairment because vegetation returned and the riparian area improved after vehicle traffic ceased in 1998.

Response: The U.S Court of Appeals for the Tenth Circuit, in *SUWA* v. *NPS,* noted that '' 'significant, permanent impairment' '' may not be coterminous with what is prohibited by the [NPS Organic] Act because other negative impacts [*e.g.*, less than permanent] may also be prohibited.''

Comment: The NPS gave inadequate consideration to realignment of the jeep route, low water crossings or other techniques to allow vehicle access.

Response: The EA analyzed three alternatives for vehicle access. One of these alternatives was a realignment of the jeep route in an attempt to avoid or reduce impacts to the streambed and riparian area. This alternative would have reduced the number of stream crossings from over 60, but over 40 crossings would have remained. It would also have required 30 to 40 new climbs from the streambed to terraces five to 30 feet above, many of which would have also required substantial road cuts. These terraces are composed of incohesive sand, and would be subject to accelerated erosion if destabilized by vehicle traffic and/or road construction. Because of continued and new disturbance, erosion and sedimentation, this alternative was also found to cause impairment of park resources.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule may raise novel legal or policy issues. It has been the focus of approximately eight years of litigation and controversy regarding the environmental impacts associated with motor vehicle use on an eight mile section of a trail that runs in and out of a creek bed within the Middle Salt Creek Canyon area of Canyonlands National Park. The NPS's environmental assessment evaluated three alternatives that would allow some degree of continued motor vehicle traffic in Salt Creek Canyon, and a fourth alternative that would prohibit motor vehicle access year-round. The NPS Organic Act requires that the NPS manage park areas ''in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' The assessment concluded that each one of the three alternatives would cause impairment to park resources and values because of the impacts to the Salt Creek riparian/wetland ecosystem. Therefore, none of the three alternatives would be permissible.

Regulatory Flexibility Act

An analysis of gross receipts and recreation visitor-days (1993–2000) indicates that Salt Creek commercial use, while fluctuating during this period, actually bypassed pre-closure levels. The analysis also shows that commercial use of the middle portion of Salt Creek is a small percentage of the overall commercial use of the park. The economic effects of this rule are local in nature and negligible in scope. There are several roads throughout the Park that commercial motorized vehicles may continue to use. The Department of the Interior therefore 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.*).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule will have no effect on small or large businesses. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

Takings (Executive Order 12630)

In accordance with Executive Order 12630 and the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, the rule does not have takings implications. The EA/FONSI and the impairment finding with respect to motorized use of the Salt Creek trail were made as a direct result of the still-pending litigation brought by Southern Utah Wilderness Alliance challenging the permit system that Canyonlands instituted for motor vehicles to use this trail. Since this lawsuit was originally filed, State and local entities have asserted that the trail constitutes an R.S. 2477 right-of-way, which in this case would be a right-of-way across public lands in favor of the State and County. As noted previously, the NPS has concluded that the information available to it is not sufficient to demonstrate that a valid right-of-way was created prior to reservation of these lands and that closure to motorized vehicles is required to prevent an impermissible impairment to park resources. No evidence exists that either the State or County has ever managed or maintained this trail, nor have they commenced administrative or judicial proceedings to lead to a determination whether any such claims are valid. Nevertheless, should it be subsequently determined that the State and County do hold a valid R.S. 2477 right-of-way, the regulation will be revisited to ensure that it is consistent with the property rights that are afforded to the holders of such valid rights-of-way.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This regulation will not have a substantial direct effect on the states, or on the distribution of power and responsibilities among the various levels of government. The rule addresses the prohibition of motorized use in part of a canyon in Canyonlands National Park. Canyonlands has had proprietary jurisdiction over the canyon since the creation of the Park in 1964. On April 9, 2003, the Department of the Interior and the State of Utah entered into a Memorandum of Understanding to implement ''a State and County Road Acknowledgment Process'' for certain R.S. 2477 rights-of-way on BLM lands within the State of Utah. The Memorandum provides that the State and Utah counties will not assert rights-

of-way under the Road Acknowledgement Process within any National Park System unit in Utah, and that ''the State, Utah counties and the Department shall work cooperatively to minimize trespass situations on roads'' within national parks. Other means for the County or State to pursue an R.S. 2477 right-of-way claim, such as a Quiet Title suit, remain available and are unaffected by promulgation of the final rule.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection, and a submission under the Paperwork Reduction Act is not required.

National Environmental Policy Act

This rule is not a major Federal action significantly affecting the quality of the human environment. Pursuant to the National Environmental Policy Act, 42 U.S.C. 4332, NPS has prepared an Environmental Assessment and a Finding of No Significant Impact (FONSI) on the proposed use of Salt Creek Road. The Environmental Assessment and FONSI may be viewed at *www.nps.gov/cany,* or copies may be obtained by contacting Canyonlands National Park.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

■ For the reasons set forth in the proposed rule and in this document, the proposed rule amending 36 CFR Part 7 is adopted as a final rule, without change, as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under DC Code 8–137 (1981) and DC Code 40–721 (1981).

■ 2. Add § 7.44 to read as follows:

§ 7.44 Canyonlands National Park.

(a) *Motorized Vehicle Use.* Motorized vehicles are prohibited in Salt Creek Canyon above Peekaboo campsite.

(b) [Reserved].

Dated: May 20, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–13234 Filed 6–10–04; 8:45 am]

BILLING CODE 4312–DF–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AB30

NARA Facilities; Phone Numbers

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration is updating the phone numbers for its Presidential libraries and regional records services facilities. The Presidential libraries and regional records services facilities are open to the public and other Federal agency staff for visitation and use of records for research. This final rule affects the public.

DATES: *Effective Date:* June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–837–2902 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: This rule is effective upon publication for good cause as permitted by the Administrative Procedure Act (5 U.S.C. 553(d)(3)). NARA believes that delaying the effective date for 30 days is unnecessary as this rule represents minor technical amendments. Moreover, as the public benefits immediately being provided with corrections to phone numbers for Presidential libraries and the regional records services facilities, any delay in the effective date would be contrary to the public interest.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. This rule is not a major rule as defined in 5 U.S.C. chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1253

Archives and records.

■ For the reasons set forth in the preamble, NARA amends part 1253 of title 36, Code of Federal Regulations, chapter XII, as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

■ 1. The authority citation for Part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

■ 2. Amend § 1253.3 by revising paragraphs (a) through (i) to read as follows:

§ 1253.3 Presidential Libraries.

* * * * *

(a) Herbert Hoover Library is located at 210 Parkside Dr., West Branch, IA (mailing address: PO Box 488, West Branch, IA 52358–0488). The phone number is 319–643–5301 and the fax number is 319–643–6045. The e-mail address is *hoover.library@nara.gov.*

(b) Franklin D. Roosevelt Library is located at 4079 Albany Post Rd., Hyde Park, NY 12538–1999. The phone number is 800–FDR–VISIT or 845–486–7770 and the fax number is 845–486–1147. The e-mail address is *roosevelt.library@nara.gov.*

(c) Harry S. Truman Library is located at 500 W. U.S. Hwy 24, Independence, MO 64050–1798. The phone number is 800–833–1225 or 816–268–8200 and the fax number is 816–268–8295. The e-mail address is *truman.library@nara.gov.*

(d) Dwight D. Eisenhower Library is located at 200 SE. Fourth Street, Abilene, KS 67410–2900. The phone number is 877–RING–IKE or 785–263–4751 and the fax number is 785–263–6718. The e-mail address is *eisenhower.library@nara.gov.*

(e) John Fitzgerald Kennedy Library is located at Columbia Point, Boston, MA 02125–3398. The phone number is 866–JFK–1960 or 617–514–1600 and the fax number is 617–514–1652. The e-mail address is *kennedy.library@nara.gov.*

(f) Lyndon Baines Johnson Library and Museum is located at 2313 Red River St., Austin, TX 78705–5702. The phone number is 512–721–0200 and the fax number is 512–721–0170. The e-

mail address is *johnson.library@nara.gov.*

(g) Gerald R. Ford Library is located at 1000 Beal Avenue, Ann Arbor, MI 48109–2114. The phone number is 734–205–0555 and the fax number is 734–205–0571. The e-mail address is *ford.library@nara.gov.* Gerald R. Ford Museum is located at 303 Pearl St., Grand Rapids, MI 49504–5353. The phone number is 616–254–0400 and the fax number is 616–254–0386. The e-mail address is *ford.museum@nara.gov.*

(h) Jimmy Carter Library is located at 441 Freedom Parkway, Atlanta, GA 30307–1498. The phone number is 404–865–7100 and the fax number is 404–865–7102. The e-mail address is *carter.library@nara.gov.*

(i) Ronald Reagan Library is located at 40 Presidential Dr., Simi Valley, CA 93065–0699. The phone number is 800–410–8354 or 805–577–4000 and the fax number is 805–577–4074. The e-mail address is *reagan.library@nara.gov.*

* * * * *

■ 3. Amend § 1253.6 by revising paragraphs (b) through (f) and (j), (k), and (m) to read as follows:

§ 1253.6 Records Centers.

* * * * *

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 02101. Hours are 8 a.m. to 4:30 p.m. The telephone number is 413–236–3600.

(c) NARA—Mid Atlantic Region (Northeast Philadelphia) is located at 14700 Townsend Rd., Philadelphia, PA 19154–1096. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 215–305–2000.

(d) NARA—Southeast Region (Atlanta) is located at 1557 St. Joseph Ave., East Point, GA 30344–2593. The hours are 7 a.m. to 4 p.m., Monday through Friday. The telephone number is 404–763–7474.

(e) NARA—Great Lakes Region (Dayton) is located at 3150 Springboro Road, Dayton, OH, 45439. The hours are 7:00 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 937–425–0600.

(f) NARA—Great Lakes Region (Chicago) is located at 7358 S. Pulaski Rd., Chicago, IL 60629–5898. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 773–948–9000.

* * * * *

(j) NARA—Rocky Mountain Region (Denver) is located at Building 48, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO (mailing address: PO Box 25307, Denver, CO 80225–0307). The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 303–407–5700.

(k) NARA—Pacific Region (San Francisco) is located at 1000 Commodore Dr., San Bruno, CA 94066–2350. The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 650–238–3500.

* * * * *

(m) NARA—Pacific Alaska Region (Seattle) is located at 6125 Sand Point Way, NE., Seattle, WA 98115–7999. The hours are 7:45 a.m. to 4:15 p.m., Monday through Friday. The telephone number is 206–336–5115.

■ 4. Amend § 1253.7 by revising paragraphs (a), (d), (e), (f), and (i) through (m) to read as follows:

§ 1253.7 Regional Archives.

* * * * *

(a) NARA—Northeast Region (Boston) is located in the Frederick C. Murphy Federal Center, 380 Trapelo Rd., Waltham, MA 02452. Hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 781–663–0144 or Toll Free 1–866–406–2379.

* * * * *

(d) NARA—Mid Atlantic Region (Center City Philadelphia) is located at the Robert N.C. Nix Federal Building, 900 Market St., Philadelphia, PA 19107–4292 (Entrance is on Chestnut Street between 9th and 10th Streets). The hours are 8 a.m. to 5 p.m., Monday through Friday. The telephone number is 215–606–0100.

(e) NARA—Southeast Region (Atlanta) is located at 1557 St. Joseph Ave., East Point, Georgia 30344–2593. The hours are 7 a.m. to 4 p.m., Monday through Friday. The telephone number is 404–763–7477.

(f) NARA—Great Lakes Region (Chicago) is located at 7358 S. Pulaski Rd., Chicago, IL 60629–5898. The hours are 8 a.m. to 4:15 p.m., Monday through Friday. The telephone number is 773–948–9000.

* * * * *

(i) NARA—Rocky Mountain Region (Denver) Textual Research room is located at Building 48, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO. The hours are 7:30 a.m. to 3:45 p.m., Monday through Friday. The telephone number is 303–407–5740. The Microfilm Research room is located at Building 46, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO. (The mailing address: PO Box 25307, Denver, CO 80225–0307). The hours are 7:30 a.m. to 3:45 p.m., Monday through Friday. The telephone number is 303–407–5751.

(j) NARA—Pacific Region (Laguna Niguel, CA) is located at 24000 Avila Rd., 1st Floor East Entrance, Laguna Niguel, CA, 92677–6719. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 949–360–2641.

(k) NARA—Pacific Region (San Francisco) is located at 1000 Commodore Dr., San Bruno, CA 94066–2350. The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 650–238–3501.

(l) NARA—Pacific Alaska Region (Seattle) is located at 6125 Sand Point Way, NE., Seattle, WA 98115–7999. The hours are 7:45 a.m. to 4:15 p.m., Monday through Friday. The telephone number is 206–336–5115.

(m) NARA—Pacific Alaska Region (Anchorage) is located at 654 West Third Avenue, Anchorage, AK 99501–2145. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 907–261–7820.

* * * * *

Dated: June 3, 2004.

John W. Carlin,

Archivist of the United States.

[FR Doc. 04–13196 Filed 6–10–04; 8:45 am]

BILLING CODE 7515–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 87 and 95

[WT Docket No. 01–289; RM–9499; FCC 03–238]

Aviation Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission amends its rules to accommodate technological advances, facilitate operational flexibility, and promote spectral efficiency in the Aviation Radio Service. The purpose of the Report and Order is to streamline and update our rules governing the Aviation Radio Service.

DATES: Effective September 13, 2004.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *Jeff.Tobias@FCC.gov,* Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order,* FCC 03–238, adopted on October 6, 2003, and released on October 16, 2003. The full text of this document is available for inspection

and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded *at: www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. In the *Report and Order,* the FCC adopts changes to part 87 of the Commission's rules that were either proposed in or suggested in response to the Notice of Proposed Rule Making (''NPRM'') in this proceeding. The *NPRM,* released on October 16, 2001, 66 FR 64785 (December 14, 2001), proposed rule changes that were intended to consolidate, revise and streamline our rules governing aviation communications. These changes were proposed to ensure that the part 87 rules reflect recent technological advances and are consistent with other Commission rules. In addition, changes were proposed to eliminate regulations that are duplicative, outmoded, or otherwise unnecessary in the Aviation Radio Service.

2. The significant actions taken in this Report and Order are as follows: (i) Updating the technical specifications for Aeronautical Mobile Satellite (Route) Service (AMS(R)S) equipment; (ii) permitting certification of dual spacing transceivers to accommodate aircraft operating in countries that employ 8.33 kHz channel spacing; (iii) extending license terms of non-aircraft stations from five to ten years; (iv) extending the construction period for aeronautical advisory stations (unicoms) and radionavigation land station from eight months to one year; (v) eliminating all references to the Civil Air Patrol from part 87; (vi) authorizing use of the Differential Global Positioning System (DGPS) in the 108–117.975 MHz and 1559–1610 MHz bands on a non-developmental basis, while also requiring DGPS receivers to meet minimum interference immunity requirements; (vii) modifying the licensing procedures and eligibility requirements for unicoms; and (viii) retaining the rule specifying that there may be only one aeronautical enroute station licensee per location, while clarifying that the licensee is expected to provide access to the spectrum on a reasonable, nondiscriminatory basis.

I. Regulatory Matters

A. Paperwork Reduction Act

3. The *Report and Order* does not contain any new or modified information collection.

B. Final Regulatory Flexibility Certification

4. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''

In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the SBA.

5. The purpose of the *Report and Order* is to streamline and update our part 87 rules governing the Aviation Radio Service. We believe that the rules adopted in the *Report and Order* do not impose any additional compliance burden on small entities.

6. We have identified those small entities that could conceivably be affected by the rule changes adopted herein. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The adopted rules may also affect small businesses that manufacture radio equipment. However, we anticipate that these rule changes will not impose any new burdens on small entities, but in fact will reduce regulatory and procedural burdens on small entities. The general effect of the rule changes adopted herein is to streamline the rules, remove duplicative requirements, provide greater operational flexibility, promote spectrum efficiency, facilitate equipment certification, and make our rules consistent with international requirements, all of which are measures that should have an overall beneficial effect on the regulated entities. We certified in the Notice of Proposed Rule Making in this proceeding that the rules proposed therein would not, if promulgated, have a significant economic impact upon a substantial number of small entities, as that term is defined by the RFA, and no party has challenged or otherwise commented on that certification.

7. We therefore certify that the requirements of the *Report and Order* will not have a significant economic impact upon a substantial number of small entities, as that term is defined by the RFA.

8. The Commission will send a copy of the *Report and Order*, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the *Report and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

II. Ordering Clauses

9. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order* including the Regulatory Flexibility Certification and to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Radio.

47 CFR Parts 87 and 95

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 87 and 95 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106 is amended as follows:

■ a. In the list of International Footnotes under heading I., add footnotes 5.197A and 5.328B.

■ b. In the list of United States (US) Footnotes, revise footnote US31 and add footnote US343.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

International Footnotes

* * * * *

5.197A The band 108–117.975 MHz may also be used by the aeronautical mobile (R) service on a primary basis, limited to systems that transmit navigational information in support of air navigation and surveillance functions in accordance with recognized international aviation standards. Such use shall be in accordance with Resolution 413 (WRC–03) and shall not cause harmful interference to nor claim protection from stations operating in the aeronautical radionavigation service which operate in accordance with international aeronautical standards.

* * * * *

5.328B The use of the bands 1164–1300 MHz, 1559–1610 MHz and 5010–5030 MHz by systems and networks in the radionavigation-satellite service for which complete coordination or notification information, as appropriate, is received by the Radiocommunication Bureau after 1 January 2005 is subject to the application of the provisions of Nos. 9.12, 9.12A and 9.13. Resolution 610 (WRC–03) shall also apply.

* * * * *

United States (US) Footnotes

* * * * *

US31 The frequencies 122.700, 122.725, 122.750, 122.800, 122.950, 122.975, 123.000, 123.050 and 123.075 MHz may be assigned to aeronautical advisory stations. In addition, at landing areas having a part-time or no airdrome control tower or FAA flight service station, these frequencies may be assigned on a secondary non-interference basis to aeronautical utility mobile stations, and may be used by FAA ground vehicles for safety related communications during inspections conducted at such landing areas.

The frequencies 122.850, 122.900 and 122.925 MHz may be assigned to aeronautical multicom stations. In addition, 122.850 MHz may be assigned on a secondary noninterference basis to aeronautical utility mobile stations. In case of 122.925 MHz, US213 applies.

Air carrier aircraft stations may use 122.000 and 122.050 MHz for communication with aeronautical stations of the Federal Aviation Administration and 122.700, 122.800, 122.900 and 123.000 MHz for communications with aeronautical stations pertaining to safety of flight with and in the vicinity of landing areas not served by a control tower.

Frequencies in the band 121.9375–122.6875 MHz may be used by aeronautical stations of the Federal Aviation Administration for communication with aircraft stations.

* * * * *

US343 Differential-Global-Positioning-System (DGPS) Stations, limited to ground-based transmitters, may be authorized on a primary basis in the bands 108–117.975 and 1559–1610 MHz for the specific purpose of transmitting DGPS information intended for aircraft navigation. Such use shall be in accordance with ITU Resolution 413 (WRC–03).

* * * * *

PART 87—AVIATION SERVICES

■ 3. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307(e) unless otherwise noted.

■ 4. Section 87.5 is amended by removing the entry for *Civil Air Patrol Station* and by adding the following three entries in alphabetical order to read as follows:

§ 87.5 Definitions.

* * * * *

Automatic terminal information service-broadcast (ATIS–B). The automatic provision of current, routine information to arriving and departing aircraft throughout a 24-hour period or a specified portion thereof.

* * * * *

Differential GPS (DGPS). A system which transmits corrections to the GPS derived position.

* * * * *

Flight Information Service-Broadcast (FIS–B). A broadcast service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights.

* * * * *

§ 87.25 [Amended]

■ 5. Section 87.25 is amended by removing paragraph (f).

■ 6. Section 87.27 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising paragraph (a) to read as follows:

§ 87.27 License term.

(a) Licenses for stations in the aviation services will normally be issued for a term of ten years from the date of original issuance, or renewal.

* * * * *

■ 7. Section 87.45 is revised to read as follows:

§ 87.45 Time in which station is placed in operation.

This section applies only to unicom stations and radionavigation land stations, excluding radionavigation land test stations. When a new license has been issued or additional operating frequencies have been authorized, the station or frequencies must be placed in operation no later than one year from the date of the grant. The licensee must notify the Commission in accordance with § 1.946 of this chapter that the station or frequencies have been placed in operation.

■ 8. Section 87.109 is revised to read as follows:

§ 87.109 Station logs.

(a) A station at a fixed location in the international aeronautical mobile service must maintain a log in accordance with Annex 10 of the ICAO Convention.

(b) A station log must contain the following information:

(1) The name of the agency operating the station.

(2) The identification of the station.

(3) The date.

(4) The time of opening and closing the station.

(5) The frequencies being guarded and the type of watch (continuous or scheduled) being maintained on each frequency.

(6) Except at intermediate mechanical relay stations where the provisions of this paragraph need not be complied with, a record of each communication showing text of communication, time communications completed, station(s) communicated with, and frequency used.

(7) All distress communications and action thereon.

(8) A brief description of communications conditions and difficulties, including harmful interference. Such entries should include, whenever practicable, the time at which interference was experienced, the character, radio frequency and identification of the interfering signal.

(9) A brief description of interruption to communications due to equipment failure or other troubles, giving the duration of the interruption and action taken.

(10) Such additional information as may be considered by the operator to be of value as part of the record of the stations operations.

(c) Stations maintaining written logs must also enter the signature of each operator, with the time the operator assumes and relinquishes a watch.

■ 9. Section 87.111 is revised to read as follows:

§ 87.111 Suspension or discontinuance of operation.

The licensee of any airport control tower station or radionavigation land

station must notify the nearest FAA regional office upon the temporary suspension or permanent discontinuance of the station. The FAA regional office must be notified again when service resumes.

■ 10. Section 87.131 is amended by revising the table entries for Aeronautical enroute and aeronautical fixed stations, Aircraft (Communication) stations—frequency bands UHF, VHF, HF, HF, Aircraft earth stations, and footnote 8 to read as follows:

§ 87.131 Power and emissions.

* * * * *

Class of station	Frequency band/frequency	Authorized emission(s) [9]	Maximum power [1]
* *	* *	* *	*
Aeronautical enroute and aeronautical fixed.	HF	R3E, H3E, J3E, J7B, H2B, J2D	6 kw.
	HF	A1A, F1B, J2A, J2B	1.5 kw.
	VHF	A3E, A9W G1D, A2D.	
* *	* *	* *	*
Aircraft (Communication)	UHF	F2D, F9D, F7D	25 watts.
	VHF	A3E, A9W, G1D, G7D, A2D	55 watts.
	HF	R3E, H3E, J3E, J7B, H2B, J7D, J9W	400 watts.
	HF	A1A, F1B, J2A, J2B	100 watts.
* *	* *	* *	*
Aircraft earth	UHF	G1D, G1E, G1W	60 watts.[8]
* *	* *	* * *	

* * * * *

[8] Power may not exceed 60 watts per carrier, as measured at the input of the antenna subsystem, including any installed diplexer. The maximum EIRP may not exceed 2000 watts per carrier.

* * * * *

■ 11. Section 87.133 is amended by revising paragraph (c) to read as follows:

§ 87.133 Frequency stability.

* * * * *

(c) For single-sideband transmitters, the tolerance is:

(1) All aeronautical stations on land—10 Hz.

(2) All aircraft stations—20 Hz.

* * * * *

■ 12. Section 87.137 is amended by revising the entries for A3E [2], A3E, F9D, G1D, G1E [16], and G1W [16] in the table in paragraph (a) and footnotes 2, 3, 9, 16 and by adding footnote 17 to read as follows:

§ 87.137 Types of emission.

(a) * * *

Class of emission	Emission designator	Authorized bandwidth (kilohertz)		
		Below 50 MHz	Above 50 MHz	Frequency deviation
* * * *	*	*	*	*
A3E [2]	6K00A3E		50[3]	
A3E	5K6A3E		8.33 kHz [17]	
* * * *	*	*	*	*
F9D	5M0F9D		[9]	
G1D	16K0G1D		20 kHz	
* * * *	*	*	*	*
G1E [16]	21K0G1E		25	
G1W [16]	21K0G1W		25	
* * * *	*	*	*	*

* * * * *

[2] For use with an authorized bandwidth of 8.0 kilohertz at radiobeacon stations. A3E will not be authorized:

(i) At existing radiobeacon stations that are not authorized to use A3 and at new radiobeacon stations unless specifically recommended by the FAA for safety purposes.

(ii) At existing radiobeacon stations currently authorized to use A3, subsequent to January 1, 1990, unless specificallly recommended by the FAA for safety purposes.

[3] In the band 117.975–136 MHz, the authorized bandwidth is 25 kHz for transmitters approved after January 1, 1974.

[9] To be specified on license.

* * * * *

[16] Authorized for use by aircraft earth stations. Lower values of necessary and authorized bandwidth are permitted.

[17] In the band 117.975–137 MHz, the Commission will not authorize any 8.33 kHz channel spaced transmissions or the use of their associated emission designator within the U.S. National Airspace System, except by avionics equipment manufacturers, and Flight Test Stations, which are required to perform installation and checkout of such radio systems prior to delivery to their customers for use outside U.S. controlled airspace. For transmitters certificated to tune to 8.33 kHz channel spacing as well as 25 kHz channel spacing, the authorized bandwidth is 8.33 kHz when tuned to an 8.33 kHz channel.

* * * * *

■ 13. Section 87.139 is amended by removing paragraph (i)(2), redesignating paragraphs (i)(3) and (i)(4) as paragraphs (i)(2) and (i)(3), and revising paragraphs (h), (i)(1), and newly designated paragraph (i)(3) to read as follows:

§ 87.139 Emission limitations.

* * * * *

(h) For ELTs operating on 121.500 MHz, 243.000 MHz and 406.0–406.1 MHz the mean power of any emission must be attenuated below the mean power of the transmitter (pY) as follows:

(1) When the frequency is moved from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth the attenuation must be at least 25 dB;

(2) When the frequency is removed from the assigned frequency by more than 100 percent of the authorized bandwidth the attenuation must be at least 30 dB.

(i) * * *

(1) At rated output power, while transmitting a modulated single carrier, the composite spurious and noise output shall be attenuated by at least:

Frequency (MHz)	Attenuation (dB)[1]
0.01 to 1525	−135 dB/4 kHz
1525 to 1559	−203 dB/4 kHz
1559 to 1585	−155 dB/MHz
1585 to 1605	−143 dB/MHz
1605 to 1610	−117 dB/MHz
1610 to 1610.6	−95 dB/MHz
1610.6 to 1613.8	−80 dBW/MHz[3]
1613.8 to 1614	−95 dB/MHz
1614 to 1626.5	−70 dB/4 kHz
1626.5 to 1660	−70 dB/4 kHz[2, 3, 4]
1660 to 1670	−49.5 dBW/20 kHz[2, 3, 4]
1670 to 1735	−60 dB/4 kHz
1735 to 12000	−105 dB/4 kHz
12000 to 18000	−70 dB/4 kHz

[1] These values are expressed in dB referenced to the carrier for the bandwidth indicated, and relative to the maximum emission envelope level, except where the attenuation is shown in dBW, the attenuation is expressed in terms of absolute power referenced to the bandwidth indicated.

[2] Attenuation measured within the transmit band excludes the band ± 35 kHz of the carrier frequency.

[3] This level is not applicable for intermodulation products.

[4] The upper limit for the excess power for any narrow-band spurious emission (excluding intermodulation products within a 30 kHz measurement bandwidth) shall be 10 dB above the power limit in this table.

* * * * *

(3) * * *

Frequency Offset (normalized to SR)	Attenuation (dB)
+/− 0.75 × SR	0
+/− 1.40 × SR	20
+/− 2.95 × SR	40

Where:

SR = Symbol Rate,

SR = 1 × channel rate for BPSK,

SR = 0.5 × channel rate for QPSK.

* * * * *

§ 87.145 [Amended]

■ 14. Section 87.145 is amended by removing paragraph (c)(1) and redesignating paragraphs (c)(2) through (c)(5) as paragraphs (c)(1) through (c)(4).

■ 15. Section 87.147 is amended by revising paragraphs (d) introductory text (d)(2), (d)(3), and (e) and by adding paragraph (f) to read as follows:

§ 87.147 Authorization of equipment.

* * * * *

(d) An applicant for certification of equipment intended for transmission in any of the frequency bands listed in paragraph (d)(3) of this section must notify the FAA of the filing of a certification application. The letter of notification must be mailed to: FAA, Office of Spectrum Policy and Management, ASR–1, 800 Independence Ave., SW., Washington, DC 20591 prior to the filing of the application with the Commission.

* * * * *

(2) The certification application must include a copy of the notification letter to the FAA. The Commission will not act until it receives the FAA's determination regarding whether it objects to the application for equipment authorization. The FAA should mail its determination to: Office of Engineering and Technology Laboratory, Authorization and Evaluation Division, 7435 Oakland Mills Rd., Columbia, MD 21046. The Commission will consider the FAA determination before taking final action on the application.

(3) The frequency bands are as follows:

90–110 kHz
190–285 kHz
325–435 kHz
74.800 MHz to 75.200 MHz
108.000 MHz to 137.000 MHz
328.600 MHz to 335.400 MHz
960.000 MHz to 1215.000 MHz
1545.000 MHz to 1626.500 MHz
1646.500 MHz to 1660.500 MHz
5000.000 MHz to 5250.000 MHz
14.000 GHz to 14.400 GHz
15.400 GHz to 15.700 GHz
24.250 GHz to 25.250 GHz
31.800 GHz to 33.400 GHz

(e) Verification reports for ELTs capable of operating on the frequency 406.0–406.1 MHz must include sufficient documentation to show that the ELT meets the requirements of § 87.199(a). A letter notifying the FAA of the ELT verification must be mailed to: FAA, Office of Spectrum Policy and Management, ASR–1, 800 Independence Avenue SW., Washington, DC 20591.

(f) Certification may be requested for equipment that has the capability to transmit in the 138–144 MHz, 148–149.9 MHz, or 150.5–150.8 MHz bands as well as frequency bands set forth in § 87.173. The Commission will only certify this equipment for use in the bands regulated by this part.

■ 16. Section 87.151 is added to read as follows:

§ 87.151 Special requirements for differential GPS receivers.

(a) The receiver shall achieve a message failure rate less than or equal to one failed message per 1000 full-length (222 bytes) application data messages, while operating over a range from −87 dBm to −1 dBm, provided that the variation in the average received signal power between successive bursts in a given time slot shall not exceed 40 dB. Failed messages include those lost by the VHF data receiver system or which do not pass the cyclic redundancy check (CRC) after application of the forward error correction (FEC).

(b) The aircraft receiving antenna can be horizontally or vertically polarized. Due to the difference in the signal strength of horizontally and vertically polarized components of the broadcast signal, the total aircraft implementation loss is limited to 15 dB for horizontally polarized receiving antennas and 11 dB for vertically polarized receiving antennas.

(c) *Desensitization.* The receiver shall meet the requirements specified in paragraph (a) of this section in the presence of VHF–FM broadcast signals in accord with following tables.

(1) Maximum levels of undesired signals.

Frequency [1]	Maximum level of undesired signal at the receiver input (dBm)
50 kHz up to 88 MHz	−13
88 MHz–107.900 MHz.	[see paragraph (c)(2)]
108.000 MHz–117.975 MHz.	excluded

Frequency [1]	Maximum level of undesired signal at the receiver input (dBm)
118MHz	−44
118.025 MHz	−41
118.050 MHz up to 1660.5 MHz.	−13

[1] The relationship is linear between single adjacent points designated by the above frequencies.

(2) Desensitization frequency and power requirements for the frequencies 108.025 MHz to 111.975 MHz.

Frequency [1]	Maximum level of undesired signal at the receiver input (dBm)
88 MHz ≤ f ≤ 102 MHz	15
104 MHz	10
106 MHz	5
107.9 MHz	−10

[1] The relationship is linear between single adjacent points designated by the above frequencies.

(3) Desensitization frequency and power requirements for the frequencies 112.00 MHz to 117.975 MHz.

Frequency [1]	Maximum level of undesired signal at the receiver input (dBm)
88 MHz ≤ f ≤ 104 MHz	15
106 MHz	10
107 MHz	5
107.9 MHz	0

[1] The relationship is linear between single adjacent points designated by the above frequencies.

(d) *Intermodulation Immunity.* The receiver shall meet the requirements specified in paragraph (a) of this section in the presence of interference from two-signal, third order intermodulation products of two VHF-FM broadcast signals having levels in accordance with the following:

(1) $2N_1 + N_2 + 72 \leq 0$ for VHF–FM sound broadcasting signals in the range 107.7–108 MHz; and

(2) $2N_1 + N_2 + 3\ (24 - 20\log \text{delta } f/0.4) \leq 0$ for VHF–FM sound broadcasting signals below 107.7 MHz, where the frequencies of the two VHF–FM sound broadcasting signals produce, within the receiver, a two signal, third-order intermodulation product on the desired VDB frequency.

(3) In the formulas in paragraphs (d)(1) and (d)(2) of this section, N_1 and N_2 are the levels (dBm) of the two VHF FM sound broadcasting signals at the VHF data broadcast (VDB) receiver input. Neither level shall exceed the desensitization criteria set forth in paragraph (c) of this section. Delta $f = 108.1 - f_1$, where f_1 is the frequency of N_1, the VHF FM sound broadcasting signal closer to 108.1 MHz.

■ 17. Section 87.169 is revised to read as follows:

§ 87.169 Scope.

This subpart contains class of station symbols and a frequency table which lists assignable frequencies. Frequencies in the Aviation Services will transmit communications for the safe, expeditious, and economic operation of aircraft and the protection of life and property in the air. Each class of land station may communicate in accordance with the particular sections of this part which govern these classes. Land stations in the Aviation Services in Alaska may transmit messages concerning sickness, death, weather, ice conditions or other matters relating to safety of life and property if there is no other established means of communications between the points in question and no charge is made for the communications service.

■ 18. Section 87.171 is amended by adding, in alphabetical order, the symbols and class of station for GCO, RCO, RLD, RNV, and RPC, and by removing the symbol and class of station for FAP to read as follows:

§ 87.171 Class of station symbols.

* * * * *

GCO—Ground Communication Outlet

* * * * *

RCO—Remote Communications Outlet

* * * * *

RLD—RADAR/TEST

* * * * *

RNV—Radio Navigation Land/DME

RPC—Ramp Control

* * * * *

■ 19. Section 87.173 is amended by revising the entries for 325–405 kHz, 2371.0 kHz, 2374.0 kHz, 2935.0 kHz, 4466.0 kHz, 4469.0 kHz, 4506.0 kHz, 4509.0 kHz, 4582.0 kHz, 4585.0 kHz, 4601.0 kHz, 4604.0 kHz, 4627.0 kHz, 4630.0 kHz, 26618.5 kHz, 26620.0 kHz, 26621.5 kHz, 108.000–117.950 MHz, 118.000–121.400 MHz, 121.600–121.925 MHz, 121.975 MHz, 122.000 MHz, 122.025 MHz, 122.050 MHz, 122.075 MHz, 122.100 MHz, 122.125–122.675 MHz, 122.725 MHz, 122.950 MHz, 122.975 MHz, 123.050 MHz, 123.075 MHz, 123.6–128.8 MHz, 132.025–135.975 MHz, 136.000–136.400 MHz, 136.425 MHz, 136.450 MHz, 136.475 MHz, 143.900 MHz, 148.150 MHz, 960–1215 MHz, 1559–1626.5 MHz, 2700–2900 MHz, and 9000–9200 MHz, adding entries for 510–535 kHz, 108.000–117.975 MHz, 143.750 MHz, 406.0–406.1 MHz, and 1559–1610 MHz, and removing the entries for 510.525 kHz, 143.75 MHz, and 406.025 MHz in the table in paragraph (b) to read as follows:

§ 87.173 Frequencies.

* * * * *

(b) Frequency table:

Frequency or frequency band	Subpart	Class of station	Remarks
* * *	*	* *	*
325–405 kHz	Q	RLB	Radiobeacons.
* * *	*	* *	*
510–535 kHz	Q	RLB	Radiobeacons.
2371.0 kHz			[Reserved].
2374.0 kHz			[Reserved].
* * *	*	* *	*
2935.0 kHz	I	MA, FAE	International HF (NP).
* * *	*	* *	*
4466.0 kHz			[Reserved].
4469.0 kHz			[Reserved].
4506.0 kHz			[Reserved].
4509.0 kHz			[Reserved].

Frequency or frequency band	Subpart	Class of station	Remarks
* * *	*	* *	*
4582.0 kHz			[Reserved].
4585.0 kHz			[Reserved].
4601.0 kHz			[Reserved].
4604.0 kHz			[Reserved].
4627.0 kHz			[Reserved].
4630.0 kHz			[Reserved].
* * *	*	* *	*
26618.5 kHz			[Reserved].
26620.0 kHz			[Reserved].
26621.5 kHz			[Reserved].
* * *	*	* *	*
108.000–117.950 MHz	Q	RLO	VHF omni-range.
108.000–117.975 MHz	Q	DGP	Differential GPS.
* * *	*	* *	*
118.000–121.400 MHz	O	MA, FAC, FAW, GCO, RCO, RPC.	25 kHz channel spacing.
* * *	*	* *	*
121.600–121.925 MHz	I, O, L, Q	MA, FAC, MOU, RLT, GCO, RCO, RPC.	25 kHz channel spacing.
* * *	*	* *	*
121.975 MHz	F	MA, FAW, FAC, MOU	Air traffic control operations.
122.000 MHz	F	MA, FAC, MOU	Air carrier and private aircraft enroute flight advisory service provided by FAA.
122.025 MHz	F	MA, FAC, MOU	Air traffic control operations.
122.050 MHz	F	MA, FAC, MOU	Air traffic control operations.
122.075 MHz	F	MA, FAW, FAC, MOU	Air traffic control operations.
122.100 MHz	F, O	MA, FAC, MOU	Air traffic control operations.
122.125–122.675 MHz	F	MA, FAC, MOU	Air traffic control operations; 25 kHz spacing.
* * *	*	* *	*
122.725 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
* * *	*	* *	*
122.950 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
122.975 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
* * *	*	* *	*
123.050 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
123.075 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
* * *	*	* *	*
123.6–128.8 MHz	O	MA, FAC, FAW, GCO, RCO, RPC.	25 kHz channel spacing.
* * *	*	* *	*
132.025–135.975 MHz	O	MA, FAC, FAW, GCO, RCO, RPC.	25 kHz channel spacing.

Frequency or frequency band	Subpart	Class of station	Remarks
136.000–136.400 MHz	O, S	MA, FAC, FAW, GCO, RCO, RPC.	Air traffic control operations; 25 kHz channel spacing.
136.425 MHz	O, S	MA, FAC, FAW, GCO, RCO, RPC.	Air traffic control operations.
136.450 MHz	O, S	MA, FAC, FAW, GCO, RCO, RPC.	Air traffic control operations.
136.475 MHz	O, S	MA, FAC, FAW, GCO, RCO, RPC.	Air traffic control operations.
* * *	*	* *	*
143.750 MHz			[Reserved].
143.900 MHz			[Reserved].
148.150 MHz			[Reserved].
* * *	*	* *	*
406.0–406.1 MHz	F, G, H, I, J, K, M, O	MA, FAU, FAE, FAT, FAS, FAC, FAM, FAP.	Emergency and distress.
960–1215 MHz	F, Q	MA, RL, RNV	Electronic aids to air navigation.
* * *	*	* *	*
1559–1610 MHz	Q	DGP	Differential GPS.
1559–1626.5 MHz	F, Q	MA, RL	Aeronautical radionavigation.
* * *	*	* *	*
2700–2900 MHz	Q	RLS, RLD	Airport surveillance and weather radar.
* * *	*	* *	*
9000–9200 MHz	Q	RLS, RLD	Land-based radar.
* * *	*	* *	*

■ 20. Section 87.187 is amended by revising paragraphs (m) and (q) and adding a new paragraph (ee) to read as follows:

§ 87.187 Frequencies.

* * * * *

(m) The frequency 406.0–406.1 MHz is an emergency and distress frequency available for use by emergency locator transmitters. Use of this frequency must be limited to transmission of distress and safety communications.

* * * * *

(q)(1) The frequencies in the bands 1545.000–1559.000 MHz, 1610.000–1626.500 MHz, 1646.500–1660.500 MHz, and 5000.000–5150.000 MHz are authorized for use by the Aeronautical Mobile-Satellite (R) Service. The use of the bands 1544.000–1545.000 MHz (space-to-Earth) and 1645.500–1646.500 MHz (Earth-to-space) by the Mobile-Satellite Service is limited to distress and safety operations. In the frequency bands 1549.500–1558.500 MHz, 1610.000–1626.500 MHz 1651.000–1660.000 MHz, and 5000.000–5150.000 MHz, the Aeronautical Mobile-Satellite (R) requirements that cannot be accommodated in the 1545.000–1549.5000 MHz, 1558.500–1559.000 MHz, 1646.500–1651.000 MHz, and 1660.000–1660.500 MHz bands shall have priority access with real-time preemptive capability for communications in the Mobile-Satellite Service. Systems not interoperable with the Aeronautical Mobile-Satellite (R) Service shall operate on a secondary basis. Account shall be taken of the priority of safety-related communications in the Mobile-Satellite Service.

(2) In the frequency bands 1549.5–1558.5 MHz, 1610–1626.5 MHz, 1651–1660 MHz and 5000–5150 MHz, the Aeronautical-Mobile-Satellite (Route) Service requirements that cannot be accommodated in the 1545–1549.5 MHz, 1558.5–1559 MHz, 1646.5–1651 MHz and 1660–1660.5 MHz bands shall have priority access with real-time preemptive capability for communications in the mobile satellite service. Systems not interoperable with the Aeronautical Mobile-Satellite (Route) Service shall operate on a secondary basis. Account shall be taken of the priority of safety-related communications in the mobile-satellite service.

* * * * *

(ee) The frequency 121.95 MHz is authorized for air-to-ground and air-to-air communications for aircraft up to 13000 feet above mean sea level (AMSL) within the area bounded by the following coordinates (all coordinates are referenced to North American Datum 1983 (NAD83)):

32–35–00 N. Lat.; 117–12–00 W. Long.
32–42–00 N. Lat.; 116–56–00 W. Long.
32–41–00 N. Lat.; 116–41–00 W. Long.
32–35–00 N. Lat.; 116–38–00 W. Long.
32–31–00 N. Lat.; 117–11–00 W. Long.

■ 21. Section 87.189 is amended by revising paragraph (c) to read as follows:

§ 87.189 Requirements for public correspondence equipment and operations.

* * * * *

(c) A continuous watch must be maintained on the frequencies used for safety and regularity of flight while public correspondence communications are being handled. For aircraft earth stations, this requirement is satisfied by compliance with the priority and preemptive access requirements of § 87.187(q).

* * * * *

■ 22. Section 87.195 is amended by revising paragraph (a) to read as follows:

§ 87.195 Frequencies.

(a) ELTs transmit on the frequency 121.500 MHz, using A3E, A3X or NON

emission. ELTs that transmit on the frequency 406.0–406.1 MHz use G1D emission.

* * * * *

■ 23. Section 87.199 is revised to read as follows:

§ 87.199 Special requirements for 406.0–406.1 MHz ELTs.

(a) Except for the spurious emission limits specified in § 87.139(h), 406.0–406.1 MHz ELTs must meet all the technical and performance standards contained in the Radio Technical Commission for Aeronautics document titled ''Minimum Operational Performance Standards 406 MHz Emergency Locator Transmitters (ELT)'' Document No. RTCA/DO–204 dated September 29, 1989. This RTCA document is incorporated by reference in accordance with 5 U.S.C. 552(a), and 1 CFR part 51. Copies of the document are available and may be obtained from the Radio Technical Commission of Aeronautics, One McPherson Square, 1425 K Street NW., Washington, DC 20005. The document is available for inspection at Commission headquarters at 445 12th Street, SW., Washington, DC 20554. Copies may also be inspected at the Office of the Federal Register, 800 North Capital Street NW., suite 700, Washington, DC.

(b) The 406.0–406.1 MHz ELT must contain as an integral part a homing beacon operating only on 121.500 MHz that meets all the requirements described in the RTCA Recommended Standards document described in paragraph (a) of this section. The 121.500 MHz homing beacon must have a continuous duty cycle that may be interrupted during the transmission of the 406.0–406.1 MHz signal only.

(c) Prior to verification of a 406.0–406.1 MHz ELT, the ELT must be certified by a test facility recognized by one of the COSPAS/SARSAT Partners that the equipment satisfies the design characteristics associated with the COSPAS/SARSAT document COSPAS/SARSAT 406 MHz Distress Beacon Type Approval Standard (C/S T.007). Additionally, an independent test facility must certify that the ELT complies with the electrical and environmental standards associated with the RTCA Recommended Standards.

(d) The procedures for verification are contained in subpart J of part 2 of this chapter.

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406.0–406.1 MHz COSPAS/SARSAT satellite system, must be programmed in each ELT unit to establish a unique identification for each ELT station. With each marketable ELT unit the manufacturer or grantee must include a postage pre-paid registration card printed with the ELT identification code addressed to: NOAA/SARSAT Beacon Registration, E/SP3, Federal Building 4, Room 3320, 5200 Auth Road, Suitland, MD 20746–4304. The registration card must request the owner's name, address, telephone, type of aircraft, alternate emergency contact, and other information as required by NOAA. The registration card must also contain information regarding the availability to register the ELT at NOAA's online Web-based registration database at: *http://www.beaconregistration.noaa.gov.* Further, the following statement must be included: ''WARNING ''Failure to register this ELT with NOAA before installation could result in a monetary forfeiture being issued to the owner.''

(f) To enhance protection of life and property, it is mandatory that each 406.0–406.1 MHz ELT must be registered with NOAA before installation and that information be kept up-to-date. In addition to the identification plate or label requirements contained in §§ 2.925 and 2.926 of this chapter, each 406.0–406.1 MHz ELT must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: ''The owner of this 406.0–406.1 MHz ELT must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA), whose address is: NOAA/SARSAT Beacon Registration, E/SP3, Federal Building 4, Room 3320, 5200 Auth Road, Suitland, MD 20746–4304.'' Aircraft owners shall advise NOAA in writing upon change of aircraft or ELT ownership, or any other change in registration information. Fleet operators must notify NOAA upon transfer of ELT to another aircraft outside of the owner's control, or an other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

(g) For 406.0–406.1 MHz ELTs whose identification code can be changed after manufacture, the identification code shown on the plant or label must be easily replaceable using commonly available tools.

■ 24. Section 87.215 is amended by redesignating paragraphs (c) and (d) as paragraphs (f) and (g), adding new paragraphs (c), (d), and (e), and by removing the Effective Date Note to read as follows:

§ 87.215 Supplemental eligibility.

* * * * *

(c) At an airport where only one unicom may be licensed, eligibility for new unicom licenses is restricted to State or local government entities, and to nongovernmental organizations (NGOs) that are authorized to apply for the license by a State or local government entity whose primary mission is the provision of public safety services. All applications submitted by NGOs must be accompanied by a new, written certification of support (for the NGO applicant to operate the applied for station) by the state or local government entity. Applications for a unicom license at the same airport, where only one unicom may be licensed, that are filed by two or more applicants meeting these eligibility criteria must be resolved through settlement or technical amendment.

(d) At an airport where only one unicom may be licensed, the license may be assigned or transferred only to an entity meeting the requirements of paragraph (c) of this section.

(e) An applicant for renewal of a unicom license shall be granted a presumptive renewal expectancy regardless of whether the applicant is eligible for a new unicom license under paragraph (c) of this section. Unless the renewal expectancy is defeated, applications that are mutually exclusive with the renewal application will not be accepted. The renewal expectancy may be defeated only upon a determination, following a hearing duly designated on the basis of a petition to deny or on the Commission's own motion, that the renewal applicant has not provided substantial service. For purposes of this paragraph, substantial service means service which is sound, favorable, and substantially above a level of mediocre service during the applicant's past license term. If the renewal expectancy is defeated, the renewal application will be dismissed unless the renewal applicant is eligible for a new unicom license pursuant to paragraph (c) of this section.

* * * * *

■ 25. Section 87.217 is amended by revising paragraph (a) introductory text to read as follows:

§ 87.217 Frequencies.

(a) Only one unicom frequency will be assigned at any one airport. Applicants must request a particular frequency, which will be taken into consideration when the assignment is made. The frequencies assignable to unicoms are:

* * * * *

■ 26. Section 87.421 is amended by revising paragraph (c) to read as follows:

§ 87.421 Frequencies.

* * * * *

(c) Frequencies in the band 121.600–121.925 MHz are available to control towers and RCOs for general air traffic control communications. The antenna heights shall be restricted to the minimum necessary to achieve the required coverage. Channel spacing is 25 kHz.

* * * * *

■ 27. Section 87.475 is amended by revising paragraphs (b)(2) and (c)(2) introductory text to read as follows:

§ 87.475 Frequencies.

* * * * *

(b) * * *

(2) Radiobeacon stations enable an aircraft station to determine bearing or direction in relation to the radiobeacon station. Radiobeacons operate in the bands 190–285 kHz; 325–435 kHz; 510–525 kHz; and 525–535 kHz. Radiobeacons may be authorized, primarily for off-shore use, in the band 525–535 kHz on a non-interference basis to travelers information stations.

* * * * *

(c) * * *

(2) The frequencies available for assignment to radionavigation land test stations for the testing of airborne receiving equipment are 108.000 and 108.050 MHz for VHF omni-range; 108.100 and 108.150 MHz for localizer; 334.550 and 334.700 MHz for glide slope; 978 and 979 MHz (X channel)/1104 MHz (Y channel) for DME; 1030 MHz for air traffic control radar beacon transponders; 1090 MHz for Traffic Alert and Collision Avoidance Systems (TCAS); and 5031.0 MHz for microwave landing systems. Additionally, the frequencies in paragraph (b) of this section may be assigned to radionavigation land test stations after coordination with the FAA. The following conditions apply:

* * * * *

Subpart R—[Removed and Reserved]

■ 28. Remove and reserve subpart R.

■ 29. Section 87.529 is revised to read as follows:

§ 87.529 Frequencies.

Prior to submitting an application, each applicant must notify the applicable FAA Regional Frequency Management Office. Each application must be accompanied by a statement showing the name of the FAA Regional Office and date notified. The Commission will assign the frequency. Normally, frequencies available for air traffic control operations set forth in Subpart E will be assigned to an AWOS, ASOS, or to an ATIS. When a licensee has entered into an agreement with the FAA to operate the same station as both an AWOS and as an ATIS, or as an ASOS and an ATIS, the same frequency will be used in both modes of operation.

PART 95—PERSONAL RADIO SERVICES

■ 30. The authority citation for part 95 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

■ 31. Section 95.655 is amended by revising paragraph (a) to read as follows:

§ 95.655 Frequency capability.

(a) No transmitter will be certificated for use in the CB service if it is equipped with a frequency capability not listed in § 95.625, and no transmitter will be certificated for use in the GMRS if it is equipped with a frequency capability not listed in § 95.621, unless such transmitter is also certificated for use in another radio service for which the frequency is authorized and for which certification is also required. (Transmitters with frequency capability for the Amateur Radio Services and Military Affiliate Radio System will not be certificated.)

* * * * *

[FR Doc. 04–13323 Filed 6–10–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 191, 192, 195, and 199

[Docket No. RSPA–99–6106; Amdt. Nos. 191–16, 192–94, 195–81, 199–20]

RIN 2137–AD35

Pipeline Safety: Periodic Updates to Pipeline Safety Regulations (2001)

AGENCY: Research and Special Programs Administration (RSPA), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule is part of an effort by RSPA to periodically update the pipeline safety regulations. This rule incorporates the most recent editions of the voluntary consensus standards and specifications referenced in the Federal pipeline safety regulations to enable pipeline operators to utilize the most current technology, materials, and industry practices in the design, construction, and operation of their pipelines. This rule also increases the design pressure limitation for new thermoplastic pipe, allows the use of plastic pipe for certain bridge applications, increases the time period for revision of maximum allowable operating pressure after a change in class location, clarifies welding requirements, and makes various other editorial clarifications and corrections. This final rule does not require pipeline operators to undertake any significant new pipeline safety initiatives.

DATES: This final rule takes effect on July 14, 2004. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Gopala K. Vinjamuri by telephone at (202) 366–4503, by fax at (202) 366–4566, by e-mail at *gopla.vinjamuri@rspa.dot.gov*, or by mail at U.S. Department of Transportation, RSPA/Office of Pipeline Safety, Room 7128, 400 Seventh Street, SW, Washington, DC 20590–0001. Copies of this document or other material in the docket can be reviewed by accessing the Docket Management System's home page at *http://www.dms.dot.gov*. General information on the Federal pipeline safety program is available at the Office of Pipeline Safety Web site at *http://www.ops.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

This final rule is a periodic update of RSPA's pipeline safety regulations to incorporate the most recent editions of the voluntary consensus standards and specifications referenced at 49 CFR Part 192, Appendices A and B, and 49 CFR Part 195.3. This rule also makes several other revisions and clarifications to improve the consistency and accuracy of the pipeline safety regulations. RSPA previously issued final rules on May 27, 1996 (61 FR 26121) and February 17, 1998 (63 FR 7721) that updated references to the consensus standards publications incorporated by reference in the pipeline safety regulations, and made various editorial clarifications and corrections. On March 22, 2000, RSPA issued a Notice of Proposed Rulemaking (NPRM) (65 FR 15290) proposing to amend the sections incorporating consensus standards to update to the current editions. Additionally, RSPA proposed to increase the pressure limitation for new thermoplastic pipe, to allow plastic pipe on bridges, to

clarify welding requirements, to revise the hazardous liquid pipeline accident reporting definition, to clarify the definition of a gas transmission line, and make other editorial clarifications and corrections to certain sections of the Federal pipeline safety regulations.

RSPA received a total of thirty written comments on the proposals in the NPRM. Eighteen of the comments were from the gas pipeline operators, six were from trade associations including the American Petroleum Institute, the American Gas Association, the National Fire Protection Association, the Texas Natural Gas Association, and the New England Gas Association, and the remaining six were from the Gas Piping Technology Institute, the Iowa State Public Service Commission, two advocacy groups, and two industry consultants. We also received recommendations and comments by the National Association of Pipeline Safety Representatives (NAPSR), a non-profit association of officials from State agencies that participate in RSPA's Federal pipeline safety regulatory program, and recommendations by the State Industry Regulatory Review Committee (SIRRC). The Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC), which were established by statute to evaluate and comment on pipeline safety issues, discussed the proposed amendments during their May 20, 2000 meeting and provided comments on the proposals in the NPRM. The relevant comments are summarized and discussed under each issue area below.

Standards Incorporated by Reference

RSPA's Office of Pipeline Safety participates in more than 25 national voluntary consensus standards committees and adopts standards when they are applicable. The Federal pipeline safety regulations incorporate by reference all or portions of over 60 consensus standards and specifications for the design, construction, and operation of gas and hazardous liquid pipelines that were developed and published by recognized technical organizations, including the American Petroleum Institute (API), ASME International (ASME), American Society for Testing and Materials (ASTM), Manufacturers Standardization Society of the Valve and Fittings Industry (MSS), American Gas Association (AGA), and the National Fire Protection Association (NFPA). The standards and specifications incorporated for gas pipelines, formerly in Appendix A to part 192 are now found at 49 CFR Part 192.7 and in Appendix B to Part 192. Those incorporated for hazardous liquid pipelines are found at 49 CFR 195.3. These documents can be obtained by contacting the following organizations:

1. The American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428
2. ASME International, Three Park Avenue, New York, NY 10016–5990
3. Manufacturers Standardization of Valves and Fittings Industry, Inc., 127 Park Street NW, Vienna, VA 22180
4. The National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02260–9101

These documents are also available for inspection at the following locations:

1. Office of Pipeline Safety, Room 7128, U.S. Department of Transportation, 400 7th Street SW, Washington, DC 20590
2. Office of the Federal Register, 800 N. Capitol Street, NW, Suite 700, Washington, DC 20408

The organizations responsible for developing these standards and specifications periodically publish revised editions incorporating the most current technology. This rule updates the Federal pipeline safety regulations to reflect the most recent editions of each standard and specification incorporated by reference to enable pipeline operators to utilize the latest technology, materials, and engineering practices. Because some of the standards proposed in the NPRM are no longer available, we reviewed and referenced the next available edition. Adoption of these updated documents ensures that pipeline operators will not be unnecessarily burdened with outdated material, design, and construction requirements.

The order and appearance of the consensus standards in the CFR has also been updated and clarified. The standards are set forth by name and version date in the proposed amendments to 49 CFR Part 192, Appendices A and B, and 49 CFR 195.3. In general, the only change is to reference the new edition and year of publication. On October 31, 2001, API appended errata to the 19th edition of the API 1104 standard, ''Welding of Pipelines and Related Facilities,'' which we have reviewed and accepted as part of the document for the purposes of this final rule. No substantive changes are associated with these errata. In addition to adopting the most recent editions of the standards and specifications already incorporated by reference in the pipeline safety regulations, this final rule adopts one new technical document, the Plastics Pipe Institute's technical report entitled, ''Policies and Procedures for Developing Hydrostatic Design Basis (HDB), Pressure Design Basis (PDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials or Pipe'' (PPI TR–3/2000 or the ''PPI Technical Report''). Sections 192.7 and 195.3 will continue to govern the applicability of all documents incorporated by reference.

Other than certain editorial corrections suggested by the API, we did not receive any comments on the substance of the updated consensus standards publications and other documents. However, with respect to adopting the 42nd edition of the API 5L standard, Specification for Line Pipe, and the 19th edition of the API 1104 standard, ''Welding of Pipelines and Related Facilities,'' the following issues are noteworthy. The 42nd edition of the API 5L standard is substantially different from the 41st edition referenced previously in the CFR. The 42nd edition of the API 5L specification, which has been adopted in its entirety, prescribes two performance specification levels (PSL–1 and PSL–2) for manufactured line pipe. Designers now have the option to use either the PSL–1 specification with the attendant supplementary requirements (SRs), or the more restrictive PSL–2 specification for which many SRs are mandatory. It is also important to note that certain critical aspects of the PSL–2 specification, such as the mandatory fracture toughness requirements, are considered minimum requirements. Therefore, designers must evaluate, among other things, the actual requirements for fracture toughness, strength level, weldability, and quality assurance measures for each pipeline application and the actual requirements should be reflected in the pipe and component purchase specifications. We encourage pipeline designers to carefully review the updated 5L specification and take advantage of the improved quality of pipe manufactured under PSL–2 requirements. The mandatory minimum fracture toughness requirements of the PSL–2 specification, and other recent developments including tighter dimensional tolerances, stricter controls on chemical composition, more stringent quality assurance measures, and enhanced record keeping requirements make PSL–2 pipe highly suitable for natural gas and hazardous liquid pipeline applications. RSPA is currently considering amending the pipeline

safety regulations to require the use of PSL–2 quality level or better pipe for all future pipeline construction.

The 19th edition of the API 1104 standard, ''Welding of Pipelines and Related Facilities,'' certain portions of which are incorporated by reference, is also substantially different from the edition referenced previously. As noted by several commenters, there are significant differences in the acceptance criteria between the ultrasonic test (UT) method and the radiography test (RT) method for weld quality. First, some commenters suggested that adopting the new standard be postponed until the acceptance criteria for RT and UT could be equalized. In our judgment however, equalizing the acceptance criteria is not practical because UT and RT are distinctly different methods providing different sensitivity and capability. Therefore, we will continue to accept the use of either method, along with the corresponding acceptance criteria. Secondly, in addition to being capable of discerning cracks and crack-like defects, UT methods must be capable of discerning defect indications that would be acceptable under ''workmanship acceptance criteria.'' This is important because under 49 CFR 192.241(c) and 195.228(b), the acceptability of a weld that is nondestructively tested is determined according to the API 1104 standard. However, if a girth weld is unacceptable under that standard for a reason other than a crack, Appendix A of API 1104, ''Alternate Acceptance Standard for Girth Welds,'' may determine its acceptability. Therefore, certain planar defects—such as lack of fusion and weld undercut—can be further assessed under that Appendix.

Since the closing date for comments to the NPRM, we note that a few standards have been issued with more recent publication dates than those being adopted herein. We intend to identify all relevant standards that have been amended since the currently adopted standards were issued and will propose to adopt the new editions as appropriate in 2004.

Plastics Pipe Institute (PPI) Technical Report

In the NPRM, we proposed to incorporate by reference the Plastics Pipe Institute's technical report entitled, ''Policies and Procedures for Developing Hydrostatic Design Basis (HDB), Pressure Design Basis (PDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials or Pipe'' (PPI TR–3/2000 or the ''PPI Technical Report''). The PPI technical report provides a method for determining the hydrostatic design basis (HDB) for pipelines operating at any temperature by using the arithmetic interpolation procedure in Part D2 of the report entitled, ''Policy for Determining Long-Term Strength (LTHS) by Temperature Interpolation.'' Incorporation of this report will provide gas distribution pipeline operators with the flexibility to design safe thermoplastic pipeline systems at a wide range of operating temperatures. Our proposal to incorporate the PPI technical report by reference for the first time did not draw any objection by the commenters. Therefore, the report will be referenced in the gas pipeline safety regulations at 49 CFR 192.121, ''Design of Plastic Pipe.''

Other Revisions

In addition to the incorporation by reference of the most recent editions of voluntary consensus standards and other documents, it was proposed that the design pressure limitation for new thermoplastic pipe be increased, that plastic pipe be permitted for certain bridge applications, that the time period for revising maximum allowable operating pressure (MAOP) when a change in class location occurs be modified, that certain welding requirements be clarified, that strength test requirements for components be modified, that the definition of a hazardous liquid pipeline accident be revised, and that numerous editorial changes and clarifications be made. With a few exceptions, the comments were generally supportive of these proposals, although one commenter suggested that substantive changes to the regulations would be more appropriately handled in a proceeding separate from a periodic update of referenced industry standards.

Definition of a Gas Transmission Line. Section 192.3

Section 192.3 defines the term ''transmission line,'' in part, by the nature of the entities between which the gas is being transported. Under subparagraph (a) of the definition, pipelines that transport gas from a gathering line or storage facility to a distribution center, storage facility, or ''large volume customer'' that is not downstream of a distribution center may be considered transmission lines. A large volume customer, in turn, is a customer who may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional gas users. However, the definition of a large volume customer appears in subparagraph (c), which deals only with the transportation of gas within a storage field. Because the definition of ''large volume customer'' relates directly to the definition of ''transmission line,'' the proposed amendment would clarify the application of the term by removing it from subparagraph (c) and placing it in a separate paragraph. Several commenters suggested that the term ''transmission line'' not be defined in terms of a ''large volume customer'' at all. Two commenters suggested modifying the term ''distribution center'' so that it would be broad enough to encompass these entities. In our judgment, however, it is useful to distinguish between (local) distribution centers and large volume customers. Therefore, we adopt the amendment as proposed.

Design of Plastic Pipe. Section 192.121

Section 192.121 prescribes the formula for determining the hydrostatic design pressure for thermoplastic pipe. This section allows for design pressures based on the long-term hydrostatic strength (LTHS) to be determined in accordance with the corresponding listed pipe material specification determined at certain temperatures. The proposed amendment to § 192.121 incorporates the PPI technical report which provides an enhanced methodology to establish the hydrostatic design basis (HDB) and LTHS design parameters for thermoplastic pipe. The report also provides for interpolating HDB and LTHS data at specified temperatures, namely 70 °F (23 °C), 100 °F (38 °C), 120 °F (49 °C) and 140 °F (60 °C). With the improvement over time of polyethylene materials technologies and pipe manufacturing processes, thermoplastic pipe performance and reliability has improved significantly and the proposed amendment will provide greater flexibility to pipe designers without compromising safety. In our judgment, the incorporation of the PPI technical report as a guide to interpolate the test data for pipe HDB and LTHS at intermediate temperatures will result in a corresponding improvement in the accuracy of determining thermoplastic pipe design parameters. Therefore, we adopt the amendment as proposed.

Design Limitations for Plastic Pipe. Section 192.123

Section 192.123(a) limits the design pressure for thermoplastic pipe calculated in § 192.121 to less than or equal to 100 psig (689 kPa) for pipe used in gas distribution systems or in Class 3 and 4 locations. The proposed amendment to § 192.123(a) allows a maximum design pressure of 125 psig (862 kPa) for thermoplastic pipe

designed in accordance with § 192.121. After the effective date of this rule, design pressures at operating temperatures other than those specified in the material specifications listed in ASTM 2513 would be established as provided for in Part D2 of the PPI technical report (see above discussion on the amendment of § 192.121). Therefore, the increase in pressure would correspond with the increased margin of safety resulting from the more reliable means of establishing the design pressure parameters using the PPI technical report. Eleven of the commenters agreed that the proposed increase in the design pressure limitation was warranted. AGA, for example, noted that modern polyethylene pipe was already being operated at pressures greater than 100 psig pursuant to waivers granted by State pipeline safety regulators and that such use had thus far proven to be reliable. AGA further contended that the reliability of newer polyethylene pipe was supported by laboratory and field analysis of the LTHS of these polyethylene materials. Copies of the AGA petitions are included in the docket. Bay State and Northern Natural Gas suggested that the design pressure limitation be established per International Organization for Standardization (ISO) standards, which allow any design pressure permitted by the measured HDB. UGI Utilities suggested an even higher maximum allowable pressure. However, because there is insufficient data to conclude that such pressures would provide adequate safety to the public, we conclude that prescribing a maximum pressure higher than 125 psig is unsupported at this time. It is important to note that the design pressure limitation increase only applies to thermoplastic pipe produced after the effective date of this rule, *i.e.*, to pipe newly produced in accordance with the PPI technical report method. Therefore, in the absence of a waiver, existing pipe would continue to be limited to a maximum operating pressure of 100 psig. Finally, members of the TPSSC raised the issue that it might be necessary to mandate greater burial depth to mitigate any unknown level of consequences of a failure at higher operating pressure. The committee concluded that this matter would be more appropriately addressed in future rulemaking. Having considered all these comments, we adopt the amendment as proposed.

Valves. Section 192.145

Section 192.145 sets forth the minimum design requirements for valves used in gas pipeline systems and requires that valves meet the API 6D ''Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)'' standard, ''or equivalent.'' The proposed amendment would have removed the words ''or equivalent'' from this provision. The intent of the amendment was to reduce the burden of making ad hoc determinations of whether alternative standards are equivalent to the API 6D standard. The removal of the words ''or equivalent'' from this provision was opposed by 15 commenters, who contended that the amendment would be a major change with considerable impact to the industry. It was also pointed out that there was no discussion on this issue in the preamble to the NPRM. Some of the comments included extensive material describing the variety of valve standards they felt were equivalent to API 6D, including API 600, ANSI B16.34, and ANSI B16.38, and contended that the level of safety provided by these alternative standards was demonstrably adequate. The TPSSC discussed the matter at length, questioned the need for the amendment, and recommended that the amendment not be adopted in the final rule.

In our judgment, API 6D is the valve standard accepted worldwide and we remain concerned about the practicability of making repeated determinations of whether alternative standards are equivalent to the API 6D standard. Nevertheless, we have concluded that the use of any design standard that results in a performance level equivalent to that of the valves made under the API 6D standard is acceptable. In light of the comments received, we considered the following two options: (1) Not to adopt the proposed amendment, or (2) modify the language by adding, ''* * * or to a standard that provides a level of performance equivalent to that of API 6D.'' Upon further consideration, we have determined that the later option satisfies both the original intent of the proposed amendment and the concerns of the commenters. Therefore, we adopt the amendment as modified.

Welding Procedures. Section 192.225

The proposed amendment, which was recommended by NAPSR, requires operators to qualify welding procedures under Section 5 of the API 1104 standard or Section IX of the ASME Boiler and Pressure Vessel Code. The intent of the amendment is to harmonize this provision with § 192.227, which references API 1104 and Section IX of the ASME Boiler and Pressure Vessel Code. We have not accepted SIRRC's suggestion that the welding qualification regulations allow ''other accepted welding standards'' because we are not aware of any other widely accepted pipeline welding standards. Therefore, we adopt the amendment as proposed.

Limitations on Welders. Section 192.229

Section 192.229 prohibits welders from performing welds on pipeline components to be operated at a hoop stress of 20 percent or more of SMYS unless the welder has performed a test weld meeting the acceptance criteria of Sections 6 or 9 of API 1104 during the preceding six calendar months. In response to requests for increased flexibility with regard to the time period, the proposed amendment would provide an alternative where welders who regularly perform production welds could maintain an ongoing qualification status by making acceptable test welds at least two times in a calendar year, but at intervals not exceeding 7½ months. Although supportive of the idea, many commenters noted that the proposed language was confusing. We agree with the commenters and have revised the language without affecting the intent of the proposed rule change. The revised language is as follows:

(1) May not weld on pipe to be operated at a pressure that produces a hoop stress of 20 percent or more of SMYS unless within the preceding 6 calendar months the welder has had one weld tested and found acceptable under section 6 or 9 of API 1104. Alternatively, welders may maintain an ongoing qualification status by performing welds tested and found acceptable under the acceptance criteria at least twice each calendar year, but at intervals not exceeding 7½ months. A welder qualified under an earlier edition of a standard listed in Appendix A may weld but may not requalify under that earlier edition; and

The intent of the amendment is to provide flexibility in meeting the qualification requirements for welders who regularly perform production welds which are tested under the same acceptance criteria for test welds referenced in Sections 6 and 9 of API 1104, while ensuring that first time welders and welders who perform welds infrequently are (re)qualified prior to welding. Therefore, we adopt the amendment as modified.

Inspection of Test Welds. Section 192.241

The proposed amendment to § 192.241(a) requires that visual inspection of a weld be conducted ''by an inspector qualified by appropriate training and experience.'' Although this amendment directly followed a NAPSR

recommendation, SIRRC suggested that the use of the term ''inspector'' may be problematic and suggested changing it to ''person.'' One commenter noted that the reasons for the proposed amendment were not discussed in the preamble to the NPRM and suggested that the amendment not be adopted. Although we agree that the use of the term inspector may well be problematic, in our judgment, the term ''individual'' is more suitable than the term ''person'' for this purpose and does not affect the intent of the proposed amendment. Therefore, we adopt the amendment as modified.

Installation of Plastic Pipe. Section 192.321

Recent advances in thermoplastic pipe performance and reliability have made it suitable for certain aboveground applications. In response to a petition by the Gas Piping Technology Committee (GPTC) and other comments, RSPA has concurred with a number of state waivers allowing plastic pipe installation on bridges. These waivers require that the pipe be well protected from mechanical damage, elevated temperatures, and ultraviolet radiation exposure. The proposed amendment would permit the use of plastic pipe across bridges, but closely tracks the conditions set forth in these state waivers. All comments on the subject supported the amendment. A majority of these commenters also suggested that, as long as the pipe is protected in accordance with the conditions set forth in the proposed rule, the use of thermoplastic pipe for other aboveground installations including railway crossings, highway bridges, and similar structures should be permitted. However, the GPTC technical report, ''Installation of Plastic Gas Pipeline Across Bridges,'' which is available in this docket, did not provide sufficient justification for accepting these modifications. Therefore, we adopt the amendment as proposed.

Strength Test Requirements for Steel Pipe To Operate at a Hoop Stress of 30 Percent or More of SMYS. Section 192.505

Under § 192.505(d), the strength test requirements for pipeline components, including non-standard components such as flanges, can be satisfied by pressure testing, and those for components manufactured in quantity can be satisfied by prototype testing. The proposed amendment would enable manufacturers to establish a pressure rating by use of standard pressure ratings in the ASME/ANSI B16.5, ''Pipe Flanges and Flange Fittings'' or MSS SP44, ''Steel Pipe Flanges'' material specifications, or alternatively, through unit stress calculations. The proposed amendment would add a new subparagraph (d)(3):

> The component carries a pressure rating established through ASME/ANSI, MSS specification, (ibr, see § 192.7) or a pressure rating established by unit stress calculations as described in § 192.143.

The determination of the strength of a non-standard component by unit stress calculations is of particular relevance to situations where one-of-a-kind, non-standard components are fabricated and the component strength is not determined by pressure testing, prototype testing, or use of standard pressure ratings in a listed material specification. Five of the six commenters supported the proposed amendment. One commenter suggested that qualifying a component by unit stress calculations alone would be inadequate. Notably, unit stress analysis is contemplated in the regulations as part of the design requirements at § 192.143, which also requires the analysis of loading stresses and other design parameters. The proposed amendment was endorsed by the GPTC, which acknowledged that the unit stress of non-standard components should be individually analyzed and pressure tested to ensure compliance. GPTC noted that the use of ASME/ANSI and MSS material specifications to establish pressure ratings has been routine for many years for manufactured standard components. In our judgment, the proposed amendment provides additional flexibility to determine component strength and maintains the limitation that pressure ratings established by unit stress calculations may not exceed the ratings listed in the standard material specifications. Therefore, we adopt the amendment as proposed.

Change in Class Location: Confirmation or Revision of Maximum Allowable Pressure. Section 192.611

Section 192.611(d) allows 18 months for a gas pipeline operator to confirm or revise the maximum allowable operating pressure (MAOP) of a pipeline after a change in class location. The proposed amendment would increase the time period from 18 months to 24 months, and clarify that the 24-month time period begins when a building or buildings are ready for occupancy and not when the operator discovers that there are new buildings or completes a class location review. Although the proposed change was unopposed by most commenters, some SIRRC members and one other commenter objected to the adoption of a 24-month time period because it would have an adverse impact on operators without any corresponding benefit. Upon further consideration, we adopt the increase in the time period from 18 months to 24 months as proposed, but modify the proposed language to clarify that the time period begins when the results of a study conducted under § 192.609 indicate a change in class location. Moreover, this result is also consistent with the intent of Section 854.2 of standard ASME B31.8. Therefore, we adopt the proposed language.

Damage Prevention Program. Section 192.614

The proposed amendment was intended to clarify the circumstances, such as an emergency situation, when an operator may not be able to provide temporary marking of buried pipelines in an area of intended excavation activity. Many commenters, including SIRRC, expressed confusion concerning the proposed amendment and noted that there was no discussion in the preamble to the NPRM. Upon further consideration, we have determined that withdrawing the proposed amendment will not significantly affect the level of safety. However, we intend to reexamine this issue at a later date. Therefore, the proposed amendment is not adopted.

Distribution Systems; Leakage Surveys. Section 192.723

Section 192.723 requires operators of gas distribution systems to perform periodic leak surveys. For areas outside business districts, the prescribed minimum interval is ''as frequently as necessary * * * but not exceeding 5 years.'' The proposed amendment would provide flexibility in performing the 5 year leak detection surveys by allowing up to 63 months between surveys. The intent of the amendment was to allow flexibility for inclement weather or other unforeseen circumstances. The commenters expressed confusion as to definition of certain other terms in the provision, such as ''cathodically unprotected lines,'' and questioned the need for the additional three months. Two of the commenters noted that there was no discussion of this amendment in the preamble to the NPRM. Operators should plan adequately to ensure that the leak survey interval outside business districts is conducted every five years. However, we recognize the need for some flexibility in the scheduling of these leakage surveys. Therefore, we are adopting language to require that

leakage surveys outside of business districts be conducted at least once every five calendar years at internals not exceeding 63 months.

Definition of Maximum Operating Pressure. Section 195.2

The proposed amendment would include the definition of the term ''maximum operating pressure'' as the maximum pressure at which a liquid pipeline or pipeline segment may be normally operated under Part 195. No comments were filed in opposition to the amendment. Therefore, we adopt the amendment as proposed.

Accident Reporting. Section 195.50

In the NPRM, RSPA proposed to eliminate the accident reporting criteria discrepancy between Parts 192 and 195 by modifying § 192.50(e) to ensure that the criteria are the same for both gas and hazardous liquid pipelines. This issue was addressed and resolved in a separate proceeding under a final rule issued on January 8, 2002 (67 FR 831). Therefore, there is no need to address this issue in this final rule.

Welding Procedures. Section 195.214

Based on the preceding discussion of § 192.225, we adopt the amendments to § 195.214 as proposed.

Inspection of Test Welds. Section 195.228

Based on the preceding discussion at § 192.241, we adopt the amendment to § 195.228 as modified.

Public Education. Section 195.440

Section 195.440 requires hazardous liquid pipeline operators to establish a continuing educational program to enable individuals to recognize pipeline emergencies and report them to the operator and to the authorities. The proposed amendment would have added One Call centers to the list of entities for required reporting of emergencies. Two of the three responders opposed the amendment, noting that the role of One Call centers is for prior notification of intended excavation activities to facilitate temporary marking and not for actual emergency response. Upon further consideration, we have determined that the amendment, as proposed, does not achieve its intended purpose. Therefore, the proposed amendment is not adopted.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Department of Transportation does not consider this action to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993) and, therefore, was not subject to review by the Office of Management and Budget. This rule is not significant under the DOT's regulatory policies and procedures (44 FR 11034; Feb. 26, 1979). This rule amends the pipeline safety regulations to reference the most recent editions of the voluntary industry consensus standards already incorporated by reference in the pipeline safety regulations, gives pipeline operators additional flexibility in the use of thermoplastic pipe, and makes certain clarifications and corrections. These revisions are consistent with the President's goal of regulatory reinvention and the improvement of customer service to the American people. There are minimal costs for pipeline operators to comply with this rule because the consensus standards were developed and published by authoritative organizations associated with the petroleum industry and voluntary adherence to them has been a regular industry practice for decades. The latest editions of the consensus standards have already been implemented by pipeline operators throughout the United States to increase the safety and reliability of their pipeline systems. A draft regulatory evaluation was prepared for the NPRM and no comments were received. A final regulatory evaluation is available in the docket.

Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This rule does not propose any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Further, this rule does not have sufficient impacts on federalism to warrant the preparation of a federalism assessment.

Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084, (''Consultation and Coordination with Indian Tribal Governments.'') Because this rule does not significantly or uniquely affect the communities of the Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

Executive Order 13211

This final rule is not a significant energy action under Executive Order 13211. 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. Further, this rule has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Regulatory Flexibility Act

In this action, RSPA is incorporating by reference industry consensus standards that are developed and published by authoritative organizations associated with the petroleum industry. The standards development process utilized by these organizations gives pipeline operators of all sizes the opportunity to fully participate in the consensus building process. Consequently, these industry codes and standards are well known and have been implemented by small and large pipeline operators throughout the United States and in some cases, internationally. Moreover, RSPA's interactions with operators' associations have presented no reason to expect that this action would have a significant economic impact on smaller operators. In addition, no significant adverse comments were received from small entities during the notice and comment period. Because this final rule provides relief from adherence to outdated standards and provides additional operating flexibility to pipeline operators of all sizes, and will not impose additional economic impacts for government units, businesses, or other organizations, I certify, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule contains no new information collection requirements or additional paperwork burdens. Therefore, submitting an analysis of the burdens to OMB pursuant to the Paperwork Reduction Act was unnecessary.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100

million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

Environmental Assessment

RSPA has analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). To the extent the most recent editions of the standards incorporated by reference adopt improvements in pipeline materials and control technologies, their application is generally associated with facilities located within the existing rights-of-way. This action does not lead directly to any construction project or involve any land acquisition. It does not induce significant impacts to land use, does not have a significant impact on any natural, cultural, recreational, historic or other resource, does not involve any significant air, water, or noise quality impacts, does not impact travel patterns, and does not otherwise have any significant environmental impacts. Accordingly, I have determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment. An Environmental Assessment was prepared for the NPRM. No comments were received. A finding of no significant impact has been signed and placed in the docket.

List of Subjects

49 CFR Part 191

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 192

Incorporation by reference, Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 199

Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation.

■ In consideration of the foregoing, RSPA amends 49 CFR Parts 191, 192, 195, and 199 as follows:

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETY-RELATED CONDITION REPORTS

■ 1. The authority citation for part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 1.53.

■ 2. Amend § 191.7 by revising the first sentence to read as follows:

§ 191.7 Addressee for written reports.

Each written report required by this part must be made to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW., Washington, DC 20590.

* * * * *

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

■ 2. Amend § 192.3 by revising the definition of Transmission line to read as follows:

§ 192.3 Definitions.

* * * * *

Transmission line means:

(1) A pipeline, other than a gathering line, that:

(i) Transports gas from a gathering line, storage facility, or another transmission line to a distribution center, storage facility, or large volume customer that is not downstream from a distribution center;

(ii) Operates at a hoop stress of 20 percent or more of SMYS; or

(iii) Transports gas within a storage field.

(2) A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas.

* * * * *

■ 3. Amend § 192.7 by revising paragraphs (b) and (c) to read as follows:

§ 192.7 Incorporation by reference.

* * * * *

(b) All incorporated materials are available for inspection in the Research and Special programs Administration, 400 Seventh Street, SW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* These materials have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. In addition, the incorporated materials are available from the respective organizations listed in paragraph (c) (1) of this section.

(c) The full titles of documents incorporated by reference, in whole or in part, are provided herein. The numbers in parentheses indicate applicable editions. For each incorporated document, citations of all affected sections are provided. Earlier editions of currently listed documents or editions of documents listed in previous editions of 49 CFR Part 192 may be used for materials and components designed, manufactured, or installed in accordance with these earlier documents at the time they were listed. The user must refer to the appropriate previous edition of 49 CFR Part 192 for a listing of the earlier listed editions or documents.

(1) Incorporated by reference (ibr). List of Organizations and Addresses.

(i) American Gas Association (AGA), 400 North Capitol Street, NW, Washington, DC 20001.

(ii) American Petroleum Institute (API), 1220 L Street, NW, Washington, DC 20005.

(iii) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.

(iv) ASME International (ASME), Three Park Avenue, New York, NY 10016–5990.

(v) Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS), 127 Park Street, NE, Vienna, VA 22180.

(vi) National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.

(vii) Plastics Pipe Institute, Inc. (PPI), 1825 Connecticut Avenue, NW, Suite 680, Washington, DC 20009.

(viii) NACE International (NACE), 1440 South Creek Drive, Houston, TX 77084.

(ix) Gas Technology Institute (GTI), 1700 South Mount Prospect Road, Des Plaines, IL 60018.

(2) Documents incorporated by reference (Numbers in Parentheses Indicate Applicable Editions).

Source and name of referenced material	49 CFR reference
A. American Gas Association (AGA):	
(1) AGA Pipeline Research Committee, Project PR–3–805, ''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe'' (AGA PR–3–805–1989).	§§ 192.933(a); 192.485(c).
B. American Petroleum Institute (API):	
(1) API Specification 5L ''Specification for Line Pipe'' (API 5L,42nd edition, 2000)	§§ 192.55(e); 192.113; Item I of Appendix B to part 192.
(2) API Recommended Practice 5L1 ''Recommended Practice for Railroad Transportation of Line Pipe'' (4th edition, 1990).	§ 192.65(a).
(3) API Specification 6D ''Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)'' (21st edition, 1994).	§ 192.145(a).
(4) API 1104 ''Welding of Pipelines and Related Facilities'' (19th edition, 1999, including its October 31, 2001 errata).	§§ 192.227(a); 192.229(c)(1); 192.241(c); Item II, Appendix B to part 192.
C. American Society for Testing and Materials (ASTM):	
(1) ASTM Designation: A 53/A53M–99b ''Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless'' (ASTM A53/A53M–99b).	§§ 192.113; Item I, Appendix B to part 192.
(2) ASTM Designation: A106 ''Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service'' (A106–99).	§§ 192.113; Item I, Appendix B to part 192.
(3) ASTM Designation: A333/A333M ''Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service'' (ASTM A333/A333M–99).	§§ 192.113; Item I, Appendix B to part 192.
(4) ASTM Designation: A372/A372M ''Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels'' (ASTM A372/A372M–1999).	§ 192.177(b)(1).
(5) ASTM Designation: A381 ''Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems'' (ASTM A381–1996).	§§ 192.113; Item I, Appendix B to part 192.
(6) ASTM Designation: A671 ''Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures'' (ASTM A671–1996).	§§ 192.113; Item I, Appendix B to part 192.
(7) ASTM Designation: A672 ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures'' (A672–1996).	§§ 192.113; Item I, Appendix B to part 192.
(8) ASTM Designation: A691 ''Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures'' (ASTM A691–1998).	§§ 192.113; Item I, Appendix B to part 192.
(9) ASTM Designation: D638 ''Standard Test Method for Tensile Properties of Plastics'' (ASTM D638–1999).	§§ 192.283(a)(3); 192.283(b)(1).
(10) ASTM Designation: D2513–87 ''Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings'' (ASTM D2513–1987).	§ 192.63(a)(1).
(11) ASTM Designation: D2513 ''Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings. (D2513–1999).	§§ 192.191(b); 192.281(b)(2); 192.283(a)(1)(i); Item I, Appendix B to part 192.
(12) ASTM Designation: D 2517 ''Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings'' (D2517–2000).	§§ 192.191(a); 192.281(d)(1); 192.283(a)(1)(ii); Item I, Appendix B to part 192.
(13) ASTM Designation: F1055 ''Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing'' (F1055–1998)..	§ 192.283(a)(1)(iii).
D. ASME International (ASME):	
(1) ASME/ANSI B16.1 ''Cast Iron Pipe Flanges and Flanged Fittings'' (ASME B16.1–1998)	§ 192.147(c).
(2) ASME/ANSI B16.5 ''Pipe Flanges and Flanged Fittings'' (ASME B16.5–1996, including ASME B16.5a–1998 Addenda).	§§ 192.147(a); 192.279.
(3) ASME/ANSI B31G ''Manual for Determining the Remaining Strength of Corroded Pipelines'' (ASME/ANSI B31G–1991).	§§ 192.485(c); 192.933(a).
(4) ASME/ANSI B31.8 ''Gas Transmission and Distribution Piping Systems'' (ASME/ANSI B31.8–1995).	§ 192.619(a)(1)(i).
(5) ASME/ANSI B31.8S ''Supplement to B31.8 on Managing System Integrity of Gas Pipelines'' (ASME/ANSI B31.8S–2002).	§§ 192.903(c); 192.907(b); 192.911, Introductory text; 192.911(i); 192.911(k); 192.911(l); 192.911(m); 192.913(a) Introductory text; 192.913(b)(1); 192.917(a) Introductory text; 192.917(b); 192.917(c); 192.917(e)(1); 192.917(e)(4); 192.921(a)(1); 192.923(b)(2); 192.923(b)(3); 192.925(b) Introductory text; 102.925(b)(1); 192.925(b)(2); 192.925(b)(3); 192.925(b)(4); 192.927(b); 192.927(c)(1)(i); 192.929(b)(1); 192.929(b)(2); 192.933(a); 192.933(d)(1); 192.933(d)(1)(i); 192.935(a); 192.935(b)(1)(iv); 192.937(c)(1); 192.939(a)(1)(i); 192.939(a)(1)(ii); 192.939(a)(3); 192.945(a).
(6) ASME Boiler and Pressure Vessel Code, Section I, Rules for Construction of Power Boilers (ASME Section I–1998).	§§ 192.153(a).
(7) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, ''Rules for Construction of Pressure Vessels'' (ASME Section VIII Division 1–2001).	§§ 192.153(a); 192.153(b); 192.153(d); 192.165(b)(3).
(8) ASME Boiler and Pressure Vessel Code, Section VIII, Division 2, ''Rules for Construction of Pressure Vessels: Alternative Rules'' (ASME Section VIII Division 2–2001).	§§ 192.153(b); 192.165(b)(3).
(9) ASME Boiler and Pressure Vessel Code, Section IX, ''Welding and Brazing Qualifications'' (ASME Section IX–2001).	§§ 192.227(a); Item II, Appendix B to part 192.
E. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):	
(1) MSS SP44–96 ''Steel Pipe Line Flanges'' (MSS SP–44–1996 including 1996 errata)	§ 192.147(a).
(2) [Reserved].	

Source and name of referenced material	49 CFR reference
F. National Fire Protection Association (NFPA):	
(1) NFPA 30 ''Flammable and Combustible Liquids Code'' (NFPA 30–1996)	§ 192.735(b).
(2) ANSI/NFPA 58 ''Liquefied Petroleum Gas Code (LP–Gas Code)'' (NFPA 58–1998)	§ 192.11(a); 192.11(b); 192.11(c).
(3) ANSI/NFPA 59 ''Standard for the storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants'' (NFPA 59–1998).	§ 192.11(a); 192.11(b); 192.11(c).
(4) ANSI/NFPA 70 ''National Electrical Code'' (NFPA 70–1996)	§§ 192.163(e); 192.189(c).
G. Plastics Pipe Institute, Inc. (PPI):	
(1) PPI TR–3/2000 ''Policies and Procedures for Developing Hydrostatic Design Bases (HDB), Pressure Design Bases (PDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials ''(PPI TR–3–2000-Part E only, ''Policy for Determining Long Term Strength (LTHS) by Temperature Interpolation)''.	§§ 192.121.
H. NACE International (NACE):	
(1) NACE Standard RP–0502–2002 ''Pipeline External Corrosion Direct Assessment Methodology'' (NACE RP–0502–2002).	§§ 192.923(b)(1); 192.925(b) Introductory text; 192.925(b)(1); 192.925(b)(1)(ii); 192.925(b)(2) Introductory text; 192.925(b)(3) Introductory text; 192.925(b)(3)(ii); 192.925(b)(iv); 192.925(b)(4) Introductory text; 192.925(b)(4)(ii); 192.931(d); 192.935(b)(1)(iv); 192.939(a)(2).
I. Gas Technology Institute (GTI). (Formerly Gas Research Institute):	
(1) GRI 02/0057 ''Internal Corrosion Direct Assessment of Gas Transmission Pipelines—Methodology'' (GRI 02/0057–2002).	§ 192.927(c)(2); 192.7.

§ 192.113 [Amended]

■ 4. Amend § 192.113 by removing the words ''ASTM A53'' and adding the words ''ASTM A53/A53M.'' in their place.

■ 5. Amend § 192.121 by revising the definition for ''S'' following the equation to read as follows:

§ 192.121 Design of plastic pipe.

* * * * *

S = For thermoplastic pipe, the HDB determined in accordance with the listed specification at a temperature equal to 73 °F (23 °C), 100 °F (38 °C), 120 °F (49 °C), or 140 °F (60 °C). In the absence an HDB established at the specified temperature, the HDB of a higher temperature may be used in determining a design pressure rating at the specified temperature by arithmetic interpolation using the procedure in Part E of PPI TR–3/2000 entitled, Policy for Determining Long-Term Strength (LTHS) by Temperature Interpolation, as published in the technical Report TR–3/2000 ''HDB/PDB/MRS Policies'', (ibr, see § 192.7). For reinforced thermosetting plastic pipe, 11,000 psig (75,842 kPa).

* * * * *

■ 6. Amend § 192.123 by revising the introductory text in paragraph (a), revising paragraph (b)(2)(i), and adding a new paragraph (e) to read as follows:

§ 192.123 Design limitations for plastic pipe.

(a) Except as provided in paragraph (e) of this section, the design pressure may not exceed a gauge pressure of 125 psig (862 kPa) for plastic pipe used in:

* * * * *

(b) * * *

(2) * * *

(i) For thermoplastic pipe, the temperature at which the HDB used in the design formula under § 192.121 is determined.

* * * * *

(e) The design pressure for thermoplastic pipe produced after [insert effective date of final rule] may exceed a gauge pressure of 100 psig (689 kPa) provided that:

(1) The design pressure does not exceed 125 psig (862 kPa);

(2) The material is a PE2406 or a PE3408 as specified within ASTM D2513 (ibr, see § 192.7);

(3) The pipe size is nominal pipe size (IPS) 12 or less; and

(4) The design pressure is determined in accordance with the design equation defined in § 192.121.

■ 7. Amend (192.144 by revising the introductory text and paragraph (b) introductory text to read as follows:

§ 192.144 Qualifying metallic components.

Notwithstanding any requirement of this subpart which incorporates by reference an edition of a document listed in § 192.7 or Appendix B of this part, a metallic component manufactured in accordance with any other edition of that document is qualified for use under this part if—

(a) * * *

(b) The edition of the document under which the component was manufactured has equal or more stringent requirements for the following as an edition of that document currently or previously listed in § 192.7 or appendix B of this part:

* * * * *

■ 8. Amend § 192.145 by revising paragraph (a) to read as follows:

§ 192.145 Valves.

(a) Except for cast iron and plastic valves, each valve must meet the minimum requirements of API 6D (ibr, see § 192.7), or to a national or international standard that provides an equivalent performance level. A valve may not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those requirements.

* * * * *

■ 9. Amend § 192.225 by revising the section heading and paragraph (a) to read as follows:

§ 192.225 Welding procedures.

(a) Welding must be performed by a qualified welder in accordance with welding procedures qualified under section 5 of API 1104 (ibr, see § 192.7) or section IX of the ASME Boiler and Pressure Vessel Code ''Welding and Brazing Qualifications'' (ibr, see § 192.7) to produce welds meeting the requirements of this subpart. The quality of the test welds used to qualify welding procedures shall be determined by destructive testing in accordance with the applicable welding standard(s).

* * * * *

■ 10. Amend § 192.227 by revising paragraph (a) to read as follows:

§ 192.227 Qualification of welders.

(a) Except as provided in paragraph (b) of this section, each welder must be qualified in accordance with section 6 of API 1104 (ibr, see § 192.7) or section IX of the ASME Boiler and Pressure Vessel Code (ibr, see § 192.7) . However,

a welder qualified under an earlier edition than listed in appendix A of this part may weld but may not requalify under that earlier edition.

* * * * *

■ 11. Amend § 192.229 by revising paragraph (c)(1) to read as follows:

§ 192.229 Limitations on welders.

* * * * *

(c) * * *

(1) May not weld on pipe to be operated at a pressure that produces a hoop stress of 20 percent or more of SMYS unless within the preceding 6 calendar months the welder has had one weld tested and found acceptable under the sections 6 or 9 of API Standard 1104 (ibr, see § 192.7). Alternatively, welders may maintain an ongoing qualification status by performing welds tested and found acceptable under the above acceptance criteria at least twice each calendar year, but at intervals not exceeding 7½ months. A welder qualified under an earlier edition of a standard listed in § 192.7 of this part may weld but may not requalify under that earlier edition; and

* * * * *

■ 12. Amend § 192.241 by revising paragraphs (a) introductory text and paragraph (c) to read as follows:

§ 192.241 Inspection and test of welds.

(a) Visual inspection of welding must be conducted by an individual qualified by appropriate training and experience to ensure that:

* * * * *

(c) The acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in Section 9 of API Standard 1104 (ibr, see § 192.7). However, if a girth weld is unacceptable under those standards for a reason other than a crack, and if Appendix A to API 1104 applies to the weld, the acceptability of the weld may be further determined under that appendix.

■ 13. Amend § 192.283 by revising the section heading, paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(3), and (b)(1) to read as follows:

§ 192.283 Plastic pipe: Qualifying joining procedures.

(a) * * *

(1) * * *

(i) In the case of thermoplastic pipe, paragraph 6.6 (sustained pressure test) or paragraph 6.7 (Minimum Hydrostatic Burst Test) or paragraph 8.9 (Sustained Static pressure Test) of ASTM D2513 (ibr, see § 192.7);

(ii) In the case of thermosetting plastic pipe, paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or paragraph 8.9 (Sustained Static Pressure Test) of ASTM D2517; (ibr, see § 192.7); or

(iii) In the case of electrofusion fittings for polyethylene pipe and tubing, paragraph 9.1 (Minimum Hydraulic Burst Pressure Test), paragraph 9.2 (Sustained Pressure Test), paragraph 9.3 (Tensile Strength Test), or paragraph 9.4 (Joint Integrity Tests) of ASTM Designation F1055, (ibr, see § 192.7).

(2) * * *

(3) For procedures intended for non-lateral pipe connections, follow the tensile test requirements of ASTM D638 (ibr, see § 192.7), except that the test may be conducted at ambient temperature and humidity If the specimen elongates no less than 25 percent or failure initiates outside the joint area, the procedure qualifies for use.

(b) * * *

(1) Use an apparatus for the test as specified in ASTM D 638 (except for conditioning), (ibr, see § 192.7).

* * * * *

■ 14. Amend § 192.285 by revising the section heading to read as follows:

§ 192.285 Plastic pipe: Qualifying persons to make joints.

* * * * *

■ 15. Amend § 192.287 by revising the section heading to read as follows:

§ 192.287 Plastic pipe: Inspection of joints.

* * * * *

■ 16. Amend § 192.321 by revising paragraph (a) and by adding a new paragraph (h) to read as follows:

§ 192.321 Installation of plastic pipe.

(a) Plastic pipe must be installed below ground level except as provided by paragraphs (g) and (h) of this section.

* * * * *

(h) Plastic pipe may be installed on bridges provided that it is:

(1) Installed with protection from mechanical damage, such as installation in a metallic casing;

(2) Protected from ultraviolet radiation; and

(3) Not allowed to exceed the pipe temperature limits specified in § 192.123.

■ 17. Amend § 192.505 by revising paragraphs (d)(1), (d)(2), and by adding paragraph (d)(3) to read as follows:

§ 192.505 Strength test requirements for steel pipeline to operate at a hoop stress of 30 percent or more of SMYS.

* * * * *

(d) * * *

(1) The component was tested to at least the pressure required for the pipeline to which it is being added; or

(2) The component was manufactured under a quality control system that ensures that each item manufactured is at least equal in strength to a prototype and that the prototype was tested to at least the pressure required for the pipeline to which it is being added; or

(3) The component carries a pressure rating established through applicable ASME/ANSI, MSS specifications, or by unit strength calculations as described in § 192.143.

* * * * *

■ 18. Amend § 192.611 by revising paragraph (d) to read as follows:

§ 192.611 Change in class location: Confirmation or revision of maximum allowable operating pressure.

* * * * *

(d) Confirmation or revision of the maximum allowable operating pressure that is required as a result of a study under § 192.609 must be completed within 24 months of the change in class location. Pressure reduction under paragraph (a) (1) or (2) of this section within the 24-month period does not preclude establishing a maximum allowable operating pressure under paragraph (a)(3) of this section at a later date.

■ 19. Amend § 192.723 by revising the first sentence in paragraph (b)(2) to read as follows:

§ 192.723 Distribution systems: Leakage surveys.

* * * * *

(b) * * *

(2) A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at least once every 5 calendar years at intervals not exceeding 63 months. * * *

Appendix A to Part 192 [Removed and Reserved]

■ 20. Remove and reserve Appendix A.

■ 21. Appendix B to Part 192 are revised to read as follows:

Appendix B to Part 192—Qualification of Pipe

I. Listed Pipe Specification

API 5L—Steel pipe, ''API Specification for Line Pipe'' (ibr, see § 192.7)

ASTM A 53/A53M–99b—Steel pipe, ''Standard Specification for Pipe, Steel Black and Hot-Dipped, Zinc-Coated, welded and Seamless''(ibr, see § 192.7)

ASTM A 106—Steel pipe, ''Standard Specification for Seamless Carbon Steel Pipe for High temperature Service'' (ibr, see § 192.7)

ASTM A 333/A 333M—Steel pipe, ''Standard Specification for Seamless and Welded steel Pipe for Low Temperature Service'' (ibr, see § 192.7)
ASTM A 381—Steel pipe, ''Standard specification for Metal-Arc-Welded Steel Pipe for Use with High-Pressure Transmission Systems'' (ibr, see § 192.7)
ASTM A 671—Steel pipe, ''Standard Specification for Electric-Fusion-Welded Pipe for Atmospheric and Lower Temperatures'' (ibr, see § 192.7)
ASTM A 672—Steel pipe, ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures'' (ibr, see § 192.7)
ASTM A 691—Steel pipe, ''Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High Pressure Service at High Temperatures'' (ibr, see § 192.7)
ASTM D 2513–1999 ''Thermoplastic pipe and tubing, ''Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings'' (ibr, see § 192.7)
ASTM D 2517—Thermosetting plastic pipe and tubing, ''Standard Specification Reinforced Epoxy Resin Gas Pressure Pipe and Fittings'' (ibr, see § 192.7)

II. Steel Pipe of Unknown or Unlisted Specification

A. *Bending Properties.* * * *

B. *Weldability.* A girth weld must be made in the pipe by a welder who is qualified under subpart E of this part. The weld must be made under the most severe conditions under which welding will be allowed in the field and by means of the same procedure that will be used in the field. On pipe more than 4 inches (102 millimeters) in diameter, at least one test weld must be made for each 100 lengths of pipe. On pipe 4 inches (102 millimeters) or less in diameter, at least one test weld must be made for each 400 lengths of pipe. The weld must be tested in accordance with API Standard 1104 (ibr, see § 192.7). If the requirements of API Standard 1104 cannot be met, weldability may be established by making chemical tests for carbon and manganese, and proceeding in accordance with section IX of the ASME Boiler and Pressure Vessel Code (ibr, see § 192.7). The same number of chemical tests must be made as are required for testing a girth weld.

C. *Inspection.* * * *

D. *Tensile properties.* If the tensile properties of the pipe are not known, the minimum yield strength may be taken as 24,000 p.s.i. (165 MPa) or less, or the tensile properties may be established by performing tensile test as set forth in API Specification 5L (ibr, see § 192.7).

* * * * *

■ 22. Amend Appendix C to Part 192 by adding a sentence at the end of paragraph I to read as follows:

Appendix C—Qualification of Welders for Low Stress Level Pipe

I. * * * A welder who successfully passes a butt-weld qualification test under this section shall be qualified to weld on all pipe diameters less than or equal to 12 inches.

* * * * *

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

■ 2. Amend § 195.2 by adding a definition in alphabetical order to read as follows:

§ 195.2 Definitions.

* * * * *

Maximum operating pressure (MOP) means the maximum pressure at which a pipeline or segment of a pipeline may be normally operated under this part.

* * * * *

■ 3. Amend § 195.3 by revising the section heading, paragraph (b), and paragraph (c) to read as follows:

§ 195.3 Matter incorporated by reference in whole or in part.

* * * * *

(b) All incorporated materials are available for inspection in the Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* These materials have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. In addition, materials incorporated by reference are available as follows:

(1) American Gas Association (AGA), 400 North Capitol Street, NW, Washington, DC 20001.

(2) American Petroleum Institute (API), 1220 L Street, NW, Washington, DC 20005.

(3) ASME International (ASME), Three Park Avenue, New York, NY 10016–5990.

(4) Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS), 127 Park Street, NE, Vienna, VA 22180.

(5) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.

(6) National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.

(7) NACE International, 1440 South Creek Drive, Houston, TX 77084

(c) The full titles of publications incorporated by reference wholly or partially in this part are as follows. Numbers in parentheses indicate applicable editions:

Source and name of referenced material	49 CFR reference
A. American Gas Association (AGA):	
(1) AGA Pipeline Research Committee, Project PR–3–805, ''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe'' (December 22, 1989). The RSTRENG program may be used for calculating remaining strength.	§ 195.452(h)(4)(B).
(2) [Reserved].	
B. American Petroleum Institute (API):	
(1) API Specification 5L ''Specification for Line Pipe'' (42nd edition, 2000)	§§ 195.106(b)(1)(i); 195.106(e).
(2) API Specification 6D ''Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)'' (21st edition, 1994).	§ 195.116(d).
(3) API Specification 12F ''Specification for Shop Welded Tanks for Storage of Production Liquids'' (11th edition, November 1994).	§§ 195.132(b)(1); 195.205(b)(2); 195.264(b)(1); 195.264(e)(1); 195.307(a); 195.565; 195.579(d).
(4) API 510 ''Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration'' (8th edition, June 1997, and Addenda 1 through 4).	§§ 195/205(b)(3); 195.432(c).
(5) API Standard 620 ''Design and Construction of Large, Welded, Low-Pressure Storage Tanks'' (9th edition).	§§ 195.132(b)(2); 195.205(b)(2); 195.264(b)(1); 195.264(e)(3); 195.307(b).
(6) API 650 ''Welded Steel Tanks for Oil Storage'' (1998)	§§ 195.132(b)(3); 195.205(b)(1); 195.264(b)(1); 195.264(e)(2); 195.307(c); 195.307(d); 195.565; 195.579(d).

Source and name of referenced material	49 CFR reference
(7) API Recommended Practice 651 ''Cathodic Protection of Aboveground Petroleum Storage Tanks'' (2nd edition, December 1997).	§§ 195.565; 195.579(d).
(8) API Recommended Practice 652 ''Lining of Aboveground Petroleum Storage Tank Bottoms'' (2nd edition, December 1997).	§ 195.579(d).
(9) API Standard 653 ''Tank Inspection, Repair, Alteration, and Reconstruction'' (3rd edition, 2001, and Addendum 1, 2003).	§ 195.205(b)(1); 195.432(b).
(10) API 1104 ''Welding of Pipelines and Related Facilities'' (19th edition, 1999 plus its October 31, 2001 errata).	§§ 195.222; 195.228(b).
(11) API Standard 2000 ''Venting Atmospheric and Low-Pressure Storage Tanks'' (4th edition, September 1992).	§§ 195.264(e)(2); 195.264(e)(3).
(12) API 1130 ''Computational Pipeline Monitoring'' (1st edition, 1995)	§§ 195.134; 195.444.
(13) API Recommended Practice 2003 ''Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents'' (6th edition, 1998).	§ 195.405(a).
(14) API Publication 2026 ''Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service'' (2nd edition, 1998).	§ 195.405(b).
(15) API Recommended Practice 2350 ''Overfill Protection for Storage Tanks In Petroleum Facilities'' (2nd edition, 1996).	§ 195.428(c).
(16) API Standard 2510 ''Design and Construction of LPG Installations''(7th edition, 1995)	§§ 195.132(b)(3); 195.205(b)(3); 195.264(b)(2); 195.264(e)(4); 195.307(e); 195.428(c); 195.432(c).
C. ASME International (ASME):	
(1) ASME/ANSI B16.9 ''Factory-Made Wrought Steel Butt welding Fittings'' (1993)	§ 195.118(a).
(2) ASME/ANSI B31.4 ''Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids'' (1998).	§ 195.452(h)(4)(i).
(3) ASME/ANSI B31G ''Manual for Determining the Remaining Strength of Corroded Pipelines'' (1991).	§§ 195.452(h)(4)(i)(B); 195.452(h)(4)(iii)(D).
(4) ASME/ANSI B31.8 ''Gas Transmission and Distribution Piping Systems'' (1995)	§ 195.5(a)(1)(i); 195.406(a)(1)(i).
(5) ASME Boiler and Pressure vessel Code, Section VIII, Division 1 ''Rules for Construction of Pressure Vessels,'' (1998 edition with 2000 addenda).	§ 195.124; 195.307(e).
(6) ASME Boiler and Pressure Vessel Code, Section VIII, Division 2 ''Alternate Rules for Construction for Pressure Vessels'' (2001 Edition).	§ 195.307(e).
(7) ASME Boiler and Pressure vessel Code, Section IX ''Welding and Brazing Qualifications,'' (2001 Edition).	§ 195.222.
D. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):	
(1) MSS SP–75 ''Specification for High Test Wrought Butt Welding Fittings'' (1993)	§ 195.118(a).
(2) [Reserved].	
E. American Society for Testing and Materials (ASTM):	
(1) ASTM Designation: A53/A53M ''Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless'' (A53/A53M–99b).	§ 195.106(e).
(2) ASTM Designation: A106 ''Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service'' (A106–99).	§ 195.106(e).
(3) ASTM Designation: A 333/A 333M ''Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service''(A 333/A 333M–99).	§ 195.106(e).
(4) ASTM Designation: A 381 ''Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems'' (A 381–96).	§ 195.106(e).
(5) ASTM Designation: A 671 ''Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures'' (A 671–96).	§ 195.106(e).
(6) ASTM Designation: A 672 ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures'' (A 672–96).	§ 195.106(e).
(7) ASTM Designation: A 691 ''Standard Specification for Carbon and Alloy Steel Pipe Electric-Fusion-Welded for High-Pressure Service at High Temperatures'' (A 691–98).	§ 195.106(e).
F. National Fire Protection Association (NFPA):	
(1) ANSI/NFPA 30 ''Flammable and Combustible Liquids Code'' (1996)	§ 195.264(b)(1).
(2) [Reserved].	
G. NACE International (NACE):	
(1) NACE Standard RP–169–96: ''Control of External Corrosion on Underground or Submerged Metallic Piping Systems'' (1996).	§ 195.571.
(2) Reserved.	

■ 4. Amend § 195.58 by revising the first sentence to read as follows:

§ 195.58 Address for written reports.

Each written report required by this subpart must be made to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW., Washington, DC 20590.

* * *

■ 5. Amend § 195.214 by revising the section heading and paragraph (a) to read as follows:

§ 195.214 Welding procedures.

(a) Welding must be performed by a qualified welder in accordance with welding procedures qualified under Section 5 of API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code (ibr, see § 195.3) . The quality of the test welds used to qualify the welding procedure shall be determined by destructive testing.

* * * * *

■ 6. Section 195.222 is revised to read as follows:

§ 195.222 Welders: Qualification of welders.

Each welder must be qualified in accordance with Section 6 of API 1104 (ibr, see § 195.3) or Section IX of the

ASME Boiler and Pressure Vessel Code, (ibr, see § 195.3) except that a welder qualified under an earlier edition than listed in § 195.3 may weld but may not requalify under that earlier edition.

■ 7. Amend § 195.228 by revising paragraph (b) to read as follows:

§ 195.228 Welds and welding inspection: Standards of acceptability.

* * * * *

(b) The acceptability of a weld is determined according to the standards in Section 9 of API 1104. However, if a girth weld is unacceptable under those standards for a reason other than a crack, and if Appendix A to API 1104 (ibr, see § 195.3) applies to the weld, the acceptability of the weld may be determined under that appendix.

PART 199—DRUG AND ALCOHOL TESTING

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

■ 2. Amend § 199.119 by revising paragraph (b) to read as follows:

§ 199.119 Reporting of anti-drug testing results.

* * * * *

(b) Each report required under this section shall be submitted to the Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington, DC 20590.

* * * * *

■ 3. Amend § 199.229 by revising paragraph (c) to read as follows:

§ 199.229 Reporting of alcohol testing results.

* * * * *

(c) Each report required under this section shall be submitted to the Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington, DC 20590.

* * * * *

Issued in Washington, DC, on April 23, 2004.

Samuel G. Bonasso,

Deputy Administrator.

[FR Doc. 04–12070 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 040604170–4170–01; I.D. 060204D]

RIN 0648–AS42

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Temporary emergency rule.

SUMMARY: NMFS is imposing, for a 30–day period, additional restrictions on shrimp trawlers in offshore Atlantic waters west of 77°57.5′ W. long. (approximately Cape Fear, N.C.) and north of 30° N. lat. (just north of St. Augustine, Fla.). Shrimp trawlers in this area are prohibited from fishing at night between 9 p.m. and 5 a.m. eastern daylight time (EDT). NMFS is taking this action because NMFS has determined that recent, unusually high increases in shrimping effort in this area, particularly very long tows made at night, are the cause of extraordinarily high mortality and strandings of sea turtles that are listed as endangered or threatened. This action is necessary to reduce mortality of listed sea turtles incidentally captured in shrimp trawls.

DATES: This action is effective from June 7, 2004 through July 7, 2004.

ADDRESSES: Assistant Regional Administrator for Protected Resources, NMFS Southeast Regional Office, 9721 Executive Center Drive North, Suite 102, St. Petersburg, FL 33702, 727–570–5312.

For access to the docket to read background documents go to *http://www.regulations.gov* and/or the mailing address listed above.

FOR FURTHER INFORMATION CONTACT: Robert Hoffman (ph. 727–570–5312, fax 727–570–5517, e-mail Robert.Hoffman@noaa.gov), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail *Barbara.Schroeder@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken and killed as a result of numerous activities, including fishery trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206, or if in accordance with the terms and conditions of a biological opinion issued under section 7 of the ESA or an incidental take permit issued under section 10 of the ESA. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic area, Gulf area, and summer flounder sea turtle protection area; see 50 CFR 223.206) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED the Parker soft TED (see 50 CFR 223.207).

TEDs incorporate an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97–percent effective in excluding sea turtles during testing based upon specific testing protocols (50 CFR 223.207(e)(1)). Approved hard TEDs are described in the regulations (50 CFR 223.207(a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

February 21, 2003, Amendments to the Sea Turtle Conservation Regulations

On February 21, 2003, NMFS issued a final rule (68 FR 8456), amending the sea turtle conservation regulations to protect large loggerhead, green, and leatherback sea turtles. The February 2003 final rule requires that all shrimp trawlers fishing in the offshore waters of the southeastern United States (Atlantic area and Gulf area) and the inshore

waters of Georgia and South Carolina use either a double cover flap TED, a single-grid hard TED with a 71–inch (180–cm) opening, or a Parker soft TED with a 96–inch (244–cm) opening in each net rigged for fishing. In inshore waters, except those of Georgia and South Carolina, the rule allows the use of a single-grid hard TED with a 44–inch (112–cm) opening, a Parker soft TED with a 56–inch (142–cm) opening, and a hooped hard TED with a 35–inch (89–cm) by 27–inch (69–cm) escape opening.

Section 4(b)(7) of the Endangered Species Act (16 U.S.C. 1533(b)(7)), provides for issuance of regulations, not subject to notice and comment, regarding emergencies posing a significant risk to the well-being of listed species. Such regulations may take effect immediately upon filing for public inspection in the **Federal Register**, and may be effective up to 240 days.

Recent Events

NMFS has been notified by the Georgia Department of Natural Resources (GADNR) that extraordinarily high numbers of threatened and endangered sea turtles have stranded off the Georgia coast. From May 5, 2004, through May 24, 2004, a total of 82 sea turtles have washed ashore along the Georgia coast (shrimp zones 30 and 31). By comparison, the 12–year average of stranded sea turtles in Georgia for this time period is about 18. Considering the fact that strandings are only a minimum estimate of actual mortality, these strandings represent a serious impact to local sea turtle populations.

Information from GADNR and NOAA enforcement indicates that there is a high number of shrimp boats off Georgia for the current season. Georgia state waters are closed to shrimping, so the fishery is currently operating only in Federal waters, targeting high-value, large white shrimp. These sources also indicate there are a large number of very large, powerful shrimp vessels from North Florida and Gulf states (estimated at 25–30 boats) that are participating in the fishery. These boats are generally capable of fishing a greater number of larger nets at higher speeds than the local boats. Although white shrimp are generally only caught during the day, these large vessels have been observed to be fishing 24–hours-a-day and using long tow times (up to 12 hours in some cases). Local fishermen fish mostly in the day to target white shrimp using tow times of two to four hours. The 24–hour fishing, in conjunction with long tow times, represents a significant increase in effort in this area. An aerial survey to monitor shrimping effort on May 21 found that most of the large trawlers were concentrated in the southern part of the state, in the area of highest strandings.

NMFS believes that the increased shrimping effort, particularly the switch to nighttime fishing and very long tow-times, is responsible for the sharp increase in turtle mortality and strandings along the Georgia coast.

Analysis of Other Factors

NMFS has analyzed other factors that might have contributed to the turtle strandings, including environmental conditions, and no possible causes other than shrimp trawling have been identified. A single vessel fishing for sharks using drift gillnets a fishing method that is known to capture and kill sea turtles has been operating in Federal waters in the Florida-Georgia border area in the past month. A NMFS observer has been aboard that vessel for every trip since May 12, however, and no sea turtle interactions have been observed. There is no evidence of a red tide or other harmful plankton bloom event or any major disease factor. The condition of the stranded turtles has indicated that they were generally healthy and actively foraging prior to their deaths, which is consistent with strandings resulting from shrimp trawling. The carcasses have primarily been coming ashore in the vicinity of areas where shrimping effort has been concentrated. NMFS and state personnel will continue to investigate factors other than shrimping that may contribute to sea turtle mortality in the area, including other fisheries and environmental factors.

Restrictions on Fishing for Shrimp Trawlers

Pursuant to 16 U.S.C. 1533(b)(7), NMFS has determined that the unusually high recent numbers of strandings and mortalities of sea turtles off the coast of Georgia constitute a significant risk to the well-being of listed species of sea turtles. NMFS has determined that this temporary emergency rule prohibiting shrimp trawl fishing during night time hours is necessary to alleviate the increased shrimping effort in the area that has been determined to be the cause of the recent increase in strandings. NMFS has determined that this emergency prohibition on night time shrimp trawl fishing is necessary in an area larger than the current hot-spot of strandings, to prevent fishing practices that are harmful to sea turtles from simply relocating to other areas in the South Atlantic. Specifically, this rule prohibits shrimp trawling in the area in offshore Atlantic waters west of 77°57.5′ W. longitude (approximately Cape Fear, N.C.) and north of 30° N. latitude (just north of St. Augustine, Fla.) between 9 p.m. and 5 a.m. EDT. This restriction is effective from June 7, 2004 through 11:59 p.m. (local time) July 7, 2004. NMFS is restricting this emergency rule to a 30–day period because the vessels responsible for the unusual increase in effort off the Georgia coast typically target their fishing efforts in Gulf of Mexico waters beginning in late June to early July.

This restriction has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawl fishermen may also call (727)570–5312 for updated information on shrimping restrictions.

NMFS will continue to monitor sea turtle strandings to gauge the effectiveness of these emergency measures.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

NMFS has determined that this action is necessary to respond to an emergency situation to provide adequate protection for threatened and endangered sea turtles pursuant to the ESA and other applicable law. This temporary rule is being promulgated under 16 U.S.C. 1533(b)(7), and includes a detailed statement of the reasons why such regulation is necessary, as required by that section. Therefore, the requirements of 5 U.S.C. 553 are inapplicable.

As prior notice and an opportunity for public comment are not required to be provided for this rule pursuant to 16 U.S.C. 1533(b)(7), the analytical requirements of 5 U.S.C. 601 *et seq.*, are inapplicable.

As required by 16 U.S.C. 1533(b)(7), NMFS has consulted with the marine fisheries officials in Florida, Georgia, South Carolina, and North Carolina on this emergency action. The required nighttime closure will be complementary to existing nighttime closures of state waters in Georgia, South Carolina, and North Carolina, in that there will be a closure; however, the times of the closure in Federal waters are not exactly the same as the times for the closure in state waters.

NMFS has prepared an Environmental Assessment (EA) for this action. Copies of the EA are available (see **ADDRESSES**).

Dated: June 7, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries.

[FR Doc. 04–13210 Filed 6–7–04; 4:50 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4167–03; I.D. 122203A]

RIN 0648–AN17

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13 Regulatory Amendment

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

ACTION: Final rule, regulatory amendment.

SUMMARY: The final rule to implement Amendment 13 to the NE Multispecies Fishery Management Plan (Amendment 13) was published on April 27, 2004, and the majority of measures became effective on May 1, 2004. This final rule, regulatory amendment amends observer notification requirements of Amendment 13 to relieve a restriction. The required observer notification period for groundfish Days-at-Sea (DAS) vessels fishing in the U.S./Canada Management Area is reduced from 5 working days to 72 hours. The intent is to provide maximum flexibility to the fishing industry while still meeting the requirements and objectives of the management program.

DATES: Effective June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135, e-mail Thomas.Warren@NOAA.gov.

SUPPLEMENTARY INFORMATION: The April 27, 2004, final rule implementing Amendment 13 (69 FR 22906) included an administrative measure for the purpose of selecting vessels for observer coverage. Vessel owners who choose to fish in either of the two U.S./Canada Management Areas, must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure at least 5 working days prior to the beginning of any trip that is declared into the U.S./Canada Management Area. The goal of this requirement was to obtain a level of observer coverage on NE multispecies vessels fishing in the U.S./Canada Management Area that is consistent with the rest of the fishery (i.e., 10 percent for the 2004 fishing year). The objective is to provide notification to the NMFS Observer Program of planned trips, prior to the departure of the trip, so that the Observer Program has sufficient time to contact and deploy observers.

Although a notification period of 5 working days was determined to be optimal in terms of the operational requirements of the NMFS Observer Program, public comments received from numerous industry members have indicated that a shorter notification requirement would provide vessels greater flexibility to react to contingencies such as weather developments. Upon further consideration, NMFS has determined that a notification period of 72 hours represents a balance between the requirements of the Observer Program and the interests of the fishing industry, while still meeting the objectives of Amendment 13. Therefore, this final rule reduces the notification time for groundfish DAS vessels prior to departure of a trip into the U.S./Canada Management Area from 5 working days to 72 hours.

Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C 553(b)(B) to waive the requirement to provide prior notice and the opportunity for public comment on this regulatory amendment as such procedures are unnecessary and contrary to the public interest. The timing of the advance notification for the purposes of placing observers on fishing vessels is purely a NMFS administrative function. The objective of the advance notification is to allow the Observer Program sufficient time to contact and deploy observers. Reducing the notification period from five days to three days does not impact the fishery management measures that became effective on May 1, 2004. In addition, numerous industry members, the fishery management council and the State of Maine, requested a reduction to the notification period. Fisherman will benefit from a shorter notification period because it will provide vessels greater flexibility to react to contingencies such as weather developments, while still allowing sufficient time to place observers on vessels. Further, the AA has determined that the 30–day delay in effectiveness requirement under 5 U.S.C. 553(d)(1) is not applicable because this action relieves a restriction as described in the **SUPPLEMENTARY INFORMATION** section of this rule.

This action is authorized by 50 CFR part 648 and is exempt from review under 12866. This action modifies a collection-of-information requirement for the purposes of the Paperwork Reduction Act. Although the costs associated with this reporting requirement do not change as a result of this final rule, the burden to the industry will be reduced because this rule relieves a restriction.

Because prior notice and an opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other applicable law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*,are not applicable.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 7, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16.U.S.C. 1801 *et seq.*

■ 2. In § 648.85, the last sentence in paragraph (a)(3)(ii) is revised to read as follows:

§ 648.85 Special management programs.

(a) * * *

(3) * * *

(ii) * * * For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Management Areas specified in paragraph (a)(1) of this section, must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, at least 72 hours prior to the beginning of any trip which it declares into the U.S./Canada Management Area as required under this paragraph (a)(3)(ii).

* * * * *

[FR Doc. 04–13315 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040105003–4154–02; I.D. 122203F]

RIN 0648–AR41

Fisheries of the Exclusive Economic Zone Off Alaska; General Limitations

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule amending regulations establishing pollock Maximum Retainable Amounts (MRA) by adjusting the MRA enforcement period for pollock harvested in the Bering Sea and Aleutian Islands management area (BSAI) from enforcement at anytime during a fishing trip to enforcement at the time of offload. This action is necessary to reduce regulatory discards of pollock caught incidentally in the directed fisheries for non-pollock groundfish species. The intended effect of this action is to better use incidentally caught pollock in accordance with the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective on July 14, 2004.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this regulatory action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907–586–7228 or *jason.anderson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the BSAI in the Exclusive Economic Zone under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Act. Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

This action is one of several adopted by the Council to decrease regulatory and economic discards and increase catch utilization in the BSAI groundfish fisheries. Amendment 49 to the FMP was implemented by a final rule January 3, 1998 (62 FR 63880), and established retention and utilization standards for pollock and Pacific cod. In June 2003, the Council adopted Amendment 79 to the FMP, which would establish a minimum groundfish retention standard (GRS) for specified vessels in the BSAI. Along with Amendment 79, the Council also adopted a revision to the MRA enforcement period for pollock harvested by non-American Fisheries Act (AFA) vessels in the BSAI. Prior to the June Council actions, the proposed GRS program and pollock MRA revision were considered as components of one action to reduce discard amounts in the BSAI. However, the Council recognized that the MRA change was simpler to implement than the GRS action and requested NMFS to expedite the pollock MRA revision.

Maximum Retainable Amounts

Regulations at 50 CFR 679.20(e) establish rules for calculating and implementing MRAs for groundfish species or species groups that are closed to directed fishing. The MRA is calculated as a percentage of the retained amount of species closed to directed fishing relative to the retained amount of basis species or species groups open for directed fishing. Table 11 to 50 CFR part 679 lists retainable percentages for BSAI groundfish species. Amounts that are caught in excess of the MRA must be discarded. Regulations limit vessels to MRAs at any time during a fishing trip. Under regulations implementing Amendment 49 to the FMP, vessels must retain all incidental catch of pollock and Pacific cod up to the MRA and discard the rest.

This action adds regulations at § 679.20(e)(3)(iii) to make the MRA for pollock caught by non-AFA eligible vessels in the BSAI management area enforceable at the time of offload. This action is intended to increase the retention of pollock by non-AFA vessels in the BSAI, while not increasing the overall amount of pollock harvested by adjusting the MRA enforcement period so that the MRA for pollock caught in the BSAI by non-AFA vessels is enforced at the time of offload rather than at any time during a fishing trip. Under these regulations, vessels will be able to choose to retain pollock in excess of the MRA as long as the amount retained at the time of offload is at the specified MRA percentage with respect to basis species or species groups retained. By allowing vessels to manage their MRA percentage for pollock on an offload-to-offload basis, additional pollock may be retained over the course of a fishing trip. For example, if a vessel operator catches pollock early in a trip in excess of the MRA, he or she may choose to retain the pollock and move to an area with lower incidental catch rates of pollock, thereby lowering the percentage of pollock retained, with respect to other basis species, prior to the offloading of catch. As long as the amount of pollock on board the vessel is at or below the appropriate MRA at the time of offload, the vessel operator would be in compliance.

In addition to the pollock MRA enforcement period adjustment, this action clarifies MRA requirements for catcher vessels at § 679.20(e)(3)(i). Regulations at § 679.20(e) did not differentiate between catcher vessels and catcher processors. However, the definition of fishing trip is different for each vessel type and the MRA is enforced differently for each vessel type. Catcher vessels may fish within more than one statistical reporting area during the same fishing trip. This action clarifies that the lowest MRA for any of the areas where fish are harvested during a fishing trip applies for the duration of the fishing trip. These changes apply to catcher vessels fishing in the Gulf of Alaska (GOA) and the BSAI and reflect the existing enforcement protocol. MRA requirements for catcher processors at § 679.20(e)(3) remain unchanged except to change the BSAI pollock MRA accounting period from anytime during a fishing trip to the time of offload.

Increased Retention (IR)/Increased Utilization IU)

The following changes to the IR/IU regulations apply to vessels fishing in the GOA and the BSAI:

Regulations at § 679.27(c)(2) describe retention requirements for IR/IU species. In § 679.27, paragraphs (c)(2)(i)(B), (c)(2)(ii)(B), (c)(2)(iii)(B), and (i)(2) refer to the ''MRB'' amount when directed fishing for an IR/IU species is prohibited. ''MRB'' is an acronym for maximum retainable bycatch and was changed to MRA for consistency with the definition of bycatch in the Magnuson-Stevens Act. The regulatory text in these paragraphs is amended to reflect current language and to provide consistency with other regulatory text.

Regulations at § 679.27(c)(2)(ii)(B) require vessels to retain IR/IU species up to the MRA for that species and are enforced at any time during a fishing trip. This action provides an exception in these regulations for pollock caught

by non-AFA eligible vessels in the BSAI.

Further background on the development of the regulatory amendments contained in this final rule is available in the proposed rule that was published January 29, 2004 (69 FR 4281) for a 30–day public review and comment period that ended March 1, 2004. One letter containing 3 comments was received during the comment period.

Response to Comments

Comment 1: The proposed regulation may create an unintended incentive for non-AFA vessels to increase the overall amount of pollock caught incidentally when directed fishing for other non-pollock species in the BSAI. The Council specifically addressed these concerns and noted that the non-AFA fleet should not increase their historic levels of incidental pollock catch. Further, the amount of pollock caught by non-AFA vessels should be compared against these historic levels during the annual groundfish harvest specification process.

Response: By adjusting the MRA enforcement period for pollock caught in the BSAI by non-AFA vessels from anytime during a fishing trip to enforcement at the time of offload, the Council intended to increase the retention of pollock by these vessels without increasing their overall catch of pollock. NMFS fisheries managers currently consider historic and recent incidental catch levels during the total allowable catch (TAC) specification process and will continue to provide this information to the Council annually.

Comment 2: Discussion in the proposed rule about the Incidental Catch Allowance (ICA) for pollock harvested by non-AFA vessels seems to imply that the purpose of the proposed rule would be achieved if the non-AFA fleet does not exceed the ICA for pollock. The ICA is not an appropriate reference point for determining whether pollock harvested by non-AFA vessels has exceeded historic levels because it is a conservative, precautionary estimate of incidental pollock catch in all non-target pollock fisheries, much of which is rolled back to the pollock fishery during a fishing year.

Response: The goal of this action is to reduce regulatory discards of pollock by non-AFA vessels without increasing the overall amount of pollock caught by these vessels. Members of the AFA fleet expressed concern during the Council process over non-AFA vessels exceeding historic levels of incidental pollock catch. These concerns were analyzed in the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (see **ADDRESSES**) prepared for the proposed rule and further discussion was provided in the preamble to the proposed rule. While a discussion of the ICA is provided in the proposed rule, this discussion was not intended to suggest that the goal of this action would be achieved if the non-AFA fleet does not exceed the ICA for pollock. The ICA is not an allocation or quota to any particular group or sector of the BSAI groundfish fleet. Incidental catch estimates that form the basis of annual ICAs are conservatively large to ensure that overall harvest remains within the TAC. NMFS annually provides information about historical catch to the Council to guide the ICA specification and will continue to make this information available to the Council and interested public. The amount of pollock caught by non-AFA eligible vessels will continue to be well documented. Should pollock incidental catch rates or amounts increase in a manner that would require an increase in the ICA, the Council could initiate regulatory action to reduce incidental catch rates to levels closer to historical amounts. Any adjustment to the ICA would occur within the annual harvest specification process.

Comment 3: To the extent that pollock ICA levels are higher than necessary to support incidental catch rates by non-AFA vessels, NMFS routinely makes inseason adjustments to the ICA and reallocates any projected unused pollock to the AFA fleet. These reallocations should not be considered as historical catch of the non-AFA fleet.

Response: Reallocations of pollock from the ICA to the directed fishery have occurred every year since 1999 and range from 2,000 mt in 1999 to 12,000 mt in 2001. NMFS managers use actual historical and recent catch amounts to specify future ICA amounts. As a result, the ICA can change annually.

Changes From Proposed Rule

There are two changes from the proposed rule to the final rule:

First, regulations at § 679.20(e)(2)(i), (e)(2)(ii), and (e)(2)(iii) describe how to calculate the MRA for a specific incidental catch species. Proposed regulations at § 679.20(e)(2)(iv), (e)(2)(v) and (e)(2)(vi) describe the applicability of MRA regulations. This final action redesignates § 679.20(e)(2)(iv), (e)(2)(v) and (e)(2)(vi), as published in the proposed rule, to § 679.20(e)(3)(i), (e)(3)(ii) and (e)(3)(iii), respectively, and adds the title of ''Application'' for these paragraphs. This change from the proposed rule is intended to enhance clarity of these regulations for the public. The cross-reference at § 679.27(d)(1)(iii)(B) is changed to reflect this redesignation.

Second, the text, ''and not subject to § 679.20(e)(2)(vi)'' at § 679.20(e)(2)(v) and ''except when exceeded as provided for in § 679.20(e)(2)(vi)'' at § 679.27(c)(2)(ii) is removed in the final rule. The revision to the MRA enforcement period for pollock harvested by non-AFA vessels in the BSAI applies to all vessel types. In the proposed rule, this text only was found in paragraphs which apply to catcher/processors. NMFS recognizes that this could cause confusion and has removed the text from the final action. Regulations at § 679.20(d)(1)(iii)(B) continue to clarify MRA applicability requirements for all vessels.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). Section 604(a) of the Regulatory Flexibility Act (RFA) identifies the elements that should be in the FRFA and are summarized below:

Need for, and Objectives of, the Rule

The need for, and objectives of, this action are described above in the preamble and are not repeated here.

Significant Issues Raised by the Public Comments

The proposed rule was published on January 29, 2004 (69 FR 4281). An IRFA was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. The public comment period ended on March 1, 2004. No comments were received on the IRFA or concerning the economic impact of the rule.

Number of Small Entities to Which the Rule will Apply

The change in the enforcement period for the pollock MRA will apply to all non-AFA vessels that catch BSAI pollock as an incidental species, regardless of vessel size, gear type or target fishery. Non-AFA trawl catcher processors (head-and-gut sector) incidentally catch significant amounts of pollock in other groundfish fisheries. Other non-AFA vessels do not catch significant amounts of pollock and are therefore seldom affected by the MRA

for pollock on a haul-by-haul basis. In recent years, 23 to 24 vessels in the head-and-gut trawl catcher processor sector have fished in the BSAI. Ownership of the active vessels is concentrated in 10 companies. One of the listed companies is an independent company that acts as a manager of four vessels, each of which is an independently owned corporation with different ownership structures. Therefore, the FRFA treated these vessels as four independent companies.

Analysis of the 3–year average of estimated annual receipts of the head-and-gut trawl catcher processor sector indicated that 1 of the 13 companies operating in the sector in 2002 would be defined as a small entity with receipts of less than $3.5 million. The company operates a single vessel that is less than 125 feet (38.1 meters).

Steps Taken to Minimize the Significant Economic Impact on Small Entities

The preferred alternative is not expected to have a significant negative impact on individual vessel gross receipts. Therefore, this final rule is not expected to have a significant negative impact on small entities. The preferred alternative changes the enforcement interval of the MRA to an offload-to-offload basis. This alternative meets the goal of the Council of reducing discards of pollock by non-AFA vessels without increasing the overall amount of pollock harvested by these vessels. The preferred alternative also provides regulatory relief to any directly regulated small entity to which the rule applies by increasing operational flexibility, improving resource utilization, and reducing the risk of an inadvertent violation of MRA and IR/IU pollock retention standards. This action is not expected to create any adverse impacts for directly regulated entities, small or large. The alternative allows non-AFA vessels to retain additional pollock caught incidentally in the BSAI management area, thereby helping to meet the Council's goals and objectives to reduce discards in the groundfish fisheries off Alaska.

Options for different enforcement periods for adjusting the MRA for pollock harvested by non-AFA vessels in the BSAI and for increasing the MRA percentage were considered by the Council, but were eliminated from detailed analysis due to potential difficulties in enforcing these options and inconsistencies with the problem statement. The status quo is the alternative to the preferred action. The status quo would not lead to increased retention of pollock caught by non-AFA vessels in the BSAI. The status quo was rejected because it would not accomplish the objectives of the action.

Small Entity Compliance Guide

This action changes regulations at § 679.20 and § 679.27 to make the MRA for pollock caught by non-AFA eligible vessels in the BSAI management area enforceable at the time of offload. This action does not require additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS (see **ADDRESSES**) and at the following website: *http://www.fakr.noaa.gov*.

Reporting, Recordkeeping, and Other Compliance Requirements

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities. The FRFA did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 4, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 679 is amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

■ 2. In § 679.20, paragraph (e)(2)(iv) is removed, paragraph (d)(1)(iii)(B) is revised, and paragraph (e)(3) is added to read as follows:

§ 679.20 General limitations.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(B) *Retention of incidental species.* Except as described in § 679.20(e)(3)(iii), if directed fishing for a target species, species group, or the ''other species'' category is prohibited, a vessel may not retain that incidental species in an amount that exceeds the maximum retainable amount, as calculated under paragraphs (e) and (f) of this section, at any time during a fishing trip.

* * * * *

(e) * * *

(3) *Application.*

(i) For catcher vessels, the maximum retainable amount for vessels fishing during a fishing trip in areas closed to directed fishing is the lowest maximum retainable amount applicable in any area, and this maximum retainable amount must be applied at any time and to all areas for the duration of the fishing trip.

(ii) For catcher/processors fishing in an area closed to directed fishing for a species or species group, the maximum retainable amount for that species or species group applies at any time for the duration of the fishing trip.

(iii) For all vessels not listed in subpart F of this section, the maximum retainable amount for pollock harvested in the BSAI is calculated at the end of each offload and is based on the basis species harvested since the previous offload. For purposes of this paragraph, offload means the removal of any fish or fish product from the vessel that harvested the fish or fish product to any other vessel or to shore.

* * * * *

■ 3. In § 679.27, the table in paragraph (c)(2), and the table in (i) are revised to read as follows:

§ 679.27 Improved Retention/Improved Utilization Program.

* * * * *

(c) * * *

(2) * * *

IF YOU OWN OR OPERATE A	AND	YOU MUST RETAIN ON BOARD UNTIL LAWFUL TRANSFER
(i) Catcher vessel	(A) Directed fishing for an IR/IU species is open	all fish of that species brought on board the vessel.
	(B) Directed fishing for an IR/IU species is prohibited.	all fish of that species brought on board the vessel up to the MRA for that species.
	(C) Retention of an IR/ IU species is prohibited	no fish of that species.
(ii) Catcher/processor	(A) Directed fishing for an IR/IU species is open	a primary product from all fish of that species brought on board the vessel.

IF YOU OWN OR OPERATE A	AND	YOU MUST RETAIN ON BOARD UNTIL LAWFUL TRANSFER
	(B) Directed fishing for an IR/IU species is prohibited.	a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRA for that species.
	(C) Retention of an IR/IU species is prohibited	no fish or product of that species.
(iii) Mothership	(A) Directed fishing for an IR/IU species is open	a primary product from all fish of that species brought on board the vessel
	(B) Directed fishing for an IR/IU species is prohibited.	a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRA for that species.
	(C) Retention of an IR/IU species is prohibited	no fish or product of that species.

* * * * *

(i) * * *

IF...	then your total weight of retained or lawfully transferred products produced from your catch or receipt of that IR/IU species during a fishing trip must...
(1) directed fishing for an IR/IU species is open,	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip.
(2) directed fishing for an IR/IU species is prohibited,	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip or 15 percent of the MRA for that species, whichever is lower.
(3) retention of an IR/IU species is prohibited,	equal zero.

[FR Doc. 04–13198 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 113
Monday, June 14, 2004

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

FARM CREDIT ADMINISTRATION

12 CFR Parts 620, 621, 650, 651, 652, 653, 654, and 655

RIN 3052–AC18

Disclosure to Shareholders; Accounting and Reporting Requirements; Federal Agricultural Mortgage Corporation General Provisions; Federal Agricultural Mortgage Corporation Governance; Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Federal Agricultural Mortgage Corporation Disclosure and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, our, or we) proposes regulations governing the Federal Agricultural Mortgage Corporation (Farmer Mac or the Corporation) in the areas of non-program investments and liquidity. We are proposing the regulations to ensure that Farmer Mac holds only high-quality, liquid investments to maintain a sufficient liquidity reserve, invest surplus funds, and manage interest-rate risk, while not holding excessive amounts of non-program investments considering Farmer Mac's status as a Government-sponsored enterprise.

DATES: Please send comments to the FCA by September 13, 2004.

ADDRESSES: You may send comments by electronic mail to *reg-comm@fca.gov*, through the ''Pending Regulations'' section of FCA's Web site, *www.fca.gov*, or through the Governmentwide *www.regulations.gov* portal. You may also send comments to Thomas G. McKenzie, Director, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. You may review copies of all comments we receive in our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas G. McKenzie, Director, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4280; TTY (703) 883–4434; or Jennifer A. Cohn, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The primary objectives of our proposal are to ensure the safety and soundness and continuity of Farmer Mac operations by:

- Establishing minimum liquidity standards that would require Farmer Mac to hold sufficient high-quality, marketable investments to provide adequate liquidity to fund maturing obligations and operational expenses for a minimum of 60 days;
- Specifying the type, quality, and maximum amount (or limit) of non-program investments [1] that may be held by Farmer Mac;
- Establishing diversification requirements, including portfolio limits on specific types of investments and counterparty exposure limits; and
- Requiring Farmer Mac's board of directors to approve liquidity and non-program investment management policies and implement appropriate internal controls to oversee the investment and liquidity management of the Corporation.

Another objective of this proposal is to better organize current regulatory sections pertaining to Farmer Mac, details of which are discussed in section XIV. below.

[1] Pursuant to title VIII of the Farm Credit Act of 1971, as amended (Act), Farmer Mac issues debt in order to buy (invest in) ''program'' assets under the Corporation's core programs known as the Farmer Mac I Program and the Farmer Mac II Program. Under these programs, Farmer Mac purchases, or commits to purchase, ''qualified loans,'' as that term is defined in section 8.0(9) of the Act. Generally, ''qualified loans'' consist of loans on agricultural real estate or portions of loans guaranteed by the United States Department of Agriculture. Under section 8.0(1) of the Act, ''agricultural real estate'' includes both land used to produce agricultural commodities or products and single family, moderately-priced principal residential dwellings located in rural areas. In this preamble, we refer to loans made on this latter type of real estate as ''rural housing mortgages.'' We propose to define investments other than those in (1) ''qualified loans,'' or (2) securities collateralized by ''qualified loans'' as ''non-program'' investments.

II. Background

Congress established Farmer Mac in 1988 as part of its effort to resolve the agricultural crisis of the 1980s. Congress expected that a secondary market for agricultural and rural housing mortgages would increase competitively priced mortgage credit to America's farmers, ranchers, and rural homeowners.

As originally structured, market demand for Farmer Mac services was low and the Corporation's ability to thrive and develop an active secondary market for long-term agricultural real estate loans was challenged. In 1996, statutory changes [2] by Congress made Farmer Mac's programs more attractive, but Farmer Mac still had difficulty in building and maintaining recognition in the secondary market. In early 1997, Farmer Mac adopted a new ''debt issuance strategy'' and consequently built its non-program investment portfolio to relatively high levels when compared to program assets. Farmer Mac's rationale for its debt issuance strategy was to increase its presence in the capital markets to attract more investors to its debt and mortgage-backed securities and reduce its borrowing and securitization costs.

Farmer Mac now has about $4.4 billion in assets, which includes about $1.7 billion in non-program investments. Also, Farmer Mac has over $4.0 billion in liabilities. (For comparison, 5 years ago liabilities totaled $1.6 billion, and 10 years ago liabilities totaled $452 million.) In addition to on-balance assets and liabilities, Farmer Mac now has in excess of $3.3 billion in off-balance sheet obligations associated with Long-Term Standby Purchase Commitments (LTSPC)[3] and Farmer Mac Guaranteed Securities (FMGS).[4]

[2] The Farm Credit System Reform Act of 1996 (Pub. L. 104–105) amendments authorized Farmer Mac to purchase agricultural real estate and rural housing mortgages directly, as a pooler, and to guarantee securities backed by those loans without a 10-percent ''subordinated interest'' or provision for private sector assumption of first losses.

[3] An LTSPC is a commitment by Farmer Mac to purchase specified eligible loans on one or more undetermined future dates. In consideration for Farmer Mac's assumption of the credit risk on the specified loans underlying an LTSPC, Farmer Mac receives an annual commitment fee on the outstanding balance of those loans in monthly installments based on the outstanding balance of those loans.

[4] Periodically, Farmer Mac transfers agricultural mortgage loans into trusts that are used as vehicles

Continued

We are proposing these regulations because, as Farmer Mac continues to grow, its exposure to various business risks, including liquidity risk, also can be anticipated to grow. In addition, excessive or inappropriate use of non-program investments is not consistent with the Corporation's status as a Government-sponsored enterprise (GSE). This proposal balances safety and soundness concerns with the program focus of the Corporation.

These proposed regulations do not address Farmer Mac's program investments. We will continue to monitor those investments for safety and soundness and other purposes through our examination, and off-site monitoring activities, of the Corporation.

III. Arrangement of This Proposal

The following preamble material is a section-by-section analysis of the subsequent proposed rule text. This arrangement allows FCA to provide additional details or rationale for our proposal. Also, in section XIV., we discuss how we propose to better organize our rules pertaining to Farmer Mac.

IV. Section 652.1—Purpose

This proposed section provides the user with a basic understanding of the contents and purpose of this subpart. We state that the purpose of this subpart is to ensure safety and soundness, continuity of funding, and appropriate use of non-program investments considering Farmer Mac's status as a GSE. It also highlights responsibilities of Farmer Mac's board of directors and management.

V. Section 652.5—Definitions

This proposed section alphabetically lists words or phrases that are applicable to this subpart and will help the user more fully understand the subpart and our requirements. Most of the definitions are self explanatory, but one definition will benefit from explanation. The proposed definition of ''Government-sponsored agency'' includes Government-sponsored enterprises such as Fannie Mae and Farmer Mac, as well as Federal agencies, such as the Tennessee Valley Authority, that issue obligations that are not explicitly guaranteed by the Government of the United States' full faith and credit.

VI. Section 652.10—Investment Management and Requirements

Farmer Mac, like any financial institution, must establish and follow certain fundamental practices to effectively manage risks in its investment portfolio. An effective risk management process for investments requires financial institutions to establish: (1) Policies; (2) risk limits; (3) a mechanism for identifying, measuring, and reporting risk exposures; and (4) a strong system of internal controls. Accordingly, proposed § 652.10 requires Farmer Mac's board of directors to adopt written policies that establish risk limits and guide the decisions of investment managers. More specifically, board policies must establish objective criteria so investment managers can prudently manage credit, market, liquidity, and operational risks. Additionally, proposed § 652.10 establishes other controls that are consistent with sound business practices, such as:

(1) Clear delegation of responsibilities and authorities to investment managers;

(2) Separation of duties;

(3) Timely and effective security valuation practices; and

(4) Routine reports on investment performance.

A. Responsibilities of the Board of Directors

Proposed § 652.10(a) outlines the basic responsibilities of the board of directors regarding Farmer Mac's non-program investment activities. The proposed rule requires the board to adopt written policies for managing those activities. The board must also ensure that management complies with the written policies and that appropriate internal controls are in place to prevent loss. The board, or a designated subcommittee of the board, must review the Corporation's investment policies at least annually. Any changes to the policies must be adopted by the board of directors and reported to FCA within 10 days of adoption.

B. Investment Policies

Proposed § 652.10(b) requires Farmer Mac's investment policies to address the purposes and objectives of investments, risk tolerance, delegations of authority, exception parameters, securities valuation, internal controls, and reporting requirements. Furthermore, the policies must address the means for reporting, and approvals needed for, exceptions to established policies. A general explanation of the board's investment objectives, expectations, and performance goals is necessary to guide investment managers. The proposed rule further requires that the investment policies must be sufficiently detailed, consistent with, and appropriate for the amounts, types, and risk characteristics of Farmer Mac's investments.

C. Risk Tolerance

Proposed § 652.10(c) requires Farmer Mac's board of directors to establish within its investment policies risk limits and diversification requirements for the various classes of eligible investments and for the entire investment portfolio. The policies must ensure that Farmer Mac maintains prudent diversification of its investment portfolio. Risk limits must be based on Farmer Mac's objectives, capital position, and risk tolerance capabilities. Risk tolerance can be expressed through several parameters such as duration, convexity, sector distribution, yield curve distribution, credit quality, risk-adjusted return, portfolio size, total return volatility, or value-at-risk.[5] Farmer Mac should use a combination of parameters to appropriately limit its exposure to credit and market risk. Farmer Mac's policies must identify the types and quantity of investments that the Corporation will hold to achieve its objectives and control credit, market, liquidity, and operational risks. Farmer Mac must establish risk limits for those four types of risk.

1. Credit Risk

Credit risk generally refers to the risk that an issuer, obligor, or other counterparty will default on its obligation to pay the investor under the terms of the security or instrument. Farmer Mac's investment policies must establish standards for addressing credit risk.

Credit risk is based on, among other factors, the ability of counterparties to honor their obligations and commitments. Farmer Mac should consider appropriate credit risk limits after fully considering its position with regard to a well-diversified investment portfolio. Accordingly, proposed § 652.10(c)(1)(i) requires Farmer Mac's

for the securitization of the transferred assets and the beneficial interests in the trusts are sold to third-party investors as FMGS. Farmer Mac guarantees the timely payment of principal and interest on the certificates issued by the trusts, regardless of whether the trusts actually receive scheduled payments on the related underlying loans. As consideration for Farmer Mac's assumption of the credit risk on these mortgage pass-through certificates, Farmer Mac receives an annual guarantee fee that is based upon the outstanding balance of the FMGS.

[5] Generically, duration is a measure of a bond's or portfolio's price sensitivity to a change in interest rates. Convexity measures the rate of change in duration with respect to a change in interest rates. A sector refers to a broad class of investments with similar characteristics or industry classification. Yield curve distribution refers to the distribution of the portfolio's investments in short-, intermediate-, or long-term investments. Value-at-risk is a methodology used to measure market risk in an investment portfolio.

investment policies to establish credit quality standards, limits on counterparty risk, and risk diversification standards that limit concentrations based on a single or related counterparty(ies), a geographical area, industries, or obligations with similar characteristics.

The selection of dealers, brokers, and investment bankers (collectively, securities firms) is an important aspect of effective management of counterparty credit risk. Proposed § 652.10(c)(1)(ii) requires Farmer Mac's investment policies to establish criteria for selecting securities firms. A satisfactory approval process includes a review of each firm's financial statements and an evaluation of its ability to honor its commitments, including an inquiry into the general reputation of the securities firm. Farmer Mac should also review information from Federal or state securities regulators and industry self-regulatory organizations, such as the National Association of Securities Dealers, concerning any formal enforcement actions against the security firm, its affiliates, or associated personnel.

In addition, to further diversify Farmer Mac's exposure to credit risk, the proposed rule requires Farmer Mac to buy and sell eligible investments with more than one securities firm. Moreover, the proposed rule requires the board of directors or a designated subcommittee of the board, as part of its annual review of its investment policies, to review the criteria for selecting securities firms and determine whether to continue Farmer Mac's existing relationships with them. Any changes to the criteria or securities firms must be approved by the board of directors.

Proposed § 652.10(c)(1)(iii) requires Farmer Mac to establish appropriate collateral margin requirements on repurchase agreements.[6] The FCA is proposing this requirement because it is prudent, as a means of managing potential counterparty credit risk, for Farmer Mac to establish appropriate collateral margin requirements based on the quality of the collateral and the terms of the agreement. Farmer Mac must also manage its exposure to loss on repurchase agreements by regularly marking the collateral to market and ensuring appropriate controls are maintained over collateral held.

2. Market Risk

Market risk is the risk to a financial institution's financial condition resulting from adverse changes in the value of its holdings arising from movements in interest rates or prices. From a safety and soundness perspective, it is crucial for a financial institution's board and management to fully understand the market risks associated with investment securities prior to acquisition and on an ongoing basis. The most significant market risk of investment activities is interest rate risk. Proposed § 652.10(c)(2) would require Farmer Mac's board to set market risk limits for specific types of investments, and for the investment portfolio or for Farmer Mac generally.

To manage market risk exposure, this proposal would require Farmer Mac to evaluate how individual instruments and the investment portfolio as a whole affect the Corporation's overall interest rate risk profile. We also expect that Farmer Mac would timely monitor the price sensitivity of its investment portfolio and specify Corporation-wide interest rate risk limits.

In addition, we believe prudently managed financial institutions should establish interest rate risk limits on their investment portfolios and on certain types of securities. Accordingly, risk parameters should be commensurate with Farmer Mac's ability to measure, manage, and absorb risk. The board should consider Farmer Mac's level of capital and earnings and its tolerance for market risk exposure when setting risk parameters. Farmer Mac must document in its records or minutes any analyses used in formulating its policy or amendments to the policy. Market risk limits should be established in a manner that is consistent with all relevant regulations, policies, and guidance issued by the FCA.

3. Liquidity Risk

Liquidity risk may exist at both the investment and the institutional level. At the investment level, liquidity risk is the risk that Farmer Mac would not be able to sell or liquidate an investment quickly at a fair price. This inability may be due to inadequate market depth or market disruption.

At the institutional level, liquidity risk is the risk that Farmer Mac could encounter a liquidity crisis if it is unable to fund operations at reasonable rates because access to the capital markets is impeded. This impediment may result from a market disruption or real or perceived credit, operational, public policy, or business problems.

FCA expects Farmer Mac to manage liquidity risk at both the investment and the institutional levels. Accordingly, proposed § 652.10(c)(3) requires Farmer Mac's investment policies to describe the liquidity characteristics of eligible investments that it will hold to meet its liquidity needs and institutional objectives. Farmer Mac's investment policies must also require the Corporation to maintain sufficient quantities of liquid investments to comply with the liquidity reserve requirements of § 652.20.

Pursuant to § 652.25, the amount of Farmer Mac's non-program investments is subject to certain limitations so that its GSE status and preferred market access privileges are not abused through excessive amounts of non-program investments. FCA expects Farmer Mac's policies to strike an appropriate balance among the need for a liquidity reserve, the management of interest rate risk, and the investment of surplus funds as it strives to accomplish its institutional objectives and its public purpose as a GSE.

4. Operational Risk

Operational risk occurs when deficiencies in internal controls or information systems result in unexpected loss to a financial institution. Operational risk may arise from inadequate procedures, human error, information system failure, or fraud. Internal controls that effectively detect and prevent operating risks are an integral part of prudent investment management. The ability of management to accurately assess and control operating risks is frequently one of the greatest challenges that a financial institution faces with regard to investment activities. Therefore, proposed § 652.10(c)(4) would require Farmer Mac's investment policies to address operating risks, including delegations of authority and internal controls, in accordance with paragraphs (d) and (e) of § 652.10.

Farmer Mac also may be exposed to other sources of operating risks, such as legal risk that may result from contracts that are not legally enforceable. FCA expects Farmer Mac to adequately assess, control, and minimize operating risks relating to investment activities. Accordingly, we expect Farmer Mac to clearly define documentation requirements for securities transactions, retention and safekeeping of documents, and possession and control of purchased investment instruments.

[6] In general, whether a given agreement is termed a ''repurchase agreement'' or a ''reverse repurchase agreement'' depends largely on which party initiated the transaction. Market participants typically view the transaction from the dealer's perspective. In this preamble and the proposed regulation, the FCA uses the term ''repurchase agreement'' regardless of the perspective from which the transaction is viewed.

D. Delegation of Authority

Prudent management of investment activities requires an organizational structure that clearly delineates responsibility and accountability for all investment management functions, including risk measurement, and oversight. Accordingly, proposed § 652.10(d) specifically provides that all delegations of authority to specified personnel or committees must state the extent of management's authority and responsibilities for investments. Farmer Mac should periodically review the Corporation's organizational structure to reveal conflicts of interest or inadequate checks and balances.

E. Internal Controls

Proposed § 652.10(e) sets forth internal control requirements for investment management of Farmer Mac. Proposed § 652.10(e)(1) would require Farmer Mac to establish appropriate internal controls to detect and prevent loss, fraud, embezzlement, conflicts of interest, and unauthorized investments.

Proposed § 652.10(e)(2) would require a separation of duties and supervision between personnel executing investment transactions and those responsible for approving, revaluating, and overseeing the investments. Separation of duties promotes integrity, accuracy, and prudent business practices that reduce the risk of loss. Senior management must ensure that Farmer Mac's investment practices and risk exposure are regularly reviewed and evaluated by personnel who are independent from those responsible for executing investment transactions. Also, we consider separate and independent valuation of computer model assumptions and data used by investment managers a necessary part of these regular reviews.

Proposed § 652.10(e)(3) would require Farmer Mac to maintain records and management information systems that are appropriate for the level and complexity of its investment activities. This requirement is especially important as investment instruments become increasingly complex and internal controls depend on adequacy and accuracy of corporate records. Internal quantitative models, computer software, and management expertise must be adequate and fully integrated to adequately analyze individual investment instruments, the investment portfolio, and the effect investments have on Farmer Mac's cashflows, earnings, and capital.

F. Securities Valuations

Accurate and frequent securities valuation is essential to measuring risk and monitoring compliance with a financial institution's objectives and risk parameters. Prudent business practices dictate that a financial institution must understand the value and price sensitivity of its investments prior to purchase and on an ongoing basis. Appropriate securities valuation practices by the financial institution enable managers to fully understand the risks and cashflow characteristics of its investments. Farmer Mac should rely on valuation methodologies that take into account all the risk elements in a security to determine its price. Proposed § 652.10(f) establishes the basic requirements for securities valuations by Farmer Mac and generally requires Farmer Mac to perform an analysis of the credit and market risks on investments prior to purchase and on an ongoing basis. The primary objective of this provision is to ensure that management understands and the board appropriately oversees the risks and cashflow characteristics of any investment that Farmer Mac purchases.

Managers must have a reasonable and adequate basis for investment purchases, supported by appropriate analysis, for the Corporation's investment decisions, and must maintain adequate documentation regarding the decisions. We believe this is especially relevant to Farmer Mac given its status as a GSE. We expect the analysis to describe the basic risk characteristics of the investment and include a balanced discussion of risks involved in purchasing the investment. In preparing the analysis, investment managers should consider the current rate of return or yield, expected total return, and annual income. We also expect investment managers to consider the degree of uncertainty associated with the cashflows, and the investment's marketability, liquidity, credit risk, and market risk. For investments that have unusual, leveraged, or highly variable cashflows, investment managers must exercise extraordinary diligence and thoroughness in making investment decisions. The depth of analyses and documentation of such decisions must be commensurate with the investment risk.

A fundamental component of sound investment management is the independent verification of securities prices. Accordingly, proposed § 652.10(f)(1) requires Farmer Mac, before it purchases a security, to evaluate its credit quality and price sensitivity to changes in market interest rates. We also propose to require Farmer Mac to evaluate and document the size and liquidity of the secondary market for the security at the time of purchase. In addition, we expect Farmer Mac to monitor and update this information as market conditions change. While Farmer Mac must support its credit evaluations by using the most recent credit rating given to a security by a Nationally Recognized Statistical Rating Organization (NRSRO) in accordance with the requirements of § 652.35, the Corporation may not rely exclusively on NRSRO ratings prior to purchasing investments. An independent and timely evaluation performed by Farmer Mac is needed because there may be a lag before an adverse event is reflected in the credit rating. Therefore, Farmer Mac's analysis must indicate whether the security's risk has changed subsequent to the most recent NRSRO rating.

Proposed § 652.10(f)(1) also requires Farmer Mac to verify the value of a security that it plans to purchase, other than a new issue, with a source that is independent of the broker, dealer, counterparty, or other intermediary to the transaction. Independent verification of price can be as simple as obtaining a price from an industry-recognized information provider. Farmer Mac may satisfy this requirement by independently verifying the price of a security with an online market reporting service, such as Bloomberg, Telerate, or Reuters. Although price quotes from information providers are not actual market prices, they confirm whether the broker's price is reasonable. In the event that Farmer Mac is unable to obtain a second price quote on a particular security, a price quote may be obtained on a security with substantially similar characteristics. However, such an alternative method increases analysis and documentation requirements and must be available for independent internal and external evaluators to assess. In addition, Farmer Mac may use internal valuation models to verify the reasonableness of prices it pays or receives for securities.

Finally proposed § 652.10(f)(1) requires the board's investment policies to fully address the extent of the prepurchase analysis that management needs to perform for various classes of instruments. For example, Farmer Mac should specifically describe the stress tests in § 652.40 that must be performed on various types of mortgage securities.

Proposed § 652.10(f)(2) would require Farmer Mac to determine, at least monthly, the fair market value of each security in its portfolio and the fair market value of its investment portfolio as a whole. We propose this provision to ensure that management and the

board have the necessary information to assess the performance of Farmer Mac's investment portfolio. This requirement enables management to provide accurate and timely reports to the board of directors in accordance with proposed § 652.10(g) and manage market risks.

In satisfying the above requirements, proposed § 652.10(f)(2) would also require Farmer Mac to evaluate the credit quality and price sensitivity to the change in market interest rates of each security in Farmer Mac's portfolio and its whole investment portfolio. The substance and form of the evaluations are likely to vary depending on the type of instrument. Relatively simple or standardized instruments with readily identifiable risks require significantly less analysis than more volatile or complex instruments. (Proposed § 652.40 contains specific stress test guidance for evaluating the price sensitivity of mortgage securities.)

Other eligible investments that have uncertain cashflows as a result of embedded options (such as call options, caps, or floors) may require similar analytical techniques to appropriately evaluate the instruments. For example, prior to investing in asset-backed securities (ABS), the FCA expects Farmer Mac to conduct or obtain an evaluation of the collateral (including type, aging of the assets, and the credit quality of the underlying loans) and an analysis of the securities' structure and cashflows.

Proposed § 652.10(f)(3) requires Farmer Mac, before it sells a security, to verify its value with a source that is independent of the broker, dealer, counterparty, or other intermediary to the transaction. We reiterate, independent verification of price can be as simple as obtaining a price from an industry-recognized information provider, which will verify whether the broker's price is reasonable. In the event that Farmer Mac is unable to obtain a second price quote on a particular security, a price quote may be obtained on a security with substantially similar characteristics as explained and qualified above so long as the analysis is adequately documented and appropriately supports the security's value.

G. Reports to the Board of Directors

Adequate reporting will help ensure the Farmer Mac board properly carries out its fiduciary responsibilities and provides an essential element of internal controls. Management reports must communicate effectively to the board the nature of the risks inherent in Farmer Mac's investment activities. Reporting should occur frequently so that the board has timely, accurate, and sufficient information in order to adequately oversee changes in the investment portfolio and Farmer Mac's risk profile.

Proposed § 652.10(g) requires management, at least quarterly, to report to the board, or a designated subcommittee of the board, on the performance and risk of each class of investments and the entire investment portfolio. The report must identify all gains and losses that Farmer Mac incurs during the quarter on individual securities it sells before maturity and why such securities were liquidated. Reports also must identify potential risk exposure to changes in market interest rates and any other factors (such as credit deterioration) that may affect the value of Farmer Mac's investment holdings. In addition, the regulation would require management's report to discuss how Farmer Mac's investments affect its overall financial condition and to evaluate whether the performance of the investment portfolio effectively achieves the objectives established by the board of directors. The report must specifically identify deviations from the board's policies and seek board approval for any deviations.

VII. Section 652.15—Interest Rate Risk Management and Requirements

Because interest rate risk management is such an important part of investment management, we propose in § 652.15 certain responsibilities of Farmer Mac's board of directors and management as well as policy requirements to address more generally the management of interest rate risk exposure. The proposed regulations outline our minimum expectations for the management of interest rate risk exposure.

The potentially adverse effect that interest rate risk may have on net interest income and the market value of Farmer Mac's equity is of particular importance. Unless properly measured and managed, interest rate changes can have significant adverse effects on Farmer Mac's ability to generate earnings, build net worth, and maintain liquidity.

Proposed § 652.15(a) requires Farmer Mac's board of directors to be responsible for providing effective oversight (direction, controls, and supervision) to the interest rate risk management program and to be knowledgeable of the nature and level of interest rate risk taken by Farmer Mac.

Proposed § 652.15(b) requires Farmer Mac's management to be responsible for ensuring that interest rate risk is properly managed on both a long-range and a day-to-day basis.

Proposed § 652.15(c) requires Farmer Mac's board of directors to adopt an interest rate risk management policy. At least annually, the board of directors, or a designated subcommittee of the board, must review the policy. Any changes to the policy must be approved by the board and reported to FCA within 10 days of adoption.

Proposed § 652.15(d) requires Farmer Mac's interest rate management policy, at a minimum, to:

(1) Address the purpose and objectives of interest rate risk management;

(2) Identify and analyze the causes of interest rate risks within its existing balance sheet structure;

(3) Require Farmer Mac to measure the potential impact of these risks on projected earnings and market values by conducting interest rate shock tests and simulations of multiple economic scenarios at least quarterly;

(4) Describe and implement actions needed to obtain its desired risk management objectives;

(5) Document the objectives that Farmer Mac is attempting to achieve by purchasing eligible investments that are authorized by § 652.35;

(6) Require Farmer Mac to evaluate and document, at least quarterly, whether these investments have actually met the objectives stated under paragraph (4) above;

(7) Identify exception parameters and post approvals needed for any exceptions to the policy's requirements;

(8) Describe delegations of authority; and

(9) Describe reporting requirements, including exceptions to policy limits.

Proposed § 652.15(e) requires Farmer Mac's management to report, at least quarterly, to the Corporation's board of directors, or a designated subcommittee of the board, describing the nature and level of interest rate risk exposure. It also would require that any deviations from the board's policy on interest rate risk must be specifically identified in the report and approved by the board, or designated subcommittee of the board.

VIII. Liquidity Reserve Management and Requirements

As discussed in section VI., Farmer Mac is subject to liquidity risk at both the investment and institutional levels. Farmer Mac must manage risk at both of these levels.

In making this proposal, we recognize Farmer Mac's long-term liquidity is dependent on its ability to obtain funding from the securities markets. To

aid in assuring market access, temporary sources of highly liquid and low-risk investments are needed in the event of market disruptions or aberrations. Accordingly, we propose liquidity requirements in § 652.20 that address minimum reserves, policies, periodic and special reporting requirements, and high quality unencumbered investments as follows.

A. Minimum Daily Liquidity Reserve Requirement

The minimum daily liquidity reserve requirement in proposed § 652.20(a) will ensure that Farmer Mac has a pool of cash, eligible non-program investments, and/or securities backed by portions of Farmer Mac program assets (loans) that are guaranteed by the United States Department of Agriculture as described in section 8.0(9)(B) of the Act (subject to certain discounts) to fund its operations for a minimum of 60 days, if its access to the capital markets becomes impeded or otherwise threatened. The Farmer Mac program assets described above are held under a program known as the Farmer Mac II Program.

We believe the significance of maintaining an ample supply of liquid funds for safety and soundness reasons outweigh any burdens created by the minimum daily liquidity reserve requirement.

This proposed regulation will permit Farmer Mac sufficient time to make adjustments to the liquidity portfolio and any associated restructuring of Farmer Mac's maturing debt. We propose that within 24 months of this rule becoming effective, and thereafter, the minimum daily liquidity reserve requirement will be 60 days.

We seek comment on whether the 60-day minimum daily liquidity reserve requirement is too much or too little. We also seek comment on whether it is appropriate to include securities backed by portions of Farmer Mac program assets (loans) that are guaranteed by the United States Department of Agriculture (Farmer Mac II program assets) in the minimum daily liquidity reserve requirement.

B. Free of Lien

At § 652.20(b), we propose that all investments held for the purpose of meeting the minimum daily liquidity reserve requirement of this section must be free of liens or other encumbrances.

C. Discounts

We propose to subject some of the investments in the liquidity pool to certain discounts as they may exhibit somewhat less liquidity in adverse market conditions. Those investments include money market instruments, floating and fixed rate debt securities, diversified investment funds, and securities backed by portions of Farmer Mac program assets (loans) that are guaranteed by the United States Department of Agriculture as described in section 8.0(9)(B) of the Act. Additionally, we reserve the authority to modify or determine the appropriate discount for any investments used to meet the minimum daily liquidity reserve requirement. For example, if an adverse credit event or other adverse event caused an eligible investment to exhibit less liquidity, we might increase the discount associated with that investment.

D. Liquidity Reserve Policy

At § 652.20(d), we propose requirements that Farmer Mac's board must address when setting a liquidity reserve policy. We also propose that proper internal controls be put in place, and that the board of directors, or a designated subcommittee of the board, review and validate the policy's adequacy at least annually. Any changes to the policy must be approved by the board of directors, and Farmer Mac must provide a copy of the revised policy to FCA within 10 days of adoption.

At § 652.20(e), we propose the minimum contents of the policy. The policy must include a statement of the purpose and objectives of liquidity reserves; a listing of specific assets, debt, and arrangements that can be used to meet liquidity objectives; diversification requirements of Farmer Mac's liquidity reserve portfolio; exception parameters and post approvals needed; delegations of authority; and reporting requirements.

In addition, we propose the policy establish maturity limits and credit quality standards for non-program investments used to meet the minimum daily liquidity reserve requirement of § 652.20(a).

Furthermore, we propose that the policy establish minimum and target amounts of liquidity. For example, the policy could establish an internal liquidity minimum such as 75 days (in addition to the 60-day regulatory minimum), or it could set an optimum liquidity requirement such as 90 days of liquidity to be met 80 percent of the time (in addition to the 60-day regulatory minimum reserve requirement).

Finally, we propose the policy include the maximum amount of non-program investments that can be held for meeting Farmer Mac's liquidity needs, as expressed as a percentage of program assets and off-balance sheet obligations.

E. Liquidity Reserve Reporting

To ensure appropriate internal control and accountability, we propose at § 652.20(f) to require that Farmer Mac's management report specific information to its board of directors or a designated subcommittee at least quarterly. The reports would describe liquidity reserve compliance with policy and other requirements of this section. Any deviations from the board's liquidity reserve policy must be specifically identified in the report and approved by the board of directors.

At § 652.20(g), we propose special reporting requirements for Farmer Mac. Farmer Mac's management must immediately report to its board of directors if any violation of board policy requirements at § 652.20(e) occurs. We believe this will allow sufficient time for Farmer Mac's board of directors to understand the ramifications of any breach and take corrective measures to prevent violations of our minimum daily liquidity reserve requirement as proposed in § 652.20(a). The Farmer Mac board must report to FCA within 3 days of receiving a report of any noncompliance with board policy requirements that are specified in § 652.20(e).

Additionally, Farmer Mac must immediately report to the FCA when the regulatory minimum daily liquidity reserve requirement at § 652.20(a) are breached.

IX. Section 652.25—Non-Program Investment Purposes and Limitations

Proposed § 652.25 lists authorized purposes for Farmer Mac non-program investments and imposes limitations on those investments. Our proposal seeks to reasonably relate investments made by Farmer Mac to its program purpose of establishing a secondary market arrangement for agricultural and rural housing mortgages. In making this proposal, we recognize non-program investments provide for a blend of Farmer Mac needs; most fundamental of these needs is to provide highly liquid assets to meet immediate funding needs associated with Farmer Mac's business in agricultural and rural housing mortgages. Farmer Mac also uses non-program investments in managing interest rate risk and providing flexibility in responding to fluctuating liquidity and economic conditions. Any non-program investments not appropriately related to the above needs warrant specific attention and justification. We recognize that

investment fund management and prediction of changes in the market are very complex and fully support Farmer Mac's ability to respond appropriately in times of adversity. Therefore, holding adequate levels of highly liquid assets to meet funding needs during market disruptions is a fundamental safety and soundness matter. At the same time, Farmer Mac's powers to make non-program investments cannot result in inappropriate use of its GSE charter.

At § 652.25(a), we provide that non-program investments are authorized to comply with interest rate risk and liquidity reserve requirements and to manage surplus short-term funds.

At § 652.25(b), we propose that non-program investments cannot exceed the greater of $1.5 billion or the aggregate of the following: (1) Thirty (30) percent of total assets; and (2) a reasonable estimate of off-balance sheet loans covered by guarantees or commitments that Farmer Mac likely will be required to purchase during the upcoming 12-month period, not to exceed 15 percent of total off-balance sheet obligations.

In proposing the limitations, we recognized that Farmer Mac's liquidity needs are unique and considered such issues as off-balance sheet contingency funding needs and how those needs could fluctuate in times of sector or geographic adversity. We recognized that Farmer Mac's need for market presence and penetration is also unique. Additionally, we considered that in certain circumstances, Farmer Mac may borrow up to $1.5 billion from the U.S. Treasury to fulfill the guarantee obligations of the Corporation.

We seek comment on whether the $1.5 billion component or the aggregation component is too much or too little in relation to our proposed minimum daily liquidity reserve requirement set forth in § 652.20(a). In addition, should off-balance sheet obligations be permitted or not be permitted in determining the maximum levels of non-program investments? Finally, should we consider other issues pertinent to Farmer Mac's non-program investment needs or practices such as its ''debt issuance strategy''?

X. Section 652.30—Temporary Regulatory Waivers or Modifications for Extraordinary Situations

Proposed § 652.30 provides that the FCA may waive or modify restrictions on the size of Farmer Mac's investment portfolio and/or the liquidity reserve during times of economic stress, financial stress, or other extraordinary situations. As waivers or modifications are approved, we may impose certain expirations, plans to return to compliance, or other limitations. The flexibility of this provision enables the agency to tailor specific remedies for particular problems or particular circumstances that might arise.

Examples of extraordinary situations include, but are not necessarily limited to: (1) Disrupted access to capital markets due to financial, economic, agricultural, or national defense crises; and (2) situations specific to Farmer Mac that necessitate modified liquidity reserves, other investments, or other measures for continued market access.

XI. Section 652.35—Eligible Non-Program Investments

The proposed rule provides Farmer Mac with a broad array of eligible high-quality, liquid investments while providing a regulatory framework that can readily accommodate innovations in financial products and analytical tools. Similar classes of investments, such as full faith and credit obligations of Federal and state governments and short-term money market instruments, are grouped together in a table. Our proposed rule provides definitions for many of those investments in § 652.5.

Farmer Mac may purchase and hold the eligible non-program investments listed in § 652.35 to maintain liquidity reserves, manage interest rate risk, and invest surplus short-term funds. Only investments that can be promptly converted into cash without significant loss are suitable for achieving these objectives. For this reason, the eligible investments listed in § 652.35 generally have short terms to maturity and high credit ratings from NRSROs. Furthermore, all eligible investments are either traded in active and universally recognized secondary markets or are valuable as collateral. To enhance safety and soundness, for many of the investments, we propose that they comprise certain maximum percentages of the total non-program investment portfolio. We propose these portfolio caps to limit credit risk exposures, to promote diversification, and to curtail investments in securities that may exhibit considerable price volatility, price risk, or liquidity risks. We also propose obligor limits to help reduce exposure to counterparty risk.

A. Obligations of the United States

We propose to authorize Farmer Mac to invest in Treasuries and other obligations (except mortgage securities) fully insured or guaranteed by the United States Government or a Government agency. Farmer Mac may, for example, hold deposits that are insured by the Federal Deposit Insurance Corporation or portions of loans that are guaranteed by the Small Business Administration.

B. Obligations of Government-Sponsored Agencies

We propose to authorize Farmer Mac to invest in Government-sponsored agency securities (except mortgage securities) and other obligations (except mortgage securities) fully insured or guaranteed by Government-sponsored agencies. However, because Farmer Mac is also a Government-sponsored agency, we believe counterparty exposures should be limited. Accordingly, we propose that Farmer Mac may not invest more than 100 percent of its total capital in any single Government-sponsored agency. This limitation does not apply to Farmer Mac's own securities (*e.g.*, agricultural mortgage-backed securities issued by Farmer Mac and retained in its portfolio).

C. Municipal Securities

We propose to authorize investment in the general obligations of state and municipal governments. We also propose to authorize investment in revenue bonds of state and municipal governments; however, we propose to limit revenue bonds to 15 percent or less of the total investment portfolio.

D. International and Multilateral Development Bank Obligations

We propose to authorize obligations of international and multilateral development banks, provided the United States is a voting shareholder. Examples of eligible banks include the International Bank for Reconstruction and Development (World Bank), Inter-American Development Bank, and the North American Development Bank. Other highly rated banks working in concert with the World Bank to promote development in various countries are also eligible, subject to the shareholder-voting requirement above.

E. Money Market Instruments

We propose to authorize investments in Federal funds, negotiable certificates of deposit, bankers acceptances, and prime commercial paper. These money market instruments have high credit quality and short maturities and can be sold on active secondary markets prior to maturity. Therefore, we place no portfolio limits on these investments.

We propose to authorize investments in noncallable term Federal funds and Eurodollar time deposits. However, we propose to limit these investments to 20 percent or less of the total investment portfolio and require maturities of 100 days or less to control concentration risk in these non-negotiable instruments.

We propose to authorize investments in Master Notes that have maturities of 270 days or less, but Master Notes cannot comprise more than 20 percent of the total investment portfolio.

We propose to authorize investments in repurchase agreements collateralized by eligible investments or marketable securities rated in the highest credit rating category by an NRSRO. We propose to require that repurchase agreements have maturities of 100 days or less. In addition, if the counterparty defaults, Farmer Mac must divest itself of noneligible securities as required under proposed § 652.45.

F. Mortgage Securities

We propose to authorize investments in mortgage securities that are issued or guaranteed by the United States or a Government agency. Farmer Mac must perform the stress testing described in proposed § 652.40 on these securities.

We propose to authorize investments in mortgage securities issued by a Government-sponsored agency. Farmer Mac must perform the stress testing described in proposed § 652.40 on these securities. In addition, the combined amount of the securities cannot comprise more than 50 percent of Farmer Mac's total investment portfolio. We propose to authorize investments in non-Government agency or Government-sponsored agency securities that comply with 15 U.S.C. 77(d)5 or 15 U.S.C. 78c(a)(41). Farmer Mac must perform the stress testing described in proposed § 652.40 on these securities. In addition, the securities must maintain the highest credit rating by an NRSRO. These types of mortgage securities are typically issued by private sector entities and are mostly comprised of securities that are collateralized by ''jumbo'' mortgages with principal amounts that exceed the maximum limits of Fannie Mae or Freddie Mac programs.[7] The securities must meet: (1) The requirements of 15 U.S.C. 77d(5) that pertain to mortgage securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933; or (2) the requirements of 15 U.S.C. 78c(a)(41) that pertain to residential mortgage-related securities within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. Generally speaking, this means the securities are secured by a first lien on a single parcel of real estate (residential or mixed residential and commercial properties) and originated by a qualifying financial institution. Additionally, we propose to require that these securities comprise 15 percent or less of Farmer Mac's total investment portfolio because they are not explicitly or implicitly guaranteed by the United States, typically require credit enhancements to receive a high NRSRO credit rating, and are dependent upon a myriad of factors (collateral, terms, and originators) to achieve satisfactory credit quality and liquidity.

We propose to authorize investment in commercial mortgage-backed securities (CMBS),[8] which are collateralized by mortgages on commercial properties, such as apartment buildings, shopping centers, office buildings, and hotels. CMBS typically have yield-maintenance provisions or other features that provide greater prepayment protection to investors than residential mortgage securities. However, the structures of CMBS can vary widely and the more unique structures may contain additional risks that need to be thoroughly evaluated. Investment managers must fully understand the cashflow characteristics and price sensitivity of CMBS investments. Nonetheless, with appropriate safety and soundness controls, CMBS may provide Farmer Mac with greater investment portfolio diversification. Therefore, we propose to authorize investments in the securities provided that: (1) The security has the highest NRSRO credit rating; (2) the security is backed by a minimum of 100 loans; (3) loans from a single mortgagor cannot exceed 5 percent of the mortgage security pool; and (4) the mortgage security pool is geographically diversified and complies with Farmer Mac board policy. In addition, Farmer Mac must perform the stress testing described in proposed § 652.40 on these securities.

G. Asset-Backed Securities (ABS)

We propose to allow investment in ABS secured by credit card receivables, automobile loans, home equity loans, wholesale automobile dealer loans, student loans, equipment loans, and manufactured housing loans. Under this proposal, securities collateralized by home equity loans qualify as ABS, not mortgage securities.

Investments in ABS must have the highest NRSRO credit rating and cannot comprise more than 20 percent of Farmer Mac's total investment portfolio. Furthermore, if a fixed or floating rate ABS is at its contractual interest rate cap, it must have a 5-year weighted average life (WAL),[9] or less.

H. Corporate Debt Securities

We propose to allow investment in corporate debt securities with maturities up to 5 years and one of the two highest NRSRO credit ratings. Additionally, the securities cannot be convertible to equity securities and cannot comprise more than 20 percent of Farmer Mac's total investment portfolio.

I. Diversified Investment Funds

We propose to authorize investment in shares of any investment company that is registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a–8, as long as the investment company's portfolio consists solely of investments that are authorized by § 652.40. Prior to investing in a particular investment company, Farmer Mac would be required to evaluate the investment company's risk and return objectives. As part of this evaluation, Farmer Mac should determine whether the investment company's use of derivatives is consistent with FCA guidance and Farmer Mac's investment policies. For instance, we would generally view it an unsafe and unsound practice for Farmer Mac to invest in an investment company that uses financial derivatives for speculative purposes rather than as a risk management tool. Farmer Mac must maintain appropriate documentation on each investment, including a prospectus and analysis, so its investment and selection process can be independently and objectively audited and examined. If Farmer Mac's shares in each investment company comprise 10 percent or less of Farmer Mac's total investment portfolio, no maximum portfolio limits are triggered. However, if Farmer Mac's shares in a particular investment company comprise more than 10 percent of Farmer Mac's total investment portfolio, then the pro rata interest in an asset class of security in an investment company must be added to the same asset class of Farmer Mac's other investments to determine investment portfolio limits. For example, if Farmer Mac has 12 percent of its total

[7] Other asset classes in the non-Government agency security class exist, including (1) Housing and Urban Development paper; (2) high loan-to-value loans; (3) Community Reinvestment Act loans; and (4) loans to borrowers with conforming loan balances with other features that prevent agency securitization, such as low documentation, self-employment, and unique property features.

[8] ''CMBS'' refers only to securities backed by mortgages on commercial real estate. This term does not cover Fannie Mae mortgage securities on mixed residential and commercial properties or mortgage securities on commercial real estate that the Small Business Administration issues or guarantees.

[9] Generally, the WAL is the average amount of time required for each dollar of invested principal to be repaid, based on the cashflow structure of an ABS and an assumed level of prepayments. Nearly all ABS are priced and traded on the basis of their WAL, not their final maturity dates.

investment portfolio (*i.e.*, more than 10 percent) in Diversified Investment Company Alpha (Alpha), then Farmer Mac would have to determine the composition of investments in Alpha's portfolio. The pro rata dollar amount of corporate debt securities (one example of the many asset classes) in Alpha would have to be added to Farmer Mac's corporate debt securities, and that combined amount would have to be 20 percent or less of Farmer Mac's total investment portfolio. Again, corporate debt securities are used only as an example. Any asset class in Farmer Mac's portfolio with an investment portfolio limit would have to be computed the same way.

J. Rating of Foreign Countries

We want to ensure that investments from outside the United States are of minimal risk to Farmer Mac, a GSE. For that reason, at § 652.35(b) we propose that whenever the obligor or issuer of an eligible investment is located outside the United States, the host country must maintain the highest sovereign rating for political and economic stability by an NRSRO.

K. Marketable Investments

Marketability without significant loss is one of the key components of liquidity. Proposed § 652.40(c) requires that all eligible investments, except money market instruments, must be readily marketable. We note that an eligible investment is marketable if Farmer Mac can sell it promptly at a price that closely reflects its fair value in an active and universally recognized secondary market. We also propose to require Farmer Mac to evaluate and document the size and liquidity of the secondary market for the investment at time of purchase.

L. Obligor Limits

Previously, we discussed the risks of investment concentrations and the benefits of a well diversified and high quality investment portfolio. In proposed § 652.35(d)(1), we prohibit Farmer Mac from investing more than 20 percent of its total capital in eligible investments issued by any single entity, issuer, or obligor. However, the obligor limit would not apply to Government agencies or Government-sponsored agencies. Instead, we propose that Farmer Mac may not invest more than 100 percent of its total capital in any one Government-sponsored agency. There are no obligor limits for Government agencies.

Also, at proposed § 652.35(d)(2), we require Farmer Mac to count securities that it holds through an investment company towards the obligor limits of this section unless the investment company's holdings of the security of any one issuer do not exceed 5 percent of the investment company's total portfolio.

M. Investments in Preferred Stock of Farm Credit System Institutions and Other Investments Approved by FCA

With our prior written approval, Farmer Mac may purchase non-program investments in preferred stock issued by Farm Credit System (System) institutions and in other non-program investments that are not expressly authorized by FCA regulations.

Proposed § 652.35(e) requires that Farmer Mac request our approval to invest in preferred stock issued by System institutions. We propose this requirement to enhance our oversight of the flow of capital and investments between System institutions and Farmer Mac.

Farmer Mac presently owns preferred stock in two System institutions. An increasing number of System institutions are issuing preferred stock for a variety of valid reasons, including meeting long-term capital objectives and supporting growth. However, as the safety and soundness regulator for System banks and associations and Farmer Mac, we have concerns that continued and expanded preferred stock investments could potentially reduce the quality of System institution and Farmer Mac capital. Concentration and systemic risks concerns arise from Farmer Mac's ability to invest in unlimited amounts of preferred stock issued by System institutions, and potentially in the future, vice-versa.[10]

As we noted previously, for any investment that does not fit wholly within one of the investment categories that we describe or provide for, we reserve the authority to determine an appropriate discount as the investment is considered in meeting the minimum daily liquidity reserve requirement of proposed § 652.20(a).

Similar to our rules for Farm Credit banks and associations, proposed § 652.35(f) requires that Farmer Mac receive FCA approval for any investments that are not specifically included in this section as eligible non-program investments.

Farmer Mac's request for FCA approval to invest in the preferred stock of System institutions or other non-program investments must explain the risk characteristics of the investment and the purpose and objective for making the investment.

[10] On April 22, 2004, the FCA Board adopted a provision, in another proposed rule, that would require System institutions to obtain FCA approval when investing in Farmer Mac preferred stock.

XII. Stress Tests for Mortgage Securities

A. Overview/Reason for Proposal

For several reasons, stress testing is an essential risk management practice for Farmer Mac to perform on mortgage securities in its investment portfolio. Stress testing is essential when the cashflows from investments or assets of financial institutions change in response to fluctuations in market interest rates. For example, although credit risk on highly rated mortgage securities is minimal, mortgage securities may expose investors to significant interest rate risk. Since borrowers may prepay their mortgages, investors may not receive the expected cashflows and returns on these securities. Prepayments on these securities are affected by the spread between market rates and the actual interest rates of mortgages in the pool, the path of interest rates, and the unpaid balances and remaining terms to maturity on the mortgage collateral. The price behavior of a mortgage security also depends on whether the security was purchased at a premium or at a discount.

To better control and manage these factors, we propose that Farmer Mac employ appropriate analytical techniques and methodologies to measure and evaluate interest rate risk inherent in mortgage securities. More specifically, prudent risk management practices require Farmer Mac to examine the performance of each mortgage security under a wide array of possible interest rate scenarios.

We propose in § 652.40 to allow Farmer Mac to accomplish this performance analysis by developing stress tests that measure the price sensitivity of mortgage instruments over different interest rate/yield curve scenarios.

The methodology that Farmer Mac uses to analyze mortgage securities must be appropriate for the complexity of the instrument's structure and cashflows. Prior to purchase and each quarter thereafter, Farmer Mac must use stress tests to determine that the risk in the mortgage securities is within the risk limits of Farmer Mac's board investment policies. The stress tests must be able to determine at the time of purchase and each subsequent quarter that the mortgage security does not expose Farmer Mac's capital or earnings to excessive risks.

B. Other Considerations and Requirements of Stress Testing

Farmer Mac may consider the effect of a derivative hedge transaction on the price sensitivity of instruments as part of its evaluation of whether a particular mortgage security is a suitable investment.

Under proposed § 652.40(b), we require that Farmer Mac's management:

(1) Rely on verifiable information to support all its assumptions, including prepayment and interest rate volatility assumptions.

(2) Document the basis for all assumptions that are used to evaluate the security and its underlying mortgages.

(3) Document all subsequent changes in Farmer Mac's assumptions.

(4) Report to the Corporation's board of directors in accordance with § 652.10(g) if at any time after purchase the mortgage security no longer complies with the requirements of proposed § 652.40.

We believe the proposals under § 652.40 allow Farmer Mac the latitude to consider a number of relevant factors when evaluating a mortgage security's suitability while promoting overall safety and soundness by not exposing Farmer Mac's capital and earnings to excessive risk.

XIII. Divestiture of Ineligible Non-Program Investments

In § 652.45 we propose that an ineligible non-program investment or security must be divested within 6 months, unless FCA approves, in writing, a plan that authorizes the investment or its divesture over a longer period of time. An acceptable plan generally requires Farmer Mac to divest of the ineligible investment or security as quickly as possible without substantial financial loss. We propose that until the ineligible investment or security is actually divested of, Farmer Mac's investment manager must report at least quarterly to Farmer Mac's board of directors and to FCA's Office of Secondary Market Oversight about the status and performance of the ineligible instrument, the reason why it remains ineligible, and the investment manager's progress in divesting of the investment or security.

XIV. Better Organizing Rules That Apply to Farmer Mac

We propose moving some existing regulation sections that pertain specifically to Farmer Mac to a centralized location in our regulations so they can be more easily located and used. The following table provides details of our proposal and shows where this proposed rule would be located:

PROPOSED ORGANIZATION OF FARMER MAC RULES

Proposed new part	Proposed new part name	Proposed new subpart	Proposed new subpart name	Proposed new sections	From
650	Federal Agricultural Mortgage Corporation—General Provisions.		Receiver and Conservator	§§ 650.1–650.80	Existing Part 650, Subpart C, §§ 650.50 to 650.68
651	Federal Agricultural Mortgage Corporation—Governance.		Conflicts of Interest	§§ 651.1–651.4	Existing Part 650, Subpart A, §§ 650.1 to 650.4
652	Federal Agricultural Mortgage Corporation—Funding and Fiscal Affairs.	A	Investment Management	§§ 652.1–652.45	Newly proposed in this rule.
652	Federal Agricultural Mortgage Corporation—Funding and Fiscal Affairs.	B	Risk-Based Capital	§§ 652.50–652.105	Existing Part 650, Subpart B, §§ 650.20 to 650.31
653	Reserved				
654	Reserved				
655	Federal Agricultural Mortgage Corporation—Disclosure and Reporting Requirements.	A	Annual Report of Condition of the Federal Agricultural Mortgage Corporation.	§ 655.1	Existing Part 620, Subpart G, § 620.40
655	Federal Agricultural Mortgage Corporation—Disclosure and Reporting Requirements.	B	Accounting and Reporting Requirements.	§ 655.50	Existing Part 621, Subpart E, § 621.20

XV. Regulatory Flexibility Act

Farmer Mac has assets and annual income in excess of the amounts that would qualify it as a small entity. Therefore, Farmer Mac is not a ''small entity'' as defined in the Regulatory Flexibility Act. Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 620

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

12 CFR Part 621

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

12 CFR Part 650

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

12 CFR Part 651

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

12 CFR Part 652

Agriculture, Banks, banking, Rural areas, investments, capital.

12 CFR Part 655

Accounting, Agriculture, Banks, banking, Accounting and reporting requirements, Disclosure and reporting requirements, Rural areas.

For the reasons stated in the preamble, we propose amending parts 620, 621, and 650 of chapter VI, adding parts 651, 652, and 655 to chapter VI, and reserving parts 653 and 654 of chapter VI, title 12 of the Code of Federal Regulations to read as follows:

PART 655—FEDERAL AGRICULTURAL MORTGAGE CORPORATION DISCLOSURE AND REPORTING REQUIREMENTS

1. Add the heading for a new part 655 to read as set forth above.

2. Add the authority citation for new part 655 to read as follows:

Authority: Sec. 8.11 of the Farm Credit Act (12 U.S.C. 2279aa–11).

PART 620—DISCLOSURE TO SHAREHOLDERS

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

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

Subpart G—Annual Report of Condition of the Federal Agricultural Mortgage Corporation

§ 620.40 [Redesignated as § 655.1]

4. Redesignate subpart G of part 620, consisting of § 620.40 as subpart A of new part 655, consisting of § 655.1.

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

5. The authority citation for part 621 continues to read as follows:

Authority: Secs. 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2279aa–11).

Subpart E—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation

§ 621.20 [Redesignated as § 655.50]

6. Redesignate subpart E of part 620, consisting of § 621.20 as subpart B of new part 655, consisting of § 655.50.

PART 651—FEDERAL AGRICULTURAL MORTGAGE CORPORATION GOVERNANCE

7. Add the heading for a new part 651 to read as set forth above.

8. The authority citation for new part 651 is added to read as follows:

Authority: Secs. 4.12, 5.9, 5.17, 8.11, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

9. Add a new part 652 to read as follows:

PART 652—FEDERAL AGRICULTURAL MORTGAGE CORPORATION FUNDING AND FISCAL AFFAIRS

Subpart A—Investment Management

Sec.
652.1 Purpose.
652.5 Definitions.
652.10 Investment management and requirements.
652.15 Interest rate risk management and requirements.
652.20 Liquidity reserve management and requirements.
652.25 Non-program investment purposes and limitations.
652.30 Temporary regulatory waivers or modifications for extraordinary situations.
652.35 Eligible non-program investments.
652.40 Stress tests for mortgage securities.
652.45 Divestiture of ineligible non-program investments.

Subpart B—Risk-Based Capital Requirements [Reserved]

Authority: Secs. 4.12, 5.9, 5.17, 8.11, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

Subpart A—Investment Management

§ 652.1 Purpose.

This subpart contains the Farm Credit Administration's (FCA) rules for governing liquidity and non-program investments held by the Federal Agricultural Mortgage Corporation (Farmer Mac). The purpose of this subpart is to ensure safety and soundness, continuity of funding, and appropriate use of non-program investments considering Farmer Mac's special status as a Government-sponsored enterprise (GSE). The subpart contains requirements for Farmer Mac's board of directors to adopt policies covering such areas as investment management, interest rate risk, and liquidity reserves. The subpart also requires Farmer Mac to comply with various reporting requirements.

§ 652.5 Definitions.

For purposes of this subpart, the following definitions will apply:

Affiliate means any entity established under authority granted to the Corporation under section 8.3(b)(13) of the Farm Credit Act of 1971, as amended.

Asset-backed securities (ABS) means investment securities that provide for ownership of a fractional undivided interest or collateral interests in specific assets of a trust that are sold and traded in the capital markets. For the purposes of this subpart, ABS exclude mortgage securities that are defined below.

Eurodollar time deposit means a non-negotiable deposit denominated in United States dollars and issued by an overseas branch of a United States bank or by a foreign bank outside the United States.

Farmer Mac, Corporation, you, and your means the Federal Agricultural Mortgage Corporation and its affiliates.

FCA, our, or we means the Farm Credit Administration.

Final maturity means the last date on which the remaining principal amount of a security is due and payable (matures) to the registered owner. It does not mean the call date, the expected average life, the duration, or the weighted average maturity.

General obligations of a state or political subdivision means:

(1) The full faith and credit obligations of a state, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a political subdivision thereof that possesses general powers of taxation, including property taxation; or

(2) An obligation that is unconditionally guaranteed by an obligor possessing general powers of taxation, including property taxation.

Government agency means an agency or instrumentality of the United States Government whose obligations *are* fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the United States Government.

Government-sponsored agency means an agency or instrumentality chartered or established to serve public purposes specified by the United States Congress but whose obligations *are not* explicitly guaranteed by the full faith and credit of the United States Government.

Liquid investments are assets that can be promptly converted into cash without significant loss to the investor. A security is liquid if the spread between its bid price and ask price is narrow and a reasonable amount can be sold at those prices promptly.

Long-Term Standby Purchase Commitment (LTSPC) is a commitment by Farmer Mac to purchase specified eligible loans on one or more undetermined future dates. In consideration for Farmer Mac's assumption of the credit risk on the specified loans underlying an LTSPC, Farmer Mac receives an annual commitment fee on the outstanding balance of those loans in monthly installments based on the outstanding balance of those loans.

Market risk means the risk to your financial condition because the value of your holdings may decline if interest rates or market prices change. Exposure to market risk is measured by assessing the effect of changing rates and prices on either the earnings or economic value of an individual instrument, a portfolio, or the entire Corporation.

Maturing obligations means maturing debt and other obligations that may be expected, such as buyouts of long-term standby purchase commitments or repurchases of agricultural mortgage securities.

Mortgage securities means securities that are either:

(1) Pass-through securities or participation certificates that represent ownership of a fractional undivided interest in a specified pool of residential (excluding home equity loans), multifamily or commercial mortgages, or

(2) A multiclass security (including collateralized mortgage obligations and real estate mortgage investment conduits) that is backed by a pool of residential, multifamily or commercial real estate mortgages, pass-through mortgage securities, or other multiclass mortgage securities.

(3) This definition does not include agricultural mortgage-backed securities guaranteed by Farmer Mac itself.

Nationally recognized statistical rating organization (NRSRO) means a rating organization that the Securities and Exchange Commission recognizes as an NRSRO.

Non-program investments means investments other than those in:

(1) ''Qualified loans'' as defined in section 8.0(9) of the Farm Credit Act of 1971, as amended; or

(2) Securities collateralized by ''qualified loans.''

Revenue bond means an obligation of a municipal government that finances a specific project or enterprise, but it is not a full faith and credit obligation. The obligor pays a portion of the revenue generated by the project or enterprise to the bondholders.

Total capital means total capital in accordance with generally accepted accounting principles.

Weighted average life (WAL) means the average time until the investor receives the principal on a security, weighted by the size of each principal payment and calculated under specified prepayment assumptions.

§ 652.10 Investment management and requirements.

(a) *Investment policies—board responsibilities.* Your board of directors must adopt written policies for managing your non-program investment activities. Your board must also ensure that management complies with these policies and that appropriate internal controls are in place to prevent loss. At least annually, your board, or a designated subcommittee of the board, must review these investment policies. Any changes to the policies must be adopted by the board. You must report any changes to these policies to FCA within 10 days of adoption.

(b) *Investment policies—general requirements.* Your investment policies must address the purposes and objectives of investments, risk tolerance, delegations of authority, exception parameters, securities valuation, internal controls, and reporting requirements.

Furthermore, the policies must address the means for reporting, and approvals needed for, exceptions to established policies. Investment policies must be sufficiently detailed, consistent with, and appropriate for the amounts, types, and risk characteristics of your investments.

(c) *Investment policies—risk tolerance.* Your investment policies must establish risk limits and diversification requirements for the various classes of eligible investments and for the entire investment portfolio. These policies must ensure that you maintain prudent diversification of your investment portfolio. Risk limits must be based on the Corporation's objectives, capital position, and risk tolerance capabilities. Your policies must identify the types and quantity of investments that you will hold to achieve your objectives and control credit, market, liquidity, and operational risks. Your policies must establish risk limits for the following four types of risk:

(1) *Credit risk.* Your investment policies must establish:

(i) Credit quality standards, limits on counterparty risk, and risk diversification standards that limit concentrations based on a single or related counterparty(ies), a geographical area, industries or obligations with similar characteristics.

(ii) Criteria for selecting brokers, dealers, and investment bankers (collectively, securities firms). You must buy and sell eligible investments with more than one securities firm. As part of your annual review of your investment policies, your board of directors, or a designated subcommittee of the board, must review the criteria for selecting securities firms. Any changes to the criteria must be approved by the board. Also, as part of your annual review, the board, or a designated subcommittee of the board, must review existing relationships with securities firms. Any changes to securities firms must be approved by the board.

(iii) Collateral margin requirements on repurchase agreements. You must regularly mark the collateral to market and ensure appropriate controls are maintained over collateral held.

(2) *Market risk.* Your investment policies must set market risk limits for specific types of investments, and for the investment portfolio or for Farmer Mac generally. Your board of directors must establish market risk limits in accordance with these regulations (including, but not limited to, §§ 652.15 and 652.40) and our other policies and guidance. You must evaluate how individual instruments and the investment portfolio as a whole affect the Corporation's overall interest rate risk profile. You must document in the Corporation's records or minutes any analyses used in formulating your policies or amendments to the policies.

(3) *Liquidity risk.* Your investment policies must describe the liquidity characteristics of eligible investments that you will hold to meet your liquidity needs and the Corporation's objectives.

(4) *Operational risk.* Investment policies must address operational risks, including delegations of authority and internal controls in accordance with paragraphs (d) and (e) of this section.

(d) *Delegation of authority.* All delegations of authority to specified personnel or committees must state the extent of management's authority and responsibilities for investments.

(e) *Internal controls.* You must:

(1) Establish appropriate internal controls to detect and prevent loss, fraud, embezzlement, conflicts of interest, and unauthorized investments.

(2) Establish and maintain a separation of duties and supervision between personnel who execute investment transactions and personnel who approve, revaluate, and oversee investments.

(3) Maintain records and management information systems that are appropriate for the level and complexity of your investment activities.

(f) *Securities valuations.*

(1) Before you purchase a security, you must evaluate its credit quality and price sensitivity to changes in market interest rates. You must also document the size and liquidity of the secondary market for the security at the time of purchase. In addition, you must also verify the value of a security that you plan to purchase, other than a new issue, with a source that is independent of the broker, dealer, counterparty, or other intermediary to the transaction.

Your investment policies must fully address the extent of the prepurchase analysis that management needs to perform for various classes of instruments. For example, you should specifically describe the stress tests in § 652.40 that must be performed on various types of mortgage securities.

(2) At least monthly, you must determine the fair market value of each security in your portfolio and the fair market value of your whole investment portfolio. In doing so you must also evaluate the credit quality and price sensitivity to the change in market interest rates of each security in your portfolio and your whole investment portfolio.

(3) Before you sell a security, you must verify its value with a source that is independent of the broker, dealer, counterparty, or other intermediary to the transaction.

(g) *Reports to the board of directors.* At least quarterly, Farmer Mac's management must report to the Corporation's board of directors, or a designated subcommittee of the board:

(1) On the performance and risk of each class of investments and the entire investment portfolio;

(2) All gains and losses that you incur during the quarter on individual securities that you sold before maturity and why they were liquidated;

(3) Potential risk exposure to changes in market interest rates and any other factors that may affect the value of your investment holdings;

(4) How investments affect your overall financial condition;

(5) Whether the performance of the investment portfolio effectively achieves the board's objectives; and

(6) Any deviations from the board's policies. These deviations must be formally approved by the board of directors.

§ 652.15 Interest rate risk management and requirements.

(a) The board of directors of Farmer Mac must provide effective oversight (direction, controls, and supervision) to the interest rate risk management program and must be knowledgeable of the nature and level of interest rate risk taken by Farmer Mac.

(b) The management of Farmer Mac must ensure that interest rate risk is properly managed on both a long-range and a day-to-day basis.

(c) The board of directors of Farmer Mac must adopt an interest rate risk management policy that establishes appropriate interest rate risk exposure limits based on the Corporation's risk-bearing capacity and reporting requirements in accordance with paragraphs (b) and (c) of this section. At least annually, the board of directors, or a designated subcommittee of the board, must review the policy. Any changes to the policy must be approved by the board of directors. You must report any changes to the policy to FCA within 10 days of adoption.

(d) The interest rate risk management policy must, at a minimum:

(1) Address the purpose and objectives of interest rate risk management;

(2) Identify and analyze the causes of interest rate risks within Farmer Mac's existing balance sheet structure;

(3) Require Farmer Mac to measure the potential impact of these risks on projected earnings and market values by conducting interest rate shock tests and simulations of multiple economic scenarios at least quarterly;

(4) Describe and implement actions needed to obtain Farmer Mac's desired risk management objectives;

(5) Document the objectives that Farmer Mac is attempting to achieve by purchasing eligible investments that are authorized by § 652.35 of this subpart;

(6) Require Farmer Mac to evaluate and document, at least quarterly, whether these investments have actually met the objectives stated under paragraph (d)(4) of this section;

(7) Identify exception parameters and post approvals needed for any exceptions to the policy's requirements;

(8) Describe delegations of authority; and

(9) Describe reporting requirements, including exceptions to policy limits.

(e) At least quarterly, Farmer Mac's management must report to the Corporation's board of directors, or a designated subcommittee of the board, describing the nature and level of interest rate risk exposure. Any deviations from the board's policy on interest rate risk must be specifically identified in the report and approved by the board, or a designated subcommittee of the board.

§ 652.20 Liquidity reserve management and requirements.

(a) *Minimum daily liquidity reserve requirement.* Within 24 months of this rule becoming effective, and thereafter, Farmer Mac must hold cash, eligible non-program investments under § 652.35 of this subpart, and/or securities backed by portions of Farmer Mac program assets (loans) that are guaranteed by the United States Department of Agriculture as described in section 8.0(9)(B) of the Act (in accordance with the requirements of paragraphs (b) and (c) of this section), to maintain sufficient daily liquidity to fund a minimum of 60 days of maturing obligations, interest due, and operating expenses. You must maintain sufficient documentation to demonstrate that you meet this minimum liquidity reserve requirement on a daily basis.

(b) *Free of lien.* All investments held for the purpose of meeting the liquidity reserve requirement of this section must be free of liens or other encumbrances.

(c) *Discounts.* The amount that may be counted to meet the minimum daily liquidity reserve requirement is as follows:

(1) For cash and overnight investments, multiply the cash and investments by 100 percent;

(2) For money market instruments and floating rate debt securities, multiply the instruments and securities by 95 percent of market value;

(3) For diversified investment funds, multiply the individual securities in the funds by the discounts that would apply to the securities if held separately;

(4) For fixed rate debt securities, multiply the securities by 90 percent of market value;

(5) For securities backed by portions of Farmer Mac program assets (loans) guaranteed by the United States Department of Agriculture as described in section 8.0(9)(B) of the Act, multiply the securities by 50 percent; and

(6) We reserve the authority to modify or determine the appropriate discount for any investments used to meet the minimum daily liquidity reserve requirement.

(d) *Liquidity reserve policy—board responsibilities.* Farmer Mac's board of directors must adopt a liquidity reserve policy. The board must also ensure that management uses adequate internal controls to ensure compliance with the liquidity reserve policy standards, limitations, and reporting requirements established pursuant to this paragraph and to paragraphs (e), (f), and (g) of this section. At least annually, the board of directors or a designated subcommittee of the board must review and validate the liquidity policy's adequacy. The board of directors must approve any changes to the policy. You must provide a copy of the revised policy to FCA within 10 days of adoption.

(e) *Liquidity reserve policy—content.* Your liquidity reserve policy must contain at a minimum the following:

(1) The purpose and objectives of liquidity reserves;

(2) A listing of specific assets, debt, and arrangements that can be used to meet liquidity objectives;

(3) Diversification requirements of your liquidity reserve portfolio;

(4) Maturity limits and credit quality standards for non-program investments

used to meet the minimum daily liquidity reserve requirement of paragraph (a) of this section;

(5) The minimum and target (or optimum) amounts of liquidity that the board believes are appropriate for Farmer Mac;

(6) The maximum amount of non-program investments that can be held for meeting Farmer Mac's liquidity needs, as expressed as a percentage of program assets and off-balance sheet obligations;

(7) Exception parameters and post approvals needed;

(8) Delegations of authority; and

(9) Reporting requirements.

(f) *Liquidity reserve reporting—periodic reporting requirements.* At least quarterly, Farmer Mac's management must report to the Corporation's board of directors or a designated subcommittee of the board describing, at a minimum, liquidity reserve compliance with the Corporation's policy and this section. Any deviations from the board's liquidity reserve policy (other than requirements specified in § 652.20(e)(5)) must be specifically identified in the report and approved by the board of directors.

(g) *Liquidity reserve reporting—special reporting requirements.* Farmer Mac's management must immediately report to its board of directors any noncompliance with board policy requirements that are specified in § 652.20(e)(5). The Farmer Mac board must report to FCA within 3 days of receiving a report of any noncompliance with board policy requirements that are specified in § 652.20(e)(5). Farmer Mac must immediately report to the FCA when the minimum daily liquidity reserve requirement at § 652.20(a) is breached.

§ 652.25 Non-program investment purposes and limitations.

(a) Farmer Mac is authorized to hold eligible non-program investments listed under § 652.35 for the purposes of complying with the interest rate risk requirements of § 652.15, complying with the liquidity reserve requirements of § 652.20, and managing surplus short-term funds.

(b) Non-program investments cannot exceed the greater of $1.5 billion or the aggregate of the following:

(1) Thirty (30) percent of total assets; and

(2) A reasonable estimate of off-balance sheet loans covered by guarantees or commitments that Farmer Mac likely will be required to purchase during the upcoming 12-month period, not to exceed 15 percent of total off-balance sheet obligations.

§ 652.30 Temporary regulatory waivers or modifications for extraordinary situations.

Whenever the FCA determines that an extraordinary situation exists that necessitates a temporary regulatory waiver or modification, the FCA may, in its sole discretion:

(a) Modify or waive the minimum daily liquidity reserve requirement in § 652.20 of this subpart; and/or

(b) Increase the amount of eligible investments that you are authorized to hold pursuant to § 652.25 of this subpart.

§ 652.35 Eligible non-program investments.

(a) You may hold only the types, quantities, and qualities of non-program investments listed in the following Non-Program Investment Eligibility Criteria Table. These investments must be denominated in United States dollars.

BILLING CODE 6705–01–P

Non-Program Investment Eligibility Criteria Table

ASSET CLASS	FINAL MATURITY LIMIT	NRSRO ISSUE OR ISSUER CREDIT RATING REQUIREMENT	OTHER REQUIREMENTS	MAXIMUM PERCENTAGE OF TOTAL NON-PROGRAM INVESTMENT PORTFOLIO
(1) Obligations of the United States • Treasuries • Other obligations (except mortgage securities) fully insured or guaranteed by the United States Government or a Government agency.	None	NA	None	None
(2) Obligations of Government-sponsored agencies • Government-sponsored agency securities (except mortgage securities). • Other obligations (except mortgage securities) fully insured or guaranteed by Government-sponsored agencies.	None	NA	None	None
(3) Municipal Securities				
• General obligations	10 years	One of the two highest.	None	None
• Revenue bonds	5 years for fixed rate bonds and 10 years for index/ floating rate bonds	Highest	None	15%
(4) International and Multilateral Development Bank Obligations	None	None	The United States must be a voting shareholder.	None
(5) Money Market Instruments				
• Federal funds	1 day or continuously callable up to 100 days	One of the two highest short-term.	None	None
• Negotiable certificates of deposit	1 year	One of the two highest short-term.	None	None
• Bankers acceptances	None	One of the two highest short-term.	Issued by a depository institution.	None
• Prime commercial paper	270 days	Highest short-term.	None	None
• Non-callable term Federal funds and Eurodollar time deposits.	100 days	Highest short-term.	None	20%
• Master notes	270 days	Highest short-term.	None	20%
• Repurchase agreements collateralized by eligible investments or marketable securities rated in the highest credit rating category by an NRSRO.	100 days	NA	If counterparty defaults, you must divest non-eligible securities as required under § 652.45.	None

Note: You must also comply with requirements of paragraphs (b), (c), and (d) of this section, and § 651.40 when applicable. "NA" means not applicable.

ASSET CLASS	FINAL MATURITY LIMIT	NRSRO ISSUE OR ISSUER CREDIT RATING REQUIREMENT	OTHER REQUIREMENTS	MAXIMUM PERCENTAGE OF TOTAL NON-PROGRAM INVESTMENT PORTFOLIO
(6) Mortgage Securities				
• Issued or guaranteed by the United States or a Government agency.	None	NA	Stress testing under § 652.40.	None
• Government-sponsored agency mortgage securities.	None	One of the two highest.	Stress testing under § 652.40.	50%
• Non-Government agency or Government-sponsored agency securities that comply with 15 U.S.C. 77d(5) or 15 U.S.C. 78c(a)(41).	None	Highest	Stress testing under § 652.40.	15% combined
• Commercial mortgage-backed securities.	None	Highest	• Security must be backed by a minimum of 100 loans. • Loans from a single mortgagor cannot exceed 5% of the pool. • Pool must be geographically diversified pursuant to the board's policy. • Stress testing under § 652.40.	
(7) Asset-Backed Securities secured by: • Credit card receivables • Automobile loans • Home equity loans • Wholesale automobile dealer loans • Student loans • Equipment loans • Manufactured housing loans	None	Highest	Maximum of 5-year WAL for fixed rate or floating rate ABS at their contractual interest rate caps.	20% combined
(8) Corporate Debt Securities	5 years	One of the highest two.	Cannot be convertible to equity securities.	20%
(9) Diversified Investment Funds Shares of an investment company registered under section 8 of the Investment Company Act of 1940.	NA	NA	The portfolio of the investment company must consist solely of eligible investments authorized by this section. The investment company's risk and return objectives and use of derivatives must be consistent with FCA guidance and your investment policies.	None, if your shares in each investment company comprise less than 10% of your portfolio. Otherwise counts toward limit for each type of investment.

Note: You must also comply with requirements of paragraphs (b), (c), and (d) of this section, and § 651.40 when applicable. "NA" means not applicable.

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(b) *Rating of foreign countries.* Whenever the obligor or issuer of an eligible investment is located outside the United States, the host country must maintain the highest sovereign rating for political and economic stability by an NRSRO.

(c) *Marketable investments.* All eligible investments, except money market instruments, must be readily marketable. An eligible investment is marketable if you can sell it promptly at a price that closely reflects its fair value in an active and universally recognized secondary market. You must evaluate and document the size and liquidity of the secondary market for the investment at time of purchase.

(d) *Obligor limits.* (1) You may not invest more than 20 percent of your total capital in eligible investments issued by any single entity, issuer or obligor. This obligor limit does not apply to Government-sponsored agencies or Government agencies. You may not invest more than 100 percent of your total capital in any one Government-sponsored agency. There are no obligor limits for Government agencies.

(2) *Obligor limits for your holdings in an investment company.* You must count securities that you hold through an investment company towards the obligor limits of this section unless the investment company's holdings of the security of any one issuer do not exceed 5 percent of the investment company's total portfolio.

(e) *Preferred stock and other investments approved by the FCA.* (1) You may purchase non-program investments in preferred stock issued by other Farm Credit System institutions only with our written prior approval. You may also purchase non-program investments other than those listed in the Non-Program Investment Eligibility Criteria Table at paragraph (a) of this section only with our written prior approval.

(2) Your request for our approval must explain the risk characteristics of the investment and your purpose and objectives for making the investment.

(3) We reserve the authority to determine an appropriate discount for any investment that does not fit wholly within one of the investment categories that we describe or provide for as the investment is considered in meeting the minimum daily liquidity reserve requirement of § 652.20(a).

§ 652.40 Stress tests for mortgage securities.

(a) You must perform stress tests to determine how interest rate changes will affect the cashflow and price of each mortgage security that you purchase and hold, except for adjustable rate mortgage securities that reprice at intervals of 12 months or less and are tied to an index. You must also use stress tests to gauge how interest rate fluctuations on mortgage securities affect your capital and earnings. The stress tests must be able to measure the price sensitivity of mortgage instruments over different interest rate/yield curve scenarios and be consistent with any asset liability management and interest rate risk policies. The methodology that you use to analyze mortgage securities must be appropriate for the complexity of the instrument's structure and cashflows. Prior to purchase and each quarter thereafter, you must use the stress tests to determine that the risk in the mortgage securities is within the risk limits of your board's investment policies. The stress tests must enable you to determine at the time of purchase and each subsequent quarter that the mortgage security does not expose your capital or earnings to excessive risks.

(b) You must rely on verifiable information to support all your assumptions, including prepayment and interest rate volatility assumptions. You must document the basis for all assumptions that you use to evaluate the security and its underlying mortgages. You must also document all subsequent changes in your assumptions. If at any time after purchase, a mortgage security no longer complies with requirements in this section, Farmer Mac's management must report to the Corporation's board of directors in accordance with § 652.10(g).

§ 652.45 Divestiture of ineligible non-program investments.

(a) *Divestiture requirements.* You must divest of an ineligible non-program investment or security within 6 months unless we approve, in writing, a plan that authorizes you to divest the instrument over a longer period of time. An acceptable plan generally would require you to divest of the ineligible investment or security as quickly as possible without substantial financial loss.

(b) *Reporting requirements.* Until you divest of the ineligible non-program investment or security, the manager of your investment portfolio must report at least quarterly to your board of directors and to FCA's Office of Secondary Market Oversight about the status and performance of the ineligible instrument, the reasons why it remains ineligible, and the manager's progress in divesting of the investment.

Subpart B—Risk-Based Capital Requirements [Reserved]

PART 650—FEDERAL AGRICULTURAL MORTGAGE CORPORATION GENERAL PROVISIONS

10. The authority citation for part 650 continues to read as follows:

Authority: Secs. 4.12, 5.9, 5.17, 8.11, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

11. Amend part 650 by revising the part heading to read as set forth above.

§§ 650.1 through 650.68 [Redesignated]

12. Redesignate §§ 650.1 through 650.68 as follows:

Old section	New section
650.1, subpart	A 651.1.
650.2, subpart A	651.2.
650.3, subpart A	651.3.
650.4, subpart A	651.4.
650.20, subpart B	652.50, subpart B.
650.21, subpart B	652.55, subpart B.
650.22, subpart B	652.60, subpart B.
650.23, subpart B	652.65, subpart B.
650.24, subpart B	652.70, subpart B.
650.25, subpart B	652.75, subpart B.
650.26, subpart B	652.80, subpart B.
650.27, subpart B	652.85, subpart B.

Old section	New section
650.28, subpart B	652.90, subpart B.
650.29, subpart B	652.95, subpart B.
650.30, subpart B	652.100, subpart B.
650.31, subpart B	652.105, subpart B.
Appendix A to Subpart B of Part 650	Appendix A to Subpart B of Part 652.
650.50, subpart C	650.1.
650.51, subpart C	650.5.
650.52, subpart C	650.10.
650.55, subpart C	650.15.
650.55, subpart C	650.15.
650.56, subpart C	650.20.
650.57, subpart C	650.25.
650.58, subpart C	650.30.
650.59, subpart C	650.35.
650.60, subpart C	650.40.
650.61, subpart C	650.45.
650.62, subpart C	650.50.
650.63, subpart C	650.55.
650.64, subpart C	650.60.
650.65, subpart C	650.65.
650.66, subpart C	650.70.
650.67, subpart C	650.75.
650.68, subpart C	650.80.

Subpart A—General Provisions

§ 650.75 [Amended]

13. Amend newly designated § 650.75 by removing the reference ''§ 620.40'' and adding in its place, the reference ''§ 655.1'' in paragraph (c).

PART 653—[ADDED AND RESERVED]

PART 654—[ADDED AND RESERVED]

14. Add and reserve parts 653 and 654.

Dated: May 27, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–12998 Filed 6–10–04; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–178–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3 series airplanes. This proposal would require testing for stiffness of the aft pintle pin bushing of the main landing gear (MLG), and inspecting and measuring the aft pintle pin bushings of the MLG for damage, and for out-of-limit dimensions of the bushing bore. This proposal would also require corrective action if necessary. This action is necessary to detect and correct corrosion and deterioration of the aft pintle pin bushings of the MLG. Corrosion and deterioration of the bushings, if not detected and corrected, could result in the MLG not extending fully during landing, with consequent damage to the airplane structure. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 14, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–178–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a

request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–178–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3 series airplanes. The CAA advises that the main landing gear (MLG) on one Short Brothers Model SD3–30 series airplane failed to extend fully and lock. This failure resulted from deterioration and corrosion of the aft pintle pin bushings of the MLG. In addition, the CAA reports that there continues to be a high frequency of problems with the MLG, which may be associated with deterioration of the aft pintle pin bushings. Deterioration and corrosion of the aft pintle pin bushings of the MLG, if not corrected, could result in the MLG not extending fully during landing, with consequent damage to the airplane structure.

The subject area on Short Brothers Model SD3–30 series airplanes is almost identical to that on the other Short Brothers Model SD3 series airplanes. Therefore, all Shorts Model SD3 series airplanes may be subject to the unsafe condition revealed on Model SD3–30 series airplanes.

Explanation of Relevant Service Information

Short Brothers has issued the following service bulletins:

• For Model SD3–30 series airplanes: Service Bulletin SD330–32–122, dated April 30, 2003;

• For Model SD3 SHERPA series airplanes: Service Bulletin SD3 SHERPA–32–3, dated April 30, 2003;

• For Model SD3–60 SHERPA series airplanes: Service Bulletin SD360 SHERPA–32–2, dated April 30, 2003; and

• For Model SD3–60 series airplanes: Service Bulletin SD360–32–36, Revision 1, dated May 26, 2003. This service bulletin references Short Brothers Service Bulletin SD360–32–03, dated November 1983, as an additional source of service information for replacement of certain bushings, if necessary.

These service bulletins describe the following procedures related to the aft pintle pin bushings of the MLG:

• Doing friction tests for stiffness of the aft pintle pin bushings, and sending results of the tests to the manufacturer;

• Performing a detailed inspection for defects (corrosion or deterioration) of the bushings;

• Measuring the bore diameter, in three locations, of each of the three bushings to determine if the dimensions are outside specified limits;

• Taking corrective action if there is any defect in a bushing or if the bore dimension is outside specified limits (the corrective action is replacing the bushing with a new improved bushing having a new part number, and refitting the bushing); and

• Doing other significant actions such as refitting new bushings and any bushings that were removed during inspection, but not replaced; and doing a functional test of the MLG extension and retraction function.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The CAA classified these service bulletins as mandatory and issued British airworthiness directives 001–04–2003 (for Model SD3–30 series airplanes), 002–04–2003 (for Model SD3–60 series airplanes), 004–04–2003 (for Model SD3 SHERPA series airplanes), and 003–04–2003 (for Model SD3–60 SHERPA series airplanes), to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept us informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously, except as discussed below.

Difference Between the Proposed Rule and the Service Bulletins

Operators should note that, although the service bulletins describe procedures for sending certain information and items to the manufacturer (*i.e.*, results of the friction tests, unserviceable bushings, and photographs of serviceable bushings), this proposed rule does not include that requirement.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we may consider further rulemaking then.

Cost Impact

We estimate that 108 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed test, inspection, and measurement, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $210,600, or $1,950 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time

required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that 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) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers PLC: Docket 2003–NM–178–AD.

Applicability: All Short Brothers Model SD3 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion and deterioration of the aft pintle pin bushings of the main landing gear (MLG), which could result in the MLG not extending fully during landing, with consequent damage to the airplane structure, accomplish the following:

Service Bulletin Reference

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model SD3–30 series airplanes: Short Brothers Service Bulletin SD330–32–122, dated April 30, 2003.

(2) For Model SD3 SHERPA series airplanes: Short Brothers Service Bulletin SD3 SHERPA–32–3, dated April 30, 2003.

(3) For Model SD3–60 SHERPA series airplanes: Short Brothers Service Bulletin SD360 SHERPA–32–2, dated April 30, 2003.

(4) For Model SD3–60 series airplanes: Short Brothers Service Bulletin SD3–60–32–36, Revision 1, dated May 26, 2003.

Note 1: Short Brothers Service Bulletin SD3–60–32–36 references Short Brothers Service Bulletin SD360–32–03, dated November 1983, as an additional source of service information for replacement of certain bushings, if necessary.

Tests, Inspection, Measurements, and Corrective Action

(b) Within 24 months after the effective date of this AD: Do a friction test for stiffness of the aft pintle pin bushings of the MLG, and a detailed inspection for any defect of the bushings of the aft pintle pin of the MLG; and measure the bore diameter of the bushings (if a defect is found, this paragraph requires that the bushing be replaced; therefore, it is not necessary to do the bore diameter measurement on that bushing). Do all applicable corrective actions and other specified actions prior to further flight. Do all actions per the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

No Reporting Requirement

(c) Although the service bulletins specify to send certain items to Short Brothers for evaluation (*i.e.*, results of the friction tests, unserviceable bushings, and photographs of serviceable bushings), this AD does not require that action.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in British airworthiness directives 001–04–2003 (for Model SD3–30 series airplanes), 002–04–2003 (for Model SD3–60 series airplanes), 004–04–2003 (for Model SD3 SHERPA series airplanes), and 003–04–2003 (for Model SD3–60 SHERPA series airplanes).

Issued in Renton, Washington, on June 3, 2004.

Franklin Tiangsing,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13223 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–11–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposal would require a one-time inspection of the shafts of the main landing gear (MLG) side-brace fittings to detect corrosion, and the forward and aft bushings in the left-hand and right-hand MLG side-brace fittings to detect discrepancies. This proposal also would require corrective and related actions if necessary. This action is necessary to prevent fractures of the MLG side-brace fitting shafts, and possible collapse of the MLG. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 14, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–11–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must

be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7312; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–11–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. TCCA advises that there have been reports of fractures of the side-brace fitting shafts of the main landing gear (MLG). The fractures occurred on Bombardier Model CL–604 series airplanes. Investigation revealed that the fractures were caused by corrosion on the forward side of the MLG side-brace fitting shafts. Fractures of the side-brace fitting shafts, if not corrected, could result in collapse of the MLG.

The subject area on the affected Bombardier Model CL–604 series airplanes is almost identical to that on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. Therefore, Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes may be subject to the same unsafe condition revealed on the Bombardier Model CL–604 series airplanes. The Model CL–604 series airplanes are the business version of the Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The FAA may consider issuing further rulemaking for the affected Model CL–604 series airplanes.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 601R–57–036, Revision 'C', including Appendix A, dated January 30, 2003, which describes procedures for a visual inspection of the shafts of the side-brace fittings of the MLG for corrosion; and a visual inspection of the forward and aft bushings in the MLG side-brace fittings for discrepancies (gouges, scores, corrosion, or other damage). If corrosion is found on the MLG side-brace fitting shaft, the corrective action is to replace the side-brace fitting shaft with a new or serviceable shaft. The service bulletin specifies that operators should complete a report detailing the extent of the corrosion, and send it to the manufacturer. If the forward and aft bushings in the MLG side-brace have any discrepancy, the corrective action is to contact Bombardier for replacement instructions.

Following the inspection and any necessary corrective actions, the service bulletin describes related actions that include reconnecting the MLG side-brace fitting; installing a new improved nut having a new part number; and performing a functional test of the MLG extension/retraction system.

TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2002–41, dated September 20, 2002, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept us informed of the situation described above. We have examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Among the Proposed AD, the Service Bulletin, and the Canadian Airworthiness Directive

Although the Canadian airworthiness directive and the service bulletin specify that operators may contact Bombardier for certain replacement instructions, this proposed AD would require operators to replace per a method approved by either the FAA or the TCCA (or its delegated agent). In light of the type of replacement that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a replacement approved by either the FAA or the TCCA would be acceptable for compliance with this proposed AD.

The Canadian airworthiness directive mandates, and the Bombardier service bulletin recommends, compliance at the next scheduled ''C-check,'' but no later than June 30, 2004. Because ''C-check'' schedules vary among operators, this proposed AD would require compliance within 4,000 flight cycles or 20 months after the effective date of this AD, whichever occurs first. We find that 4,000 flight cycles or 20 months is appropriate for affected airplanes to continue to operate without compromising safety.

Although the Canadian airworthiness directive refers to an inspection of the bore surface of the bushing for roughness, this proposed AD would not include this inspection. This inspection was removed from Revision 'C' of Bombardier Service Bulletin 601R–57–036, which is the source of service information for the actions in this proposed AD.

The Canadian airworthiness directive does not include the functional test of the MLG extension/retraction system as part of the corrective actions. However, this test is included in Revision 'C' of Bombardier Service Bulletin 601R–57–036. Therefore, this proposed AD would include this test as part of the related actions following any necessary replacement of a side-brace fitting and following the inspections. This test is also included in the Cost Impact estimate of this proposed AD.

These differences have been coordinated with TCCA.

Clarification of Inspection Type

The Canadian airworthiness directive refers to the required inspections as ''visual inspections.'' In this proposed AD, we refer to these inspections as ''general visual inspections.'' Note 1 of this proposed AD defines this type of inspection.

Interim Action

This proposed AD is considered to be interim action. The inspection reports that are required by this proposed AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the corrosion of the shafts of the MLG side-brace fittings, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

Cost Impact

We estimate that 462 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed inspections and functional test, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $150,150, or $325 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that 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) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 2003–NM–11–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7651 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fractures of the main landing gear (MLG) side-brace fitting shafts, and possible collapse of the MLG, accomplish the following:

Inspections, Corrective Actions, and Related Actions

(a) Within 20 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first: Do a general visual inspection of the shafts of the side-brace fittings of the MLG for corrosion, and of the forward and aft bushings in the left-hand and right-hand MLG side-brace fittings for discrepancies (gouges, scores, corrosion, or other damage); and any applicable corrective and related actions. Do all of the actions per the Accomplishment Instructions of Bombardier Service Bulletin 601R–57–036, Revision 'C', including Appendix A, dated January 30, 2003. Do any applicable corrective and related actions prior to further flight. Where the service bulletin specifies to contact the manufacturer for certain replacement instructions: Before further flight, replace per a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''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 enhance visual access to all exposed 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.''

Reporting

(b) Submit a report of any corrosion of the shafts of the side-brace fittings of the MLG found during the inspections required by paragraph (a) of this AD to the Bombardier Technical Help Desk at fax number (514) 833–8501. Submit the report at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. Submission of the Field-Report Data Sheet in Appendix A of the service bulletin is an acceptable method for complying with this requirement. Include the inspection results (including the percentage of the corrosion), a digital photo of the shafts (if available), the location (zone) in which the

corrosion is found, the serial number of the airplane, the name of the inspector, the service bulletin number, and the date of the inspection. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspections are done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspections were done prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Actions Accomplished Per Previous Issue of Service Bulletin

(c) Actions accomplished before the effective date of this AD per Bombardier Service Bulletin 601R–57–036, Revision 'A', including Appendix A, dated May 17, 2002; or Revision 'B', including Appendix A, dated July 4, 2002; are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, New York ACO, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–41, dated September 20, 2002.

Issued in Renton, Washington, on June 3, 2004.

Franklin Tiangsing,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13224 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–P

RAILROAD RETIREMENT BOARD

20 CFR Part 345

RIN 3220–AB53

Employers' Contributions and Contribution Reports

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to explain the effective date of consolidated employer records that result in the issuance of a joint contribution rate under the experience rating provisions of section 8 of the Railroad Unemployment Insurance Act. In addition, as a result of an agency reorganization, there has been a change in the title of the Board employee to whom requests for consolidation should be addressed. The Board proposes to amend its regulations to reflect this change.

DATES: Comments should be submitted on or before August 13, 2004.

ADDRESSES: Any comments should be submitted to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Effective January 1, 1990, the manner by which payroll taxes on railroad employers are determined moved from a universal tax rate to a tax rate based upon a formula which takes into consideration the amount of benefits that have been paid under the Railroad Unemployment Insurance Act (RUIA) to an employer's employees. This new method of computing employers' contribution rates is commonly referred to as experience rating. Part 345 of the Board's regulations deals with the manner by which experience rating contribution rates are determined and how employers report such contributions. Various business transactions throughout the year can impact employers' contribution rates. The existence of more than one rate for an employer during a calendar year creates a significant administrative burden for the Board, due to the design of the experience rating database. Therefore, the Board has adopted a policy of updating contribution rates to reflect relevant business transactions effective with the calendar year following the Board's determination related to the transaction.

In accordance with an agency reorganization, the revision to § 345.202 amends the title of the Board official to whom requests for the consolidation of employer records should be addressed from the Director of Unemployment and Sickness Insurance to the Director of Assessment and Training.

The revision to § 345.203 notifies employers of the date upon which an individual employer record will be updated to reflect a merger or combination of two or more employers. Where the entity surviving the merger is not a new employer, the individual employer record will not be updated to reflect the combined record until the calendar year following the year of the Board's determination. Where the entity surviving the merger becomes an employer under part 202 of subchapter B by virtue of the merger, the individual employer record shall consist of the combined record effective with its employer effective date.

The revision to § 345.204 notifies employers of the date upon which an individual employer record will be updated to reflect the acquisition of assets from another employer. Where the employer acquiring the assets is not a new employer under part 202 of subchapter B, the individual employer record for that employer will take into consideration the acquired assets effective with the calendar year following the year of the Board's determination. Otherwise, the individual employer record for the entity that becomes an employer by virtue of the acquisition will take the acquired assets into consideration as of the employer effective date.

In order to comply with the President's June 1, 1998 memorandum directing the use of plain language for all proposed and final rulemaking, the regulatory paragraphs introduced by the above rule changes have been written in plain language.

Collection of Information Requirements

The amendments to this part do not impose additional information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Regulatory Impact Statement

Prior to publication of this proposed rule, the Board submitted the rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. This proposed rule is not a major rule in terms of the aggregate costs involved. Specifically, we have determined that this proposed rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of $100 million or more per year.

The amendments made by this proposed rule are not significant. The amendments explain the effective date when an employer's individual employer records under the Railroad Unemployment Insurance Act (RUIA)

will be updated to reflect various business transactions for purposes of establishing the employer's contribution rate under the experience rating provisions of section 8 of the RUIA. The amendments also include changes in the title of the Board official to whom requests for consolidation of employer records should be addressed.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define ''agency'' by referencing the definition of ''agency'' contained in 5 U.S.C. 551(1). Section 551(1)(E) excludes from the term ''agency'' an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

List of Subjects in 20 CFR Part 345

Electronic filing, Paperwork elimination, Railroad unemployment insurance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend Title 20, Chapter II, Part 345 of the Code of the Federal Regulations as follows:

PART 345—EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

1. The authority citation for part 345 continues to read as follows:

Authority: 45 U.S.C. 362(l).

2. The text of § 345.202 of subpart C is revised to read as follows:

§ 345.202 Consolidated employer records.

(a) *Establishing a consolidated employer record.* Two or more employers that are under common ownership or control may request the Board to consolidate their individual employer records into a joint individual employer record. Such joint individual employer record shall be treated as though it were a single employer record. A request for such consolidation shall be made to the Director of Assessment and Training, and such consolidation shall be effective commencing with the calendar year following the year of the request.

(b) *Discontinuance of a consolidated employer record.* Two or more employers that have established and maintained a consolidated employer record will be permitted to discontinue such consolidated record only if the individual employers agree to an allocation of the consolidated employer record and such allocation is approved by the Director of Assessment and Training. The discontinuance of the consolidated record shall be effective commencing with the calendar year following the year of the Director of Assessment and Training's approval.

3. The text of § 345.203 of Subpart C is revised to read as follows:

§ 345.203 Merger or combination of employers.

In the event of a merger or combination of two or more employers, or an employer and non-employer, the individual employer record of the employer surviving the merger (or any person that becomes an employer as the result of the merger or combination) shall consist of the combination of the individual employer records of the entities participating in the merger. Where the person surviving the merger is an existing employer under part 202 of subchapter B, the individual employer record for the surviving employer will not be updated to reflect the combined record until the calendar year following the year of the Board's determination. Where the entity surviving the merger becomes an employer under part 202 of subchapter B by virtue of the merger, the individual employer record shall consist of the combined record effective with its employer effective date.

4. Section 345.204(a) of Subpart C is revised to read as follows:

§ 345.204 Sale or transfer of assets.

(a) In the event property of an employer is sold or transferred to another employer (or to a person that becomes an employer as the result of the sale or transfer) or is partitioned among two or more employers or persons, the individual employer record of such employer shall be prorated among the employer or employers that receive the property (including any person that becomes an employer by reason of such transaction or partition), in accordance with any agreement among the respective parties (including an agreement that there shall be no proration of the employer record). Such agreement shall be subject to the approval of the Board. Where the employer acquiring the assets is an existing employer under part 202 of subchapter B, that employer's individual employer record will take into consideration the acquired assets no earlier than the calendar year following the year of the Board's determination, unless an agreement among the respective parties provides otherwise. Where the employer acquiring the assets becomes an employer under part 202 of subchapter B by virtue of such acquisition, the individual employer record for such employer shall consider the acquired assets as of such person's employer effective date, subject to any agreement between the respective parties and the provisions of paragraph (b) of this section.

* * * * *

Dated: June 4, 2004.

By Authority of the Board.

For the Board.

Carolyn Rose,

Staff Assistant, Office of Secretary to the Board.

[FR Doc. 04–13221 Filed 6–10–04; 8:45 am]

BILLING CODE 7905–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD153–3109; FRL–7672–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revised Major Stationary Source Applicability for Reasonably Available Control Technology and Permitting and Revised Offset Ratios for the Washington Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland on December 1, 2003. This revision pertains to changes in Maryland's regulations for new source permitting for major sources of volatile organic compound (VOC) and nitrogen oxides (NO_X) emissions and regulations requiring reasonably available control technology on major stationary sources of nitrogen oxides in the Washington, DC ozone nonattainment area. The revision modifies the currently approved SIP to make the following

changes applicable in the Washington, DC ozone nonattainment area: modify the emissions offset ratio; lower the applicability threshold of the new source review (NSR) permit program; and, lower the applicability threshold of the NO_X reasonable available control technology (NO_X RACT) rule. Maryland made these changes in response to the reclassification of the Washington, DC ozone nonattainment area to severe nonattainment. The intended effect of this action is to propose approval of these changes to Maryland's NSR permitting program and NO_X RACT regulations for the Washington, DC ozone nonattainment area.

DATES: Written comments must be received on or before July 14, 2004.

ADDRESSES: Submit your comments, identified by MD153–3109 by one of the following methods:

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

B. E-mail: *morris.makeba@epa.gov*.

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. 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. MD153–3109. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal 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 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.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher@epa.gov*.

SUPPLEMENTARY INFORMATION: On December 1, 2003, the Maryland Department of the Environment submitted a revision (MD SIP Revision Number 03–08) to the Maryland State Implementation Plan (SIP) for the Washington, DC ozone nonattainment area. This revision amends the approved Maryland SIP to: revise the definition of major stationary source in the Code of Maryland Regulations (COMAR) 26.11.17.01B(13); incorporate changes in the general provisions found in COMAR 26.11.17.03B(3) which require proposed new major stationary sources to obtain emission reductions, or offsets, of the same pollutant from existing sources in the area of the proposed source at a ratio of 1.3 tons of existing emissions for every 1 ton of proposed emissions; and change the threshold of applicability of Maryland's NO_X RACT regulation, COMAR 26.11.09.08 to sources with emission of 25 or more tons per year of NO_X.

I. Background

A. What Is Nonattainment NSR?

The major NSR program contained in parts C and D of title I of the Clean Air Act (the Act) is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the Act. In areas not meeting health-based National Ambient Air Quality Standards (NAAQS) and in ozone transport regions (OTR), the program is implemented under the requirements of part D of title I of the Act. We call this program the ''nonattainment NSR'' program. (The other provisions of part C of title I to the Act, that are applicable to areas meeting the NAAQS (''attainment'' areas) or for which there is insufficient information to determine whether they meet the NAAQS (''unclassifiable'' areas), are not the subject of this proposed rule.)

The nonattainment NSR program applies only to new sources if the source is ''major.'' In a serious area a source is considered major if it has the potential to emit 50 or more tons per year of VOC or NO_X emissions. In a severe area a source is considered major if it has the potential to emit 25 or more tons per year of VOC or NO_X emissions. The minimum required offset ratio in a serious area is 1.2 to 1 but is 1.3 to 1 in a severe area.

B. What Is NO_X RACT?

The Act requires SIPs to require existing major stationary sources of VOC emissions to install and implement RACT in ozone nonattainment areas classified as moderate and worse.

Section 182(f) of the Act requires that States impose the same requirements on major stationary sources of NO_X as on major stationary sources of VOC.[1] Section 182(f) specifies that major stationary sources of NO_X are to be defined according to the definitions in sections 302 and 182(c), (d), and (e). In ozone nonattainment areas these definitions for NO_X are the same as for VOC and, as such, vary from 10 to 100 tons per year according to the classification of the ozone nonattainment area. The thresholds for the applicability of rules requiring RACT on existing major stationary sources of NO_X emissions (NO_X RACT) in serious and severe areas are the same as for nonattainment NSR, that is, for serious areas the major source threshold is 50 tons per year potential emissions, and for severe areas the threshold is 25 tons per year potential emissions. (Like the nonattainment NSR requirements, the remainder of the state is subject to a 100 tons per year applicability threshold for NO_X RACT.)

C. When Were Maryland's Regulations for Nonattainment NSR and NO_X RACT for the Washington, DC Area Approved?

On February 8, 2001 (66 FR 9522), EPA approved Maryland's NO_X RACT rule COMAR 26.11.0.08. On February 12, 2001 (66 FR 9766) EPA approved a revision to the Maryland State Implementation Plan (SIP) that consisted of Maryland's nonattainment NSR permitting requirements. At the time of these final actions, the Washington, DC area was classified as a serious ozone nonattainment area.

[1] Section 182(f) establishes conditions for the only exceptions to this requirement, none of which apply in the case of the Washington, DC area.

D. What Changes Were Necessary to Maryland's Nonattainment NSR and NO_X RACT Rules as a Result of the Reclassification of the Washington, DC Area to Severe Nonattainment?

On January 24, 2003 (68 FR 3410), EPA reclassified the Washington, DC ozone nonattainment area from serious nonattainment to severe nonattainment. Among the new requirements mandated by section 182(d) of the Act are the requirements to make the following changes to the Maryland SIP for the Washington, DC ozone nonattainment area:

(1) Lower to 25 tons per year the threshold for applicability of new source review permitting requirements for major stationary sources of VOC and NO_X from the 50 tons per year level required in serious areas,

(2) Increase the offset ratio to 1.3 to 1 from the 1.2 to 1 ratio required in serious areas, and,

(3) Lower to 25 tons per year the threshold for application of RACT on existing major stationary sources of NO_X from the 50 tons per year level required in serious areas.

On December 1, 2003, the Maryland Department of the Environment submitted a revision (MD SIP Revision Number 03–08) to the Maryland State Implementation Plan (SIP) to amend the approved Maryland SIP to meet these new requirements. The revision consists of a revised definition of major stationary source in COMAR 26.11.17.01B(13), a change in the general provisions found in COMAR 26.11.17.03B(3) which require proposed new major stationary sources to obtain emission reductions, or offsets, of the same pollutant from existing sources in the area of the proposed source at a ratio of 1.3 tons of existing emissions for every 1 ton of proposed emissions, and change the threshold of applicability of Maryland's NO_X RACT regulation, COMAR 26.11.09.08 to sources with emission of 25 or more tons per year of NO_X.

II. New Source Permitting Requirements

A. What Were the Nonattainment NSR Applicability Threshold and Offset Ratio in the Maryland SIP Prior To Adoption of the December 1, 2003, SIP Revision?

On February 12, 2001 (66 FR 9766) EPA approved a revision to the Maryland State Implementation Plan (SIP) that consisted of Maryland's nonattainment NSR permitting requirements. This revision required major new sources and major modifications to existing sources of VOC or NO_X emissions to meet nonattainment NSR permitting requirements if they are proposing to locate or are located within the State of Maryland. These nonattainment NSR requirements apply not only in those portions of Maryland designated as ozone nonattainment areas, but throughout the State of Maryland because the entire state is located within the Ozone Transport Region (OTR).[2] As a result of the 1990 amendments to the Act, Maryland's permitting programs for major new source and major modifications had to cover serious and severe ozone nonattainment areas, the OTR requirements and requirements for carbon monoxide (CO) nonattainment areas.[3]

The requirements that are pertinent to this proposed rule are the new source review permitting requirements for serious and severe ozone nonattainment areas. Specifically, among the numerous requirements for nonattainment NSR permitting requirements the pertinent requirements are those relating to the thresholds for applicability of the regulations and offset ratios. The following table compares these requirements for OTR, serious and severe areas.

TABLE OF MAJOR SOURCE APPLICABILITY THRESHOLDS AND OFFSET RATIOS

Requirement	Type of Area		
	OTR	Serious	Severe
Major new source threshold for VOC sources.	50 tons per year.	50 tons per year.	25 tons per year
Major new source threshold for NO_X sources.	100 tons per year.	50 tons per year.	25 tons per year
Offset ratio	1.15 to 1.	1.2 to 1	1.3 to 1

Prior to the reclassification, Maryland's new source permitting rules contained both the serious and severe ozone nonattainment area requirements as well as the ozone transport region requirements that were applicable in portions of the State that were not classified as serious or severe.[4] The serious ozone nonattainment area requirements were applicable in the Maryland portion—Calvert, Charles, Frederick, Montgomery, and Prince George's counties—of the Washington, DC serious ozone nonattainment area. The severe ozone nonattainment area requirements were applicable in the Baltimore area—Baltimore City, and, Anne Arundel, Baltimore, Carroll, Cecil, Harford, and Howard counties, and, applicable in the Maryland portion, Cecil County, of the Philadelphia-Wilmington-Trenton severe ozone nonattainment areas.

B. How Did Maryland Change the Applicability Threshold for Major Stationary Sources and What Is EPA's Evaluation of the Changes?

Maryland's regulations set the threshold for major stationary sources by listing which counties were subject to the 100 tons per year of NO_X threshold for those areas subject only to the OTR requirement, which counties are subject to the 50 tons per year VOC threshold applicable in serious areas and the OTR, and which counties are subject to the 25 tons per year of NO_X or VOC threshold applicable in severe areas. In Maryland's regulations this is done through the definition of ''major stationary source'' in COMAR 26.11.17.01B(13)(a). Prior to adoption of the December 1, 2003, SIP revision, this section B(13)(a) read as follows:

(a) ''Major stationary source'' means any stationary source of air pollution which emits or has the potential to emit:

(i) 25 tons or more per year of VOC or NO_X for sources located in Baltimore City or Anne Arundel, Baltimore, Carroll, Cecil, Harford, or Howard counties;

(ii) 50 tons or more per year of VOC for sources located in Allegany, Calvert, Caroline, Charles, Dorchester, Frederick, Garrett, Kent, Montgomery, Prince George's Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, or Worcester counties;

(iii) 50 tons or more per year of NO_X for sources located in Calvert, Charles, Frederick, Harford, Howard, Montgomery, or Prince George's counties;

(iv) 100 tons or more per year of NO_X for sources located in Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, or Worcester counties; or

(v) 100 tons or more per year of carbon monoxide for sources located in the areas designated as nonattainment for carbon monoxide in 40 CFR 81.321, 1991 edition, as amended on page 56733 of the **Federal Register**, Vol. 56, No. 215, dated November 6, 1991.

[2] The Act imposes the OTR requirements on the entire State, but those portions of the State that are classified as serious or severe nonattainment must implement the more stringent serious or severe requirements.

[3] Neither the OTR nor CO requirements would be impacted by this proposed rule. These requirements are noted to provide background and context for excerpts of the pertinent COMAR test in which the OTR and CO requirements to be found elsewhere in this document.

[4] And the Maryland Regulations also covered carbon monoxide nonattainment area requirements as well.

(The inclusion of the thresholds for NO_X and VOC sources located in Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester counties is due the OTR requirements of section 184 of the Act.)

On December 1, 2003, Maryland submitted a revision to the definition of ''major stationary source'' in COMAR 26.11.17.01B that added: (1) The Washington area counties of Calvert, Charles, Frederick, Montgomery, and Prince George's to section B(13)(a)(i) thus making 25 tons per year or more of VOC or NO_X for sources the major source threshold in this area, deleted section B(13)(iii) that contained the 50 tons per year threshold for NO_X sources applicable to only serious areas, deleted the Washington area counties of Calvert, Charles, Frederick, Montgomery, and Prince George's from section (13)(a)(ii), and renumbered sections B(13)(a)(c)(iv) and (v) to section B(13)(A)(iii) and (iv). The revised section B(13)(a) now reads:

(a) ''Major stationary source'' means any stationary source of air pollution which emits or has the potential to emit:

(i) 25 tons or more per year of VOC or NO_X for sources located in Baltimore City or Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Montgomery, or Prince George's counties;

(ii) 50 tons or more per year of VOC for sources located in Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, or Worcester counties;

(iii) 100 tons or more per year of NO_X for sources located in Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, or Worcester counties; or

(iv) 100 tons or more per year of carbon monoxide for sources located in the areas designated as nonattainment for carbon monoxide in 40 CFR 81.321, 1991 edition, as amended on page 56733 of the **Federal Register**, Vol. 56, No. 215, dated November 6, 1991.

EPA has concluded that the December 1, 2003, SIP revision has properly implemented the necessary change in the applicability threshold for the Washington, DC ozone nonattainment area necessitated by the January 24, 2003, reclassification action. The changes to the definition of ''major stationary source'' in COMAR 26.11.17.01B now requires that all new stationary sources whose potential emissions of VOC or NO_X emissions are 25 tons per year or greater are now classified as major sources subject to the provisions of COMAR 26.11.1.7.

C. How Did Maryland Change the Offset Ratio and What Is EPA's Evaluation of the Changes?

In a manner similar to the nonattainment NSR applicability threshold for major stationary sources, Maryland's regulations set the offset ratio by listing which counties were subject to the 1.15 to 1 OTR requirement, which to the 1.2 to 1 ratio for serious areas, and which to the 1.3 to 1 ratio for severe areas. This is found at COMAR 26.11.17.03B(3). Prior to adoption of the December 1, 2003, SIP revision, this section read as follows:

(3) The applicant has met the reasonable further progress requirements in section 173(a)(1)(A) of the Clean Air Act by obtaining emission reductions (offsets) of the same pollutant from existing sources in the area of the proposed source, whether or not under the same ownership, in accordance with the following ratios, at a minimum:

(a) 1.3 to 1 for sources of VOC or NO_X in Baltimore City, or Anne Arundel, Baltimore, Carroll, Cecil, Harford, or Howard counties,

(b) 1.2 to 1 for sources of VOC or NO_X in Calvert, Charles, Frederick, Montgomery, or Prince George's counties,

(c) 1.15 to 1 for sources of VOC or NO_X in Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, Somerset, St. Mary's, Talbot, Washington, Wicomico, or Worcester counties,

(d) 1.1 to 1 for sources of CO in CO nonattainment areas specified in Regulation .01B(13) of this chapter;

On December 1, 2003, Maryland submitted a revision to COMAR 26.11.17.03B(3) that added the Washington area counties to section B(3)(a), deleted section B(3)(b) and renumbered the remaining sections to result in a section B(3) that reads as follows:

(3) The applicant has met the reasonable further progress requirements in section 173(a)(1)(A) of the Clean Air Act by obtaining emission reductions (offsets) of the same pollutant from existing sources in the area of the proposed source, whether or not under the same ownership, in accordance with the following ratios, at a minimum:

(a) 1.3 to 1 for sources of VOC or NO_X in Baltimore City, or Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Montgomery, or Prince George's counties,

(b) 1.15 to 1 for sources of VOC or NO_X in Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, Somerset, St. Mary's, Talbot, Washington, Wicomico, or Worcester counties,

(c) 1.1 to 1 for sources of CO in CO nonattainment areas specified in Regulation .01B(13) of this chapter;

EPA has concluded that the December 1, 2003, SIP revision has properly implemented the necessary change in the offset ratio for the Washington, DC ozone nonattainment area necessitated by the January 24, 2003, reclassification action. The changes to COMAR 26.11.17.03B(3) now require that the 1.3 to 1 offset ratio be applied in the Washington, DC area.

III. How Did Maryland Change the Applicability Threshold for NO_X RACT and What Is EPA's Evaluation of the Changes?

On February 8, 2001 (66 FR 9522), EPA approved Maryland's NO_X RACT rule COMAR 26.11.0.08. As is done for the nonattainment NSR applicability threshold, Maryland's regulations set the applicability threshold for NO_X RACT by listing which counties were subject to the 100 tons per year threshold for those areas subject only to the OTR requirement, which counties are subject to the 50 tons per year threshold for serious areas, and which counties are subject to the 25 tons per year threshold for severe areas. These provisions are found in COMAR 26.11.09.08A(1). Prior to adoption of the December 1, 2003, SIP revision, COMAR 26.11.09.08A(1) read as follows:

(1) This regulation applies to a person who owns or operates an installation that causes emissions of NO_X and is located at premises that have total potential to emit:

(a) 25 tons or more per year of NO_X and is located in Baltimore City, or Anne Arundel, Baltimore, Carroll, Cecil, Harford, or Howard counties; or

(b) 50 tons or more per year of NO_X and is located in Calvert, Charles, Frederick, Montgomery, or Prince George's counties; or

(c) 100 tons or more per year of NO_X and is located in Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, or Worcester counties.

On December 1, 2003, Maryland submitted a revision to COMAR 26.11.09.08A(1) that added the Washington area counties to section A(1)(a), deleted section A(1)(b) and renumbered the remaining section to result in a section A(1) that reads as follows:

(1) This regulation applies to a person who owns or operates an installation that causes emissions of NO_X and is located at premises that have total potential to emit:

(a) 25 tons or more per year of NO_X and is located in Baltimore City, or Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Montgomery, or Prince George's counties; or

(b) 100 tons or more per year of NO_X and is located in Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, or Worcester counties.

EPA has concluded that the December 1, 2003, SIP revision has properly implemented the necessary change in the applicability threshold for the

Washington, DC ozone nonattainment area necessitated by the January 24, 2003, reclassification action. The revised COMAR 26.11.09.08A(1) now requires that all stationary sources in the Washington, DC area of NO_X emissions be subject to Maryland's NO_X RACT rule if the emissions of NO_X are 25 tons or more per year.

IV. Proposed Action

EPA's review of this submittal indicates that Maryland has revised its nonattainment NSR rules and its NO_X RACT rules as required by the reclassification of the Washington DC area to severe ozone nonattainment. EPA is proposing to approve the Maryland SIP revision, which was submitted on December 1, 2003, that revised definition of major stationary source found in COMAR 26.11.17.01B(13), that changed the general emission offset provisions found in COMAR 26.11.17.03B(3), and, that changed COMAR 26.11.09.08A(1) to add the Washington area counties to the areas where NO_X RACT is required on stationary sources emitting 25 tons or more per year. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have 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), nor will it 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), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule to approve Maryland's December 1, 2003, SIP revision that changes its approved SIP pertaining to new source review permitting and NO_X RACT for the Washington, DC area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: June 3, 2004.

Abraham Ferdas,

Acting Regional Administrator, Region III.

[FR Doc. 04–13285 Filed 6–10–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 563

[Docket No. NHTSA–2004–18029]

RIN 2127–AI72

Event Data Recorders

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal addresses event data recorders (EDRs), *i.e.*, devices that record safety information about motor vehicles involved in crashes. Manufacturers have been voluntarily installing EDRs as standard equipment in increasingly larger numbers of light vehicles in recent years. They are now being installed in the vast majority of new vehicles. The information collected by EDRs aids investigations of the causes of crashes and injuries, and makes it possible to better define and address safety problems. The information can be used to improve motor vehicle safety systems and standards. As the use and capabilities of EDRs increase, opportunities for additional safety benefits, especially with regard to emergency medical treatment, may become available.

We are not presently proposing to require the installation of EDRs in any motor vehicles. We are proposing to (1) require that the EDRs voluntarily installed in light vehicles record a minimum set of specified data elements useful for crash investigations, analysis of the performance of safety equipment, *e.g.*, advanced restraint systems, and automatic collision notification systems; (2) specify requirements for data format; (3) increase the survivability of the EDRs and their data by requiring that the EDRs function during and after the front, side and rear vehicle crash tests

specified in several Federal motor vehicle safety standards; (4) require vehicle manufacturers to make publicly available information that would enable crash investigators to retrieve data from the EDR; and (5) require vehicle manufacturers to include a brief standardized statement in the owner's manual indicating that the vehicle is equipped with an EDR and describing the purposes of EDRs.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than August 13, 2004.

ADDRESSES: You may submit comments [identified by the docket number in the heading at the beginning of this document] by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590:

For technical and policy issues: Dr. William Fan, Office of Crashworthiness Standards, telephone (202) 366–4922, facsimile (202) 366–4329.

For legal issues: J. Edward Glancy, Office of the Chief Counsel, telephone (202) 366–2992, facsimile (202) 366–3820.

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I. Background

A. Event Data Recorders

Event data recorder devices have been used in other transportation sectors, such as railroads. Over the past several years, there has been considerable interest in the safety community regarding possible safety benefits from the use of event data recorders (EDRs) in motor vehicles.

EDRs collect vehicle crash information.[1] Some systems collect only vehicle acceleration/deceleration data, while others collect these data plus a host of complementary data, such as driver inputs (*e.g.*, braking and steering) and vehicle systems status.

The way in which this is accomplished may be described in the following somewhat simplified manner. The EDR monitors several of the vehicle's systems, such as speed, brakes, and several safety systems. It continuously records and erases information on these systems so that a record of the most recent 8-second period is always available. If an ''event'' occurs, *i.e.*, if a crash meeting a pre-determined threshold of severity occurs, then the EDR moves the last 8 seconds of pre-crash information into its long-term memory. In addition, it records and puts into its long-term memory up to 6 seconds of data relating to what happens after the start of the crash, such as the timing and manner of deployment of the air bags.

[1] Since the term ''EDR'' can be used to cover many different types of devices, we believe it is important to explain the term for purposes of this document. When we use the term ''EDR'' in this document, we are referring to a device that is installed in a motor vehicle to record technical vehicle and occupant-based information for a brief period of time (*i.e.*, seconds, not minutes) before, during and after a crash. For instance, EDRs may record (1) pre-crash vehicle dynamics and system status, (2) driver inputs, (3) vehicle crash signature, (4) restraint usage/deployment status, and (5) certain post-crash data such as the activation of an automatic collision notification (ACN) system. We are not using the term to include any type of device that either makes an audio or video record, or logs data such as hours of service for truck operators.

The information collected by EDRs aids investigations of the causes of crashes and injury mechanisms, and makes it possible to better identify and address safety problems. Thus, the information can be used to improve motor vehicle safety.

EDRs have been installed as standard equipment in an increasingly large number of light motor vehicles in recent years, particularly in vehicles with air bags. We estimate that 65 to 90 percent of model year 2004 passenger cars and other light vehicles have some recording capability, and that more than half record such things as crash pulse data. We do not have more precise estimates because not all vehicle manufacturers have provided us detailed information on this topic.

Vehicle manufacturers have made EDR capability an additional function of the vehicle's air bag control systems. The air bag control systems were necessarily processing a great deal of vehicle information, and EDR capability could be added to the vehicle by designing the air bag control system to capture, in the event of a crash, relevant data in memory.

EDRs have become increasingly more advanced with respect to the amount and type of data recorded.

B. Chronology of Events Relating to NHTSA's Consideration of Event Data Recorders

NHTSA's Special Crash Investigations (SCI) program first utilized EDR information in support of an agency crash investigation in 1991. This was done in cooperation with the vehicle's manufacturer, General Motors (GM). Throughout the 1990s, NHTSA's SCI team utilized EDRs as one of their investigative tools. From 1991 through 1997, SCI worked with manufacturers to read approximately 40 EDRs in support of its program.

In 1997, the National Transportation Safety Board (NTSB) issued Safety Recommendation H–97–18 to NHTSA, recommending that we ''pursue crash information gathering using EDRs.'' NTSB recommended that the agency ''develop and implement, in conjunction with the domestic and international automobile manufacturers, a plan to gather better information on crash pulses and other crash parameters in actual crashes, utilizing current or augmented crash sensing and recording devices.'' Also, in that year, the National Aeronautics and Space Administration (NASA) Jet Propulsion Laboratory (JPL), in a study conducted for NHTSA about advanced air bag technology, recommended that we ''study the feasibility of installing and obtaining

crash data for safety analyses from crash recorders on vehicles.''

In early 1998, NHTSA's Office of Research and Development (R&D) formed a Working Group comprised of industry, academia, and other government organizations. The group's objective was to facilitate the collection and utilization of collision avoidance and crashworthiness data from on-board EDRs.

In 1999, NTSB issued a second set of recommendations to NHTSA related to EDRs, H–99–53 and 54, recommending that we require EDRs to be installed on school buses and motor coaches.

In 2000, NHTSA sponsored a second working group related to EDRs, the NHTSA Truck & Bus EDR Working Group. This Working Group collected facts related to use of EDRs in trucks, school buses, and motor coaches.

In August 2001, the NHTSA-sponsored EDR Working Group published a final report on the results of its deliberations.[2] Highlights of the Working Group findings were the following:

1. EDRs have the potential to greatly improve highway safety, for example, by improving occupant protection systems and improving the accuracy of crash reconstructions.

2. EDR technology has potential safety applications for all classes of motor vehicles.

3. A wide range of crash related and other data elements have been identified which might usefully be captured by future EDR systems.

4. NHTSA has incorporated EDR data collection in its motor vehicle research databases.

5. Open access to EDR data (minus personal identifiers) will benefit researchers, crash investigators, and manufacturers in improving safety on the highways.

6. Studies of EDRs in Europe and the U.S. have shown that driver and employee awareness of an on-board EDR reduces the number and severity of drivers' crashes.

7. Given the differing nature of cars, vans, SUVs, and other lightweight vehicles, compared to heavy trucks, school buses, and motor coaches, different EDR systems may be required to meet the needs of each vehicle class.

8. The degree of benefit from EDRs is directly related to the number of vehicles operating with an EDR and the current infrastructure's ability to use and assimilate these data.

9. Automatic crash notification (ACN) systems integrate the on-board crash sensing and EDR technology with other electronic systems, such as global positioning systems and cellular telephones, to provide early notification of the occurrence, nature, and location of a serious collision.

10. Most systems utilize proprietary technology and require the manufacturer to download and analyze the data.

In 2001, NHTSA developed a website about highway-based EDRs located at the following address: *http://www-nrd.nhtsa.dot.gov/edr-site/index.html.*

The final report of the NHTSA Truck and Bus EDR Working Group was published in May 2002.[3] The record of this Working Group is in Docket No. NHTSA–2000–7699.

C. Petitions for Rulemaking

1. Petitions From Mr. Price T. Bingham and Ms. Marie E. Birnbaum

In the late 1990s, the agency denied two petitions for rulemaking asking us to require the installation of EDRs in new motor vehicles. (63 FR 60270; November 9, 1998 and 64 FR 29616; June 2, 1999.)

The first petitioner, Mr. Price T. Bingham, a private individual, asked the agency to initiate rulemaking to require air bag sensors to be designed so that data would be recorded during a crash, allowing it to be read later by crash investigators. The petitioner cited a concern about air bag deployments that might be ''spontaneous,'' but did not limit the petition to that issue.

The second petitioner, Ms. Marie E. Birnbaum, also a private individual, asked us to initiate rulemaking to require passenger cars and light trucks to be equipped with ''black boxes'' (*i.e.*, EDRs) analogous to those found on commercial aircraft.

In responding to these petitions, NHTSA stated that it believed EDRs could provide information that is very valuable in understanding crashes, and that can be used in a variety of ways to improve motor vehicle safety. The agency denied the petitions because the motor vehicle industry was already voluntarily moving in the direction recommended by the petitioners, and because the agency believed ''this area presents some issues that are, at least for the present time, best addressed in a non-regulatory context.''

2. Petition From Dr. Ricardo Martinez

In October 2001, the agency received a petition from Dr. Ricardo Martinez, President of Safety Intelligence Systems Corporation and former Administrator of NHTSA, asking us to ''mandate the collection and storage of onboard vehicle crash event data, in a standardized data and content format and in a way that is retrievable from the vehicle after the crash.''

According to the petitioner, understanding what happens in a crash is essential to preventing injuries and deaths. Dr. Martinez stated that this information is the cornerstone of safety decision-making, whether it is designing the vehicle, making policy, identifying a potential problem or evaluating the effectiveness of safety systems.

The petitioner argued, however, that despite the high-tech nature of motor vehicles today, current methods of crash investigation rely on ''analyzing the 'archaeology of the crash,' subjective witness statements, and expert opinion to determine the 'facts.' '' Dr. Martinez also noted that the movement from mechanical to electrical systems and sensors means that physical evidence of the crash is diminishing. For example, anti-lock brakes reduce skid marks, making it more difficult to make determinations about wheel and vehicle behavior.

According to Dr. Martinez, field investigations of motor vehicle crashes are costly, time consuming, laborious, and often inaccurate. The petitioner stated that there is a significant difference (sometimes more than 100%) between derived crash severity calculations and those directly measured by a vehicle. The petitioner also stated that because of costs and limitations of current crash investigations and reconstructions, the total number of cases available for analysis are limited and skewed toward the more serious crashes. Dr. Martinez stated that, as a result, current data bases are recognized to have major deficiencies because of the small number of crashes they contain and the bias of the information.

The petitioner noted that today's vehicles generate, analyze and utilize tremendous amounts of vehicle-based information for operations such as engine and speed control, braking, and deployment of safety systems. For example, increasingly sophisticated air bag systems make ''decisions'' based on vehicle speed, crash direction and severity, occupant size and position, and restraint use. However, not all vehicles capture and store this information. Further, not all of the data elements and formats for this information are standardized.

Dr. Martinez argued that the increasing sophistication and decreasing costs of information technology has created the opportunity to now mandate the capture, storage, and retrieval of

[2] Event Data Recorders, Summary of Findings by the NHTSA EDR Working Group, August 2001, Final Report (Docket No. NHTSA–99–5218–9). Persons interested in additional information about EDRs may wish to examine section 12 of the final report, which sets forth a bibliography and references.

[3] Event Data Recorders, Summary of Findings by the NHTSA EDR Working Group, May 2002, Final Report, Volume II, Supplemental Findings for Trucks, Motorcoaches, and School Buses. (Docket No. NHTSA–2000–7699–6).

onboard crash data. The petitioner stated that rulemaking should standardize the collection of existing information as a minimal data set in a standardized format for storage and retrieval. He stated that the NHTSA-sponsored Working Group on EDRs, the Institute of Electrical and Electronics Engineers (IEEE), and the Society of Automotive Engineers (SAE) have all begun work on minimum data sets for EDRs. The petitioner also called for requirements to ensure the crash survivability of the collected data.

Dr. Martinez noted that the agency had previously denied similar petitions based the belief that the automotive industry was already voluntarily moving in the direction recommended by the petitioners and that some issues associated with this area are best addressed in a non-regulatory context. The petitioner argued, however, that an agency rulemaking along the lines discussed above is necessary because overall the industry's response has been ''sluggish and disjointed.'' Dr. Martinez stated that much of the information is proprietary to each individual manufacturer and there is no standardization of the data elements or format of information. The petitioner also stated that while some manufacturers have provided EDRs in their vehicles, others have said they will only install EDRs if the government mandates the devices.

The petitioner also argued that a NHTSA rulemaking would greatly accelerate the deployment of ACN. He noted that the FCC is currently implementing rules to require automatic location information for emergency calls made from wireless phones. According to Dr. Martinez, the nexus between vehicles and communications provides the basis for ACN. The petitioner stated that only a small amount of vehicle information, such as crash severity, restraint use, direction of force and location (if available) is of use to emergency providers. However, the advent of advanced ACN is dependent upon the standardized collection of crash information in the vehicle.

Finally, the petitioner stated that he believes privacy issues can be overcome by ensuring that the vehicle owner is the one who owns the data collected by the EDR and can provide permission for its use and transmission. The petitioner stated that EDR data does not have personal identifier information and is only stored in the event of a crash. He also noted that current crash information in the form of police reports and insurance claims have much more personal identifying information than the information in EDRs.

The petition from Dr. Martinez was submitted shortly after the NHTSA EDR Working Group had published its final report on the results of its deliberations. As discussed in more detail in the next section of this document, in October 2002, after the second working group had completed its work, we decided to request public comments on what future role the agency should take related to the continued development and installation of EDRs in motor vehicles. We decided to respond to Dr. Martinez's petition after considering those comments.

D. October 2002 Request for Comments

On October 11, 2002, NHTSA published in the **Federal Register** (67 FR 63493) (Docket No. NHTSA–02–13546), a request for comments concerning EDRs. The agency discussed its involvement with EDRs over the past few years, and explained that particularly since the two NHTSA-sponsored working groups had completed their work, it was requesting comments on what future role the agency should take related to the continued development and installation of EDRs in motor vehicles. The agency discussed a range of issues, including safety benefits, technical issues, privacy issues, and the role of the agency, and asked a number of questions.

We received comments representing light and heavy vehicle manufacturers, equipment manufacturers, vehicle users, the medical community, advocacy organizations, safety research organizations, crash investigators, insurance companies, academia, and government agencies. We also received comments from a number of private individuals.

A summary of the comments follows. To keep the summary short, we do not discuss all comments on particular topics, but instead discuss representative comments. In addition, since this NPRM concerns light vehicles and not heavy vehicles, the summary focuses primarily on comments relevant to EDRs in light vehicles.

1. Safety Benefits

A wide variety of commenters expressed the belief that EDRs will improve vehicle safety by providing necessary and accurate data for crash analysis, information for potential injury prediction, and data for vehicle/roadway design improvement.

NTSB stated that the issue of automatic recording devices for all modes of transportation has been on its ''Most Wanted'' list since 1997. That organization noted that on-board recording devices have proven themselves to be extremely valuable in other modes of transportation, particularly aviation. NTSB stated that effective implementation of on-board recording in highway vehicles can have a similar, positive impact on highway safety.

The Alliance of Automobile Manufacturers (Alliance), which represents most large manufacturers of light vehicles, stated that its members recognize that EDRs have the potential to contribute to the quality of field performance data, roadway designs and emergency response systems. That organization also stated that it is possible that EDRs could improve existing safety databases both with respect to the accuracy of existing data elements and through the addition of new data elements that are not currently available.

The Automotive Occupant Restraints Council, which represents manufacturers of safety belts and air bags, stated that it believes that the installation of EDRs and capture of data related to vehicle crashes has the potential to greatly improve highway safety by providing crash data that can be utilized in designing improved occupant restraint systems.

The Advocates for Highway and Auto Safety stated that research literature and practical experience make it abundantly clear that data obtained from EDRs after crashes and near-crash events can be used to substantially improve traffic safety.

The Insurance Institute for Highway Safety (IIHS) stated that EDRs have enormous potential to aid researchers in understanding the circumstances and precursors of crashes as well as in providing more reliable information on crash severities. That organization stated that a better understanding of these issues ultimately could lead to improved vehicle safety.

The American Automobile Association (AAA) stated that in the effort to reduce the number and severity of crashes, not enough has been in the collection and analysis of scientific data to fully understand the dynamics and trends in crash causation. According to that association, data from EDRs provide an objective measurement of what actually occurred during those last seconds before a crash. AAA stated that obtaining information about the ''crash pulse'' should yield important benefits in vehicle design by identifying the types of changes that manufacturers could pursue to build more crash-friendly vehicles.

A number of commenters from the medical community, including the National Association of EMS

Physicians, the American College of Emergency Physicians, the William Lehman Injury Research Center, and the University of Alabama Center for Injury Sciences, supported the emergency medical system (EMS) connection for improved medical treatment, including support for real time data transmission and easy download capability at a crash scene by EMS personnel.

With regard to possible crash prevention aspects of EDRs, some commenters stated that they do not believe or know of any research supporting the premise that, by itself, a driver's knowledge of the presence of an EDR would have any appreciable direct effect on crash prevention. The Virginia Tech Transportation Institute stated that it had conducted two large instrumented truck-driving studies and based on the results their researchers believe that the commercial drivers would not change their driving behavior because of the existence of an on-board EDR.

2. Technical Issues

One technical issue addressed by commenters was the data elements that should be collected. Mitsubishi believes that the list should be narrow and focused on safety-related items only. Consumers Union and IIHS submitted lists of data elements. Some of the more common data elements discussed by those two include crash pulse information (such as x- and y-acceleration), safety belt usage, air bag deployment status, pre-crash data (such as brake application, engine rpm, throttle position, etc.), and the vehicle identification number. The American Trucking Association supported the 28 data elements listed by NHTSA-sponsored truck and bus working group, but the Automotive Occupant Restraints Council doubts whether these data elements are technically and economically feasible. Public Citizen believes that NHTSA should determine a minimum set of data for light duty vehicles and another set for heavy trucks.

Another technical issue addressed by a number of commenters was how much data should be recorded. Commenters generally agreed that EDRs should collect data for a very brief period of time. IIHS, Consumers Union, Veridian Engineering, and one individual indicated data collection periods up to 10 seconds for pre-crash and post-crash data and several tenths of a second for crash data. Bendix recommended 30 to 60 seconds of pre- and post-crash data.

On the issue of standardization of EDR data, many commenters stated that standardization is desired or helpful. The Truck Manufacturers Association believes that connectors, download protocols, and data output must be standardized. While Mitsubishi believes that standardization of EDR data is desirable, it is not sure about the safety benefits. The Virginia Tech Transportation Institute believes that the data elements of EDRs should be standardized to encourage the ease of use. Public Citizen believes that standardization is the primary determinant for the program's effectiveness and would enhance efforts to monitor emerging technologies. Both the SAE and IEEE commented that they are working on drafting standards for use with EDRs.

Several commenters addressed survivability of EDRs and EDR data. Mitsubishi believes that the EDR survivability has already been demonstrated by the existing EDRs and vehicle manufacturers should be able to determine the EDR's survivability design conditions. Both Bendix and Automotive Occupant Restraints Council believe that EDRs should be installed in a secured location to survive almost all crashes. The Automotive Occupant Restraints Council also believes that a requirement for back-up power is essential, but commented that fire resistant design is not. New Jersey DOT believes that EDR designs should be able to function after a crash, tamper resistant, and waterproof. The Truck Manufacturers Association and Veridian believe that EDRs should be designed to withstand the ''standard automotive environment'' including crash and environmental effects and power failure. Veridian also believes that the EDR needs to be tamperproof. An individual said that EDRs should be mechanically tamperproof and should be designed to withstand the IIHS offset frontal crash tests.

3. Privacy Issues

There were many comments related to NHTSA's questions regarding privacy. Mitsubishi believes that government should set regulations for EDR data usage to protect privacy. The Center for Injury Sciences, University of Alabama at Birmingham believes that privacy issues can be addressed by ensuring the vehicle owner also has ownership of the data and must consent to its use.

Some commenters specifically commented that they believe that the owner of the vehicle owns the EDR data. Veridian Engineering stated that it obtains the owner's permission before collecting data for an investigation.

Chalmers University of Technology (in Sweden) believes that safety improvement is more important than privacy concerns. It also argued that while EDRs can provide more complete and accurate information than thorough crash reconstruction aided by current simulation software and vehicle dynamics theory, it cannot provide new information that cannot already be estimated by such reconstruction. IIHS urged that NHTSA ensure that EDR data it obtains and makes available to researchers do not contain any personal information that would indicate the identities of the occupants involved. Public Citizen believes that the use of EDR data for statistical analysis does not involve privacy concerns, and that issues between safety and privacy can be addressed by partitioning technology (to separate any personally identifying data from other data) and other means best evaluated as part of the rulemaking process. The American Trucking Associations believe that certain EDR data elements should be accessible to rescue/medical personnel.

Consumers Union presented several potential concerns it had regarding access to EDR data, including: Insurers requiring EDRs as a condition of coverage and the use of EDR data in crash-related litigation. It said that most consumers do not know about the existence of EDRs or how the data recorded by EDRs may be used in ways that directly affect them. That organization stated that consumers have ''the right to know that EDRs are installed in the vehicles, that they are capable of collecting data recorded in a crash, and which parties may have access to this data.''

Regarding encryption, Veridian Engineering supports encrypted EDR data and the need for security codes to gain access to the data. Consumers Union urged that NHTSA incorporate standards concerning encryption and data access into the agency EDR requirements.

Mitsubishi and American Trucking Associations believe that the storage and collection of EDR data raises privacy issues, and that NHTSA should address the issue accordingly. They also said that NHTSA should work with other Federal agencies to develop the privacy protection status afforded other industries. New Jersey DOT believes that identification of specific vehicle crash location and time should be limited for emergency purposes to crash victims.

4. NHTSA's Role in the Future of Event Data Recorders

There were many comments on this topic. The Alliance believes that NHTSA has an important role on how to incorporate EDR data into existing

databases. Mitsubishi believed that NHTSA should study the legal and privacy issues associated with the use of EDR technology.

The Association of International Automobile Manufacturers (AIAM) stated that it would be premature for NHTSA to undertake regulation of EDRs at this time. That organization stated that rather than regulating this emerging application now, manufacturers should be permitted to develop systems on their own and work with voluntary standards organizations as a means of achieving consensus.

The Center for Injury Sciences of the University of Alabama at Birmingham and Public Citizen commented that NHTSA should mandate the installation of EDRs with a minimum set of standardized data elements.

The Truck Manufacturers Association and Veridian Engineering believe that NHTSA should perform research and encourage development of EDR standards. Along similar lines, the American Trucking Associations and Automotive Occupant Restraints Council believe that SAE and/or IEEE should issue common EDR standards and that NHTSA should remain technically engaged and act like a catalyst.

IIHS believes that NHTSA should encourage manufacturers to develop and establish standard practices to download and interpret information from EDRs. They also believe that, in the short term, NHTSA should work with manufacturers to increase the availability of data that currently are recorded and include this information in NASS–CDS and FARS databases.

New Jersey DOT believes that NHTSA should continue to meet its mandate for vehicle safety and leave the privacy issues to the public through its representatives in the legislative branch.

5. Other Comments

One university submitted a survey of 437 mostly college-age people. Of those surveyed, 95 percent believe that EDRs have the potential to improve vehicle safety. Over 50 percent expected great safety improvement and 90 percent said EDRs have potential safety application to all classes of vehicles. About 60 percent of these students responded that they favored safety and privacy equally, but when asked to choose between safety and privacy, over 80 percent preferred safety. Regarding NHTSA's role, about 95 percent believed that NHTSA should continue participating in the development of EDRs.

E. Event Data Recorders and Implementation of Automatic Crash Notification Systems

As noted above, ACN systems integrate on-board crash sensing and EDR technology with other electronic systems, such as global positioning systems and cellular telephones, to provide early notification of the occurrence, nature, and location of serious crashes. Early notification can save many lives. Each year, there are about 42,000 fatalities from motor vehicle traffic crashes in the United States. In these and other emergencies, more lives can be saved if emergency personnel can determine in advance the likely nature and severity of the injuries, take with them the right resources for treating those particular injuries, and more quickly locate and reach the scene of the crash.[4]

EDRs will help make this possible since they can provide the data necessary to determine crash severity, which can be used to predict injury severity. Software has been developed for evaluating crash data and predicting injury severity. Standardizing EDR data content and format would ensure that these predictions are based on the same foundation data across the entire spectrum of new makes and models of light vehicles.

Implementation of ACN systems requires not only incorporating improved EDRs in vehicles, but also use of advanced information and communications technology. Implementation of wireless enhanced 911 (E911) and ACN systems can result in:

- Faster incident detection and notification;
- Faster emergency response times; and
- Real-time wireless communications links among emergency response organizations.[5]

The nation's existing 911 system is administered through thousands of Public Safety Answering Points (PSAPs). Prior to the advent of wireless telephones, the PSAPs were able to automatically locate nearly all 911 callers. Now, more than half of 911 calls in metropolitan areas cannot be located because they originate from mobile wireless telephones. Lack of location information is a particular problem with 911 calls made from cell phones to report crashes, since the caller is often not able to determine and report precise location information.

Under Federal Communication Commission rules adopted in 1996, wireless carriers must provide E911 service by 2005.[6] This service will provide location information for all wireless 911 calls, provided that the local PSAP is equipped to receive and use the information. DOT has been

[4] Trauma System Agenda For The Future, Coordinated through the American Trauma Society Supported by the U.S. Department of Transportation, National Highway Traffic Safety Administration, October 2002. See *http://www.nhtsa.dot.gov/people/injury/ems/emstraumasystem03/*.

Enhanced communications among all members of the trauma care team during the pre-hospital phase will speed deployment of resources, produce more appropriate triaging, and result in better patient outcomes. Greater use of wireless technology should enable team members to speak to other hospitals and providers in the field and to give direction and assistance wherever the care is being provided. Discovery (Automatic Collision Notification – (ACN), Access (wireless), and Coordination (telemedicine) all will be enhanced through improved technology.

[5] Reducing Highway Deaths and Disabilities with Automatic Wireless Transmission of Serious Injury Probability Ratings from Crash Recorders to Emergency Medical Services Providers, Champion, Augenstein, Digges, Hunt, Larkin, Malliaris, Sacco, and Siegel. See *http://www-nrd.nhtsa.dot.gov/edr-site/uploads/Reducing_Hwy_Deaths_and_Disabilities_w-_Auto_Wireless_Trans-.pdf*.

Emergency medical care experience has shown that for many serious injuries, time is critical. As described by RD Stewart: Trauma is a time-dependent disease. ''The Golden Hour'' of trauma care is a concept that emphasizes this time dependency. That is in polytrauma (typically serious crash victims suffer multiple injuries) patients, the first hour of care is crucial, and the patient must come under restorative care during that first hour.* * * Pre-hospital immediate care seeks to apply supportive measures, and it must do so quickly, within what has been called the ''Golden Ten Minutes.''

The goal in trauma care is to get seriously injured patients to a trauma center for diagnosis, critical care and surgical treatment within the ''Golden Hour''. To get the seriously injured patient into the operating room of a trauma center with an experienced team of appropriately specialized trauma surgeons within the ''Golden Hour'' requires a highly efficient and effective trauma care system. The time/life race of the ''Golden Hour'' to deliver patients to definitive care consists of the following elements:

(1) Time between crash occurrence and EMS Notification,

(2) Travel time to the crash scene by EMS,

(3) On-scene EMS rescue time,

(4) Transport time to a hospital or trauma center,

(5) Emergency Department resuscitation time.

[6] See *http://www.fcc.gov/911/enhanced/*.

The wireless E911 program is divided into two parts—Phase I and Phase II. Phase I requires carriers, upon appropriate request by a local Public Safety Answering Point (PSAP), to report the telephone number of a wireless 911 caller and the location of the antenna that received the call. Phase II requires wireless carriers to provide far more precise location information, within 50 to 100 meters in most cases.

The deployment of E911 requires the development of new technologies and upgrades to local 911 PSAPs, as well as coordination among public safety agencies, wireless carriers, technology vendors, equipment manufacturers, and local wireline carriers. The FCC established a four-year rollout schedule for Phase II, beginning October 1, 2001 and to be completed by December 31, 2005.

actively involved in providing stakeholder leadership, technical assistance, and technological innovation to accelerate full and effective implementation of E911.[7] This includes not only regulating and coordinating the service provided by wireless carriers, but ensuring that local PSAPs are able to receive and effectively use the information.[8]

In the meantime, efforts to provide ACN services have already begun. Current ACN systems, such as GM's OnStar system, provide automatic notification that a motor vehicle has been involved in a crash, information about the nature of the crash, and the location of the crash.[9] While current ACN systems provide the information to a private call center, which then relays this information to 911 dispatchers, future systems may be integrated with the 911 system.

We note that in August 2003, General Motors (GM) announced the introduction of an advanced system on the new Chevrolet Malibu and Malibu Maxx. This system is part of the OnStar package. While that company's earlier ACN system provided automatic notification to the OnStar call center in the event of air bag deployment, its advanced ACN system provides automatic notification if the vehicle is involved in a moderate to severe frontal, rear or side-impact crash, regardless of air bag deployment. Also, the new system provides crash severity information.

For these reasons, we believe that ACN systems offer great potential for reducing deaths and injuries from motor vehicle crashes, and that improving EDRs would make a contribution toward the continued development and implementation of these systems.

II. Proposal and Response to Petition

As discussed earlier, in the late-1990s, NHTSA denied two petitions for rulemaking requesting the agency to require the installation of EDRs in new motor vehicles, because the motor vehicle industry was already voluntarily moving in the direction recommended by the petitioners, and because the agency believed ''this area presents some issues that are, at least for the present time, best addressed in a non-regulatory context.''

Today, after the completion of the NHTSA-sponsored EDR Working Group's tasks and after considering the public comments and the petition from Dr. Martinez, we have tentatively concluded that motor vehicle safety can be advanced by a limited regulatory approach. In order to promote safety, we are particularly interested in ensuring that when an EDR is provided in a vehicle, the EDR will record the data necessary for effective crash investigations, analysis of the performance of advanced restraint systems, and ACN systems, and that these data can be easily accessed and used by crash investigators and researchers.

Given what the motor vehicle industry is already doing voluntarily in this area, we are not at this time proposing to require the installation of EDRs in all motor vehicles. As indicated earlier, we estimate that 65 to 90 percent of model year 2004 passenger cars and other light vehicles have some recording capability, and that more than half record such things as crash pulse data.

We are proposing a regulation that would specify requirements for light vehicles that are equipped with EDRs, *i.e.,* vehicles that record information about crashes. The proposed regulation would (1) require the EDRs in these vehicles to record a minimum set of specified data elements; (2) specify requirements for data format; (3) require that the EDRs function during and after the front, side and rear vehicle crash tests specified in several Federal motor vehicle safety standards; (4) require vehicle manufacturers to make publicly available information that would enable crash investigators to retrieve data from the EDR; and (5) require vehicle manufacturers to include a brief standardized statement in the owner's manual indicating that the vehicle is equipped with an EDR and discussing the purposes of EDRs. A discussion of each of these items is provided in the sections that follow.

The proposed regulation would apply to the same vehicles that are required by statute and by Standard No. 208 to be equipped with frontal air bags, *i.e.,* passenger cars and trucks, buses and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be used exclusively by the U.S. Postal Service. This covers the vast majority of light vehicles. Moreover, these are the vehicles that will generally have advanced restraint systems, since they are the ones subject to the advanced air bag requirements now being phased in under Standard No. 208.

We are not addressing in this document what future role the agency may take related to the continued development and installation of EDRs in heavy vehicles. We will consider that topic separately. Any action we might take in that area would be done in consultation with the Federal Motor Carrier Safety Administration.

Similar to our approach in the area of vehicle identification numbers, we are proposing a general regulation rather than a Federal motor vehicle safety standard. Thus, while a failure to meet EDR requirements would be subject to an enforcement action, it would not trigger the recall and remedy provisions of the National Traffic and Motor Vehicle Safety Act, currently codified at 49 U.S.C. Chapter 301.

A. Data Elements To Be Recorded

As indicated above, we are proposing to require light vehicles that are equipped with EDRs to meet a number of requirements, including one for recording specified data elements.

Before discussing the proposed set of specified data elements, we will briefly address the issue of the crash recording capability that would trigger application of the regulation's requirements. We are proposing to apply the regulation to vehicles that record any one or more of the following elements just prior to or during a crash, such that the information can be retrieved after the crash: The vehicle's longitudinal acceleration, the vehicle's change in velocity (delta-V), the vehicle's indicated travel speed, the vehicle's engine RPM, the vehicle's engine throttle position, service brake status, ignition cycle, safety belt status, status of the vehicle's frontal air bag warning lamp, the driver's frontal air bag deployment level, the right front passenger's frontal air bag deployment level, the elapsed time to deployment of the first stage of the driver's frontal air bag, and the elapsed time to deployment of the first stage of the right front passenger's frontal air bag. Thus, if a vehicle has a device that records any of the basic items of information typically recorded by EDRs, the proposed regulation would apply to that vehicle.

In analyzing what minimum set of specified data elements to propose, we focused on the elements that would be most useful for effective crash investigations, analysis of the

[7] See *http://www.itspublicsafety.net/wireless.htm.*

[8] In August 2002, the ITS Public Safety Advisory Group Medical Subcommittee issued a document titled ''Recommendations for ITS Technology in Emergency Medical Services.'' It may be viewed at *http://www.itspublicsafety.net/docs/recommendations_itsems.pdf.*

[9] For additional information about ACN systems, see ''Enhancing Post-Crash Vehicle Safety Through an Automatic Collision Notification System,'' Joseph Kanianthra, Arthur Carter and Gerard Preziotti, paper presented at the 17th International Technical Conference on the Enhanced Safety of Vehicles, 2001, *http://www-nrd.nhtsa.dot.gov/pdf/nrd-01/esv/esv17/proceed/00085.pdf.*

performance of safety equipment, *e.g.,* advanced restraint systems, and ACN systems. We believe these are the areas where information provided by EDRs can lead to the greatest safety benefits.

EDRs can improve crash investigations by measuring and recording actual crash parameters. They can also measure and record the operation of vehicle devices whose operation cannot readily be determined using traditional post-crash investigative procedures. For example, EDRs could determine whether the ABS system functioned during the crash.

EDRs can also directly measure crash severity. Currently, NHTSA estimates crash severity using crash reconstruction tools. One product of these tools is an estimate of the vehicle's delta-V. With an EDR, delta-V could be directly measured. Another assessment made by the crash investigators is the principal direction of force (PDOF). This is currently estimated based on physical damage. With x-axis and y-axis accelerometers, this could be measured or post-processed for planar (non-rollover) crashes, providing PDOF as a function of time.

EDRs can be particularly helpful in analyzing the performance of advanced restraint systems. They can record important information that is not measurable by post-crash investigations such as time of deployment of pre-tensioners and the various stages of multi-level air bags, the position of a seat during the crash (a seat is often moved by EMS personnel during their extrication efforts), and whether seat belts were latched.

Improved data from crash investigations will enable the agency and others to better understand the causes of crashes and injury mechanisms, and make it possible to better define and address safety problems. This information can be used to develop improved safety countermeasures and test procedures, and enhance motor vehicle safety.

EDRs can also make ACN systems more effective. An important challenge of EMS is to find, treat, and transport to hospitals occupants seriously injured in motor vehicle crashes in time to save lives and prevent disabilities. ACN systems, such as the GM On-Star system, can automatically and almost instantly provide information about serious crashes and their location to EMS personnel, based on air bag deployment or other factors. GM has announced that it will begin equipping vehicles with advanced ACN systems that provide measurements of crash forces for improved EMS decision-making. Data from EDRs can be used as inputs for advanced ACN systems.

As discussed earlier, vehicle manufacturers have made EDR capability an additional function of vehicles' air bag control systems. The air bag control systems necessarily process a great deal of vehicle information. EDR capability can be added to a vehicle by designing the air bag control system to capture, in the event of a crash, the relevant data in memory. The costs of EDR capability have thus been minimized, because it involves the capture into memory of data that is already being processed by the vehicle, and not the much higher costs of sensing much of that data in the first place.

In developing our proposed regulation for EDRs, we have followed a similar approach. That is, we have focused on the recording of the most important crash-related data that care already being processed by vehicles, and not using this rulemaking to require such things as additional accelerometers. (The addition of an accelerometer to a vehicle could add costs on the order of $20 per vehicle.)

For a variety of reasons, including the fact that the light vehicles covered by this proposal are subject to Standard No. 208's requirements for air bags, some of the most important crash-related data we have identified are already being processed (or will soon be processed) by all of these vehicles. Under our proposal, these data elements would be required to be recorded for all vehicles subject to the regulation.

Other important crash-related data are currently processed by some, but not all vehicles. This reflects the fact that some advanced safety systems are provided on some but not all vehicles. Under our proposal, these data elements would be required to be recorded only if the vehicle is equipped with the relevant advanced safety system or sensing capability.

The following table identifies the data elements that would be required to be recorded under our proposal. We note that the vast majority of the elements in the table are being considered by SAE and/or IEEE in their ongoing efforts to develop standards for EDRs.

TABLE I.—DATA ELEMENTS THAT MUST BE RECORDED

[R=Required; IE=If Equipped]

Data element	R/IE	Recording interval / time	Condition for requirement (IE)
Longitudinal acceleration	R	−0.1 to 0.5 sec	N.A.
Maximum delta-V	R	Computed after event	N.A.
Speed, vehicle indicated	R	8.0 to 0 sec	N.A.
Engine RPM	R	−8.0 to 0 sec	N.A.
Engine throttle, % full	R	−8.0 to 0 sec	N.A.
Service brake, on/off	R	−8.0 to 0 sec	N.A.
Ignition cycle, crash	R	−1.0 sec	N.A.
Ignition cycle, download	R	At time of download	N.A.
Safety belt status, driver	R	−1.0 sec	N.A.
Frontal air bag warning lamp, on/off	R	−1.0 sec	N.A.
Frontal air bag deployment level, driver	R	Event	N.A.
Frontal air bag deployment level, right front passenger	R	Event	N.A.
Frontal air bag deployment, time to deploy, in the case of a single stage air bag, or time to first stage deployment, in the case of a multi-stage air bag, driver.	R	Event	N.A.
Frontal air bag deployment, time to deploy, in the case of a single stage air bag, or time to first stage deployment, in the case of a multi-stage air bag, right front passenger.	R	Event	N.A.
Multi-event, number of events (1,2,3)	R	Event	N.A.
Time from event 1 to 2	R	As needed	N.A.
Time from event 1 to 3	R	As needed	N.A.

TABLE I.—DATA ELEMENTS THAT MUST BE RECORDED—Continued

[R=Required; IE=If Equipped]

Data element	R/IE	Recording interval / time	Condition for requirement (IE)
Complete file recorded (yes, no)	R	Following other data	N.A.
Lateral acceleration	IE	−0.1 to 0.5 sec	If vehicle is equipped to measure acceleration in the vehicle's lateral (y) direction.
Normal acceleration	IE	−0.1 to 0.5 sec	If vehicle is equipped to measure acceleration in the vehicle's normal (z) direction.
Vehicle roll angle	IE	−1.0 to 6.0 sec	If vehicle is equipped to measure or compute vehicle roll angle.
ABS activity (engaged, non-engaged)	IE	−8.0 to 0 sec	If vehicle is equipped with ABS.
Stability control status, on, off, engaged	IE	−8.0 to 0 sec	If vehicle is equipped with stability control, ESP, or other yaw control system.
Steering input (steering wheel angle)	IE	−8.0 to 0 sec	If vehicle equipped to measure steering wheel steer angle.
Safety belt status, right front passenger (buckled, not buckled).	IE	−1.0 sec	If vehicle equipped to measure safety belt buckle latch status for the right front passenger.
Frontal air bag suppression switch status, right front passenger (on, off, or auto).	IE	−1.0 sec	If vehicle equipped with a manual switch to suppress the frontal air bag for the right front passenger.
Frontal air bag deployment, time to Nth stage, driver *	IE	Event	If vehicle equipped with a driver's frontal air bag with a second stage inflator.
Frontal air bag deployment, time to Nth stage, right front passenger*.	IE	Event	If vehicle equipped with a right front passenger's frontal air bag with a second stage inflator.
Frontal air bag deployment, Nth stage disposal, Driver, Y/N (whether the Nth stage deployment was for occupant restraint or propellant disposal purposes)*.	IE	Event	If vehicle equipped with a driver's frontal air bag with a second stage that can be ignited for the sole purpose of disposing of the propellant.
Frontal air bag deployment, Nth stage disposal, right front passenger, Y/N (whether the Nth stage deployment was for occupant restraint or propellant disposal purposes)*.		Event	If vehicle equipped with a right front passenger's frontal air bag with a second stage that can be ignited for the sole purpose of disposing of the propellant.
Side air bag deployment, time to deploy, driver		Event	If the vehicle is equipped with a side air bag for the driver.
Side air bag deployment, time to deploy, right front passenger.		Event	If the vehicle is equipped with a side air bag for the right front passenger.
Side curtain/tube air bag deployment, time to deploy, driver side.		Event	If the vehicle is equipped with a side curtain or tube air bag for the driver.
Side curtain/tube air bag deployment, time to deploy, right side.		Event	If the vehicle is equipped with a side curtain or tube air bag for the right front passenger.
Pretensioner deployment, time to fire, driver		Event	If the vehicle is equipped with a pretensioner for the driver safety belt system.
Pretensioner deployment, time to fire, right front passenger.		Event	If the vehicle is equipped with a pretensioner for the right front passenger safety belt system.
Seat position, driver (whether or not the seat is forward of a certain position along the seat track).		−1.0	If the vehicle is equipped to measure the position of the driver's seat.
Seat position, passenger (whether or not the right front passenger seat is forward of a certain position along the seat track).		−1.0	If the vehicle is equipped to measure the position of the right front passenger's seat.
Occupant size classification, driver		−1.0	If the vehicle is equipped to determine the size classification of the driver.
Occupant size classification, right front passenger		−1.0	If the vehicle is equipped to determine the size classification of the right front passenger.
Occupant position classification, driver		−1.0	If the vehicle is equipped to dynamically determine position of the driver.
Occupant position classification, right front passenger		−1.0	If the vehicle is equipped to dynamically determine position of the right front occupant.

* List this element n–1 times, once for each stage of a multi-stage air bag system.

As indicated above, in developing this list, we focused on the elements that would be most useful for effective crash investigations, analysis of the performance of safety equipment, *e.g.*, advanced restraint systems, and ACN systems. Some of the data elements will be useful for all three of these purposes; others, for only one or two. The following table shows NHTSA's assessment of the application for each element.

TABLE II.—DATA ELEMENTS AND APPLICATION

Data element name	Crash investigation	Advanced restraints operation	ACN
Longitudinal acceleration	X	X	X
Maximum delta-V	X	X	X
Speed, vehicle indicated	X		

TABLE II.—DATA ELEMENTS AND APPLICATION—Continued

Data element name	Crash investigation	Advanced restraints operation	ACN
Engine RPM	X		
Engine throttle, % full	X		
Service brake, on/off	X		
Ignition cycle, crash	X		
Ignition cycle, download	X		
Safety belt status, driver	X	X	X
Frontal air bag warning lamp, on/off	X	X	
Frontal air bag deployment level, driver	X	X	
Frontal air bag deployment level, right front passenger	X	X	
Frontal air bag deployment, time to first stage, driver	X	X	
Frontal air bag deployment, time to first stage, right front passenger	X	X	
Frontal air bag deployment, time to second stage, driver	X	X	
Frontal air bag deployment, time to second stage, right front passenger	X	X	
Frontal air bag deployment, second stage disposal, driver, Y/N	X	X	
Frontal air bag deployment, second stage disposal, right front passenger, Y/N	X	X	
Multi-event, number of events	X	X	
Time from event 1 to 2	X		
Time from event 1 to 3	X		
Complete file recorded	X	X	X
Lateral acceleration	X	X	X
Normal acceleration	X		
Vehicle roll angle	X		X
ABS activity	X		
Stability control, on, off, engaged	X		
Steering input	X		
Safety belt status, right front passenger	X	X	X
Frontal air bag suppression switch status, right front passenger	X	X	
Side air bag deployment, time to deploy, driver	X	X	
Side air bag deployment, time to deploy, right front passenger	X	X	
Side curtain/tube air bag deployment, time to deploy, driver side	X	X	
Side curtain/tube air bag deployment, time to deploy, right side	X	X	
Pretensioner deployment, time to fire, driver	X	X	
Pretensioner deployment, time to fire, right front passenger	X	X	
Seat position, driver	X	X	
Seat position, right front passenger	X	X	
Occupant size classification, driver	X	X	
Occupant size classification, right front passenger	X	X	
Occupant position classification, driver	X	X	
Occupant position classification, right front passenger	X	X	

Several of the elements are associated with crash severity. These include longitudinal acceleration, lateral acceleration, normal acceleration, delta-V, and vehicle roll angle. The longitudinal, lateral, and normal accelerations are vehicle crash signatures in the x, y, and z directions. Delta-V represents the overall crash severity. These are important elements used in determining vehicle crash severity. Vehicle roll angle is important to determining crash severity in non-planar (rollover) crashes and useful for advanced ACN systems.

The service brake on/off and steering input elements are important to understanding the human response to avoiding a pending crash. Several elements cover pre-crash vehicle dynamics and system status: Vehicle speed, engine RPM, engine throttle (% full), ABS activity, and stability control (on, off, or engaged). These elements are helpful in determining crash causation.

The elements concerning ignition cycle provide data on how many times the ignition has been switched on since its first use. The difference in the two measurements provides the number cycles between the time when the data were captured and when they were downloaded. GM, in its EDRs, currently records these data. They aid investigators in determining the interval between the recorded event and the time when it occurred. Small differences between these data indicate that the event in the EDR was generated recently, while large differences indicate that they are from an earlier event that may not be associated with a current crash.

Many of the data elements relate to the usage and operation of restraint systems. These elements are important in analyzing advanced restraint operations. For example, without an EDR, it may not be possible after a crash to determine whether a multi-stage air bag deployed at a low or high level.

As discussed above, we are proposing to require some of the data elements to be recorded only if the vehicle is equipped with the relevant safety system or sensing capability. We note that as manufacturers equip greater numbers of their vehicles with advanced safety systems, a number of these data elements would be required to be recorded on an increasing number of vehicles, or even all vehicles. Of particular note, as manufacturers upgrade the side impact performance of their vehicles it is expected that all light vehicles will measure lateral acceleration.

We request comments on the data elements listed in Table I, including whether the list sufficiently covers technology that is likely to be on vehicles in the next five to 10 years. NHTSA encourages manufacturers to develop, to the extent possible, additional data elements for inclusion in the EDR as these new technologies emerge.

B. Data Standardization

As discussed earlier, one of our goals in this rulemaking is to ensure that data are recorded and can be accessed in a manner that enables crash investigators and researchers to use them easily. One aspect of this is the format of the recorded data. To increase the value of these data in assessing motor vehicle safety, the proposed regulation would require that the data be recorded in a standardized format.

We believe that data standardization would enable crash investigators and researchers to more easily identify, interpret, and compare data retrieved from vehicles involved in a crash. Currently, the data format of an EDR is established by individual manufacturers and is based on that manufacturer's specific technical specifications. In the absence of any standardization, there is presently a wide variation among vehicle manufacturers as to the format of data recorded by an EDR. Comparisons between data recorded by different manufacturers are less precise when differences exist between the parameters recorded and the precision and accuracy specified. Such comparisons become even less useful if manufacturers do not rely on a common definition of a given data element.

To address this issue, the Society of Automotive Engineers (SAE) established a committee to establish a common format for the display and presentation of the data recorded by an EDR. The SAE Vehicle Event Data Interface Committee (J1698–1), which held its first meeting in late February 2003, has been considering common data definitions for specific data elements, as well as other aspects of EDR standardization.

The Institute of Electrical and Electronics Engineers (IEEE) is also addressing the standardization of EDR data formats. The IEEE Motor Vehicle Event Data Recorder (MVEDR) working group (P1616) is drafting a data dictionary and standards document for EDRs. P1616 is considering specifying the data format with a set of attributes for each defined data element. IEEE stated that it expected to complete a standard to standardize data output and retrieval protocols by March 2004.

In light of the current lack of adopted industry standards, we are proposing a standardized format that would ensure the usability of EDR data, while still providing manufacturers flexibility in design. The proposed regulation would define each data element and specify the corresponding recording interval/time, unit of measurement, sample rate, data range, data accuracy, data precision, and where appropriate, filter class.

The proposed data format would require EDRs to capture crash data of sufficient detail and time duration to ensure the usefulness of the data in crash reconstruction without threatening its integrity. NHTSA crash testing has shown that the typical offset frontal crash may last as long as 250 milliseconds. We are also aware that underride and override crashes may last even longer. Furthermore, rollover crashes can last several seconds, depending on the number of rolls.

The proposed time periods (set forth in Table I above) would establish a recording duration of 8 seconds prior to beginning of the event to capture relevant pre-crash and event data. Acceleration data would be required to be captured during the event. Finally, only rollover data would be required to be recorded for several seconds after the event. To the extent possible, the specified recording duration is limited to reduce the likelihood of data being corrupted by failure in the vehicle's electric system resulting from the crash

The proposed format would not mandate storage or output parameters.

C. Data Retrieval

A second aspect of accessibility is the necessity for crash investigators and researchers to have the capability of downloading crash data from the EDR. To ensure the availability of these data, we are proposing to require vehicle manufacturers to submit to the NHTSA docket specifications for accessing and retrieving the recorded EDR data that would be required by this regulation. We are also seeking comment on alternative approaches.

At the present time, investigators and researchers can access crash data stored by EDRs for only a limited number of vehicles. Prior to 2000, only vehicle manufacturers could access the EDR data for their vehicles. In 2000, Vetronix released its Crash Data Retrieval (CDR) tool for sale to the public. The CDR tool is a software and hardware device that allows someone with a computer to communicate directly with certain EDRs and download the stored data. It is estimated that about 40 million vehicles on the road have EDRs that can be read using the CDR tool, including many late model GM vehicles and some new Ford vehicles.

However, Vetronix is licensed by only a limited number of vehicle manufacturers to build these devices. Vetronix must presently use proprietary vehicle manufacturer information to develop and configure the hardware and software needed to allow the CDR tool to retrieve data from a vehicle's EDR. If a vehicle manufacturer declines to license or otherwise provide any proprietary information needed to build a device, tool companies will not be able to produce them.

Both the SAE Vehicle Event Data Interface Committee (J1698–1) and the IEEE Motor Vehicle Event Data Recorder working group (P1616) discussed above have considered the downloading of EDR data by means of the On Board Diagnostic (OBD) connector developed in conjunction with the Environmental Protection Agency (EPA). EPA has established requirements for onboard diagnostic technologies, which manage and monitor a vehicle's engine, transmission, and emissions. The EPA regulations include a new standardized communications protocol for the next generation of onboard diagnostic technology that allows a single common interface between the OBD connector and diagnostic tools used to read and interpret vehicle data and convert them into engineering units.

The EPA communications protocol utilizes a Controller Area Network (CAN) to provide a standardized interface between the OBD connector and the tools used by service technicians and vehicle emission inspections stations. CAN employs a serial bus for networking computer modules as well as sensors. The standardized interface allows technicians to use a single communications protocol to download data to pinpoint problems and potential problems related to a vehicle's emissions.

Full implementation of the CAN protocol is required by 2008. Because it is a universal system, the use of the OBD connector and the CAN serial bus could assure uniform access to EDR data and alleviate concerns that the data would only be accessible through the use of multiple interfaces and different kinds of software, if at all.

While standardizing the means of downloading EDR data, possibly using the OBD connector, offers potential benefits, we are at this time proposing only to require vehicle manufacturers to submit to the agency docket specifications necessary for building a device for accessing and retrieving recorded EDR data. This approach will help ensure that EDR data can be accessed in a manner readily usable by crash investigators and researchers. It will also allow motor vehicle manufacturers the flexibility to standardize protocols for data extraction.

We note that the context of NHTSA's proposal is quite different from the

context of EPA's requirements for collecting, storing, and downloading emissions-related data. The EPA approach is very structured. It needed to be appropriate for facilitating the routine monitoring and servicing of mandated emission control systems on motor vehicles, thus helping to ensure that those systems perform properly over the useful life of those vehicles. Establishing that approach has required many years of effort and the development of numerous industry standards.

On the other hand, we are proposing a standard for voluntarily installed EDRs, and need to ensure that it is appropriate for the much more limited purpose of crash investigations. We are interested in a simple, flexible approach, while maintaining the ability to extract data efficiently from a motor vehicle's voluntarily installed EDR. To obtain the desired outcome, NHTSA believes that it need not and should not become involved in managing the interface between the auto industry and the companies that may manufacture EDR download tools. But it is evident that some interface is needed, and to that extent we are proposing that certain information be provided.

We are proposing to require that each manufacturer of vehicles equipped with EDRs provide information of sufficient detail to permit companies that manufacture diagnostic tools to develop and build devices for accessing and retrieving the data stored in the EDRs. The vehicle manufacturer would be required to specify which makes and models (by model year) of its vehicles utilize the corresponding EDR system and to specify the interface locations. The leadtime we are providing for implementing this proposed regulation (discussed below) would enable vehicle manufacturers to design their EDRs so that the data may be accessed by use of a standardized interface and communications protocol. In the event that SAE, IEEE, or other voluntary standard organization establishes a standard for a protocol to be used in downloading EDR data, manufacturers would be able to reference the industry protocol in their submissions.

Manufacturers would be required to submit this information in a timely manner to ensure that the specifications were received by NHTSA's docket not less than 90 days before the start of production of makes and models utilizing EDR systems. This would give tool companies time to develop a tool before an EDR-equipped vehicle is used on public roads.

We are also seeking comment on alternative approaches to providing access to EDR crash data, such as permitting the vehicle manufacturer to demonstrate that a reasonably priced tool is publicly available for a particular make/model or to offer to licence at a reasonable price any proprietary information needed to build such tools. We note that EPA permits manufacturers to request a reasonable price for provided OBD-related information. See EPA final rule at 68 FR 38427, June 27, 2003. Comments are requested on the similarities and differences between OBD and EDR related information, the uses of that information, and relevant statutory authorities, and on whether this type of approach would be appropriate for EDR information. We note that one difference is that OBD tools are used as part of commercial activity, i.e., routine servicing and repair of motor vehicles, while EDR tools as used in crash investigations. The market for EDR tools would likely be much smaller. If we were to adopt an approach along these lines, what factors should be used for determining a ''reasonable price?''

Commenters supporting any of these or other alternative approaches are encouraged to suggest specific regulatory text and to explain how the recommended approach would ensure that crash investigators and researchers have the capability of downloading data from EDRs. Depending on the comments, we may adopt an alternative approach in the final rule.

D. Functioning of Event Data Recorders and Crash Survivability

If an EDR is to provide useful information, it must function properly during a crash, and the data must survive the crash. We are proposing several requirements related to the functioning of the EDR and survivability.

Performance of EDRs in crash tests. First, we are proposing to require EDRs to meet the requirements for applicable data elements and format in the crash tests specified in Standards No. 208, 214, and 301. These tests are (some have been issued as final rules, but not yet taken effect) a frontal barrier crash test conducted at speeds up to 35 mph, a frontal offset test conducted at 25 mph, a rear-impact crash test conducted at 50 mph, and a side impact test conducted at 33.5 mph. Data would be required to be retrievable by the method specified by the vehicle manufacturer (discussed above) after the crash test.

This requirement would provide both a check on EDR performance and also ensure a basic level of survivability. Manufacturers are familiar with these crash tests since they are specified in the Federal motor vehicle safety standards.

As to the issue of survivability, the EDRs of light vehicles are currently part of the air bag module. These modules are located in the occupant compartment of vehicles, providing protection against crush in all but the most severe crashes. Moreover, because EDRs are part of the air bag module, their electronics are designed to operate in a shock environment. However, current EDRs lack protection from fire and immersion in water and motor vehicle fluids.

While requiring EDRs to function properly during and after the crash tests specified in Standards No. 208, 214, and 301 would ensure a basic level of survivability, it would not ensure that EDR data survive extremely severe crashes or ones involving fire or fluid immersion. While EDR data would be useful to crash investigators and researchers analyzing such crashes, we do not have sufficient information to propose survivability requirements that would address such crashes. Research is needed to develop such requirements, and information on the costs of countermeasures to meet these additional requirements would need to be developed. Countermeasures that would ensure the survivability of EDR data in fires may be costly. For all of these reasons, we are not including such requirements in this proposal.

Trigger threshold. We are also proposing requirements concerning the level of crashes for which EDRs must capture [10] data. These requirements would ensure that EDRs capture information about crashes of interest to crash investigators and researchers.

The EDR operates in two modes. One is the steady state monitoring of pre-crash data. EDRs operate continuously in this mode whenever the vehicle is operating. This process allows momentary recording [11] of the pre-crash data. EDRs operate in the second mode when the vehicle is involved in a crash. In this mode, two decisions are made. The first is the determination of the occurrence of a crash and is accomplished by use of a trigger threshold. The second is the decision to capture the recorded data and accomplished using a comparative process. Based on the outcome of this process, the recorded data associated with a crash are captured or deleted.

In current light-duty vehicle applications, the trigger threshold is

[10] Capturing is the process of saving recorded data.

[11] Recording is the process of storing data into volatile memory for later use.

associated with the air bag crash severity analyzer. The circumstances that cause the threshold to be met are called an ''event.'' The beginning of the event that causes current EDRs to start capturing data in its permanent memory is sometimes defined as the vehicle's exceeding a specified deceleration threshold, typically around 2 g's. After the event is over, and the air bags are deployed, the data are stored in the EDR, if appropriate.

For determination of the beginning of an event, we are proposing to require the EDR to start recording data when the vehicle's change in velocity during any 20 millisecond (ms) time interval equals or exceeds 0.8 km/h. That is equivalent to slightly more than 1 g of steady-state deceleration.

The vehicle's change in velocity is determined in one of two ways, depending on the data collected by the EDR. In the case of a vehicle that does not record and capture lateral acceleration, the delta-V is based on the longitudinal acceleration only. In the more complex case of a vehicle whose EDR records and captures both longitudinal and lateral acceleration, the delta-V is calculated based on both sets of data, or, simply stated, change in velocity of the vehicle in the horizontal plane.

Timing of the unique, non-recurrent actions like the deployment of an air bag in an event is very important. The trigger threshold is used to define time zero. Time zero is used to determine many of the parameters required for collection by the EDR, such as the time when the front air bag deploys. Time zero is defined as the beginning of the first 20 ms time interval in which the trigger threshold is met during an event. Time zero is used to determine many of the parameters required for collection by the EDR, such as the time of front air bag deployment.

Recording multi-event crashes. A crash may encompass several events. For example, a vehicle may sideswipe a guardrail and then hit a car, or a vehicle may hit one vehicle, then another, and finally a tree. In fact, analysis of crash data from NHTSA's NASS-CDS data system shows that while 54 percent of the crashes involve a single event, 28 percent involve 2 events, and 18 percent involve 3 or more events.[12] Thus, if an EDR captures only a single event as the depiction of a multi-event crash, in nearly one-half of the cases, it could be difficult to determine the event of the crash with which the EDR record was associated.

Current EDRs vary with respect to the number of events they capture. For example, current Ford systems capture single events. GM systems can capture two events, one non-deployment event and one deployment event. These two events can be linked ones under certain circumstances. If they are linked, the amount of time between events is recorded. Current Toyota EDRs can capture up to three events. These can also be linked to a chain of events making up a single crash sequence.

We are proposing to require that EDRs be capable of capturing up to 3 events in a multi-event crash. For any given event that generates a change in velocity that equals or exceeds the trigger threshold, the EDR would be required to record and possibly capture that event and any subsequent events, up to a total of three, that begin within a 5 second window from time zero of the first event. Subsequent events are events that meet the trigger threshold more than 500 milliseconds after time zero of the immediately preceding event. We note it is very likely that in a crash, the trigger threshold could be met or exceeded many times Thus, we are requiring that when the EDR is currently recording event data, the exceeding of the trigger threshold be disregarded until 500 milliseconds has elapsed.

To prevent unassociated events from being captured in the multi-event EDR, we are proposing that the maximum time from the beginning of the first event to the beginning of the third event be limited to 5.0 seconds. To understand the timing between the associated events, we are proposing to require that the number of associated events be included as a data element, and that the time from the first to the second event and the time from the first to the third event also be included as a data element.

The pre-event data, such as vehicle speed and engine RPM, need to be recorded continuously. Similarly, pre-event acceleration data need to be recorded continuously. Finally, pre-event statuses, such as safety belt usage, determined at -1.0 second, need a similar treatment. The recording of these data is sometimes referred to as a circular buffer; that is, data are continuously updated as they are generated. When the trigger threshold is met, additional types of data are recorded, including acceleration data and rollover angle.

Capture of EDR data. Once the trigger threshold has been met or exceeded, the data discussed above are recorded by the EDR. The EDR continues to analyze the acceleration signal(s) to determine if a second or third event, determined by the trigger threshold's being equaled or exceeded more than 500 milliseconds after time zero of the immediately preceding event, will occur in a possible multi-event crash. This continues for 5 seconds after time zero of the first event.

A decision is then required to determine if these recorded data should be captured in the EDR's memory bank or discarded in favor of a previously captured data set. This decision is based on the maximum delta-V in the sequence of up to 3 events and air bag deployment status.

The maximum delta-V for a multi-event crash would be defined as the absolute value of the maximum of the individual delta-Vs from each of the events in the crash. Since events in a multi-event crash may occur from the front, side, or rear, we are proposing that the maximum delta-V be based on the magnitude of the value, that is, irrespective of the direction, or sign of the value.

We are proposing that the recorded data be captured in the EDR's memory only if the maximum delta-V for the recorded crash sequence exceeds that of the maximum delta-v associated with the data currently stored in the EDR's memory. We are making this proposal to prevent the capturing of EDR crash data with data from new events that may occur subsequent to the event of greatest interest. In the absence of such a requirement, the trigger threshold might be exceeded when the vehicle is towed from the scene or moved in a salvage yard, thus capturing a new record and erasing data regarding the event of greatest interest.

With regard to air bag deployment status, we are proposing that an event that generates information related to an air bag deployment, either frontal or side bag systems, must be captured by the EDRs and cannot be overwritten.

We note that on current GM systems, the EDR locks the data in memory after a crash that involves an air bag deployment. This results in the air bag control system's needing replacement as part of the vehicle's repair after an air bag deployment. On Ford vehicles, the file is not locked when an air bag deploys. However, it is Ford's current service policy that the control module must be replaced after each deployment event.

In the case of multi-event crashes, some of the pre-crash data will be common to each event. For example, vehicle speed data would be collected for 8 seconds prior to the first event. If the second event occurs 1 second later, an additional sample of speed data

[12] Gabler and Roston, ''Estimating Crash Severity: Can Event Data Recorders Replace Crash Reconstruction,'' ESV Paper 490, 2003, *http://www-nrd.nhtsa.dot.gov/pdf/nrd-01/esv/esv18/CD/Files/18ESV–000490.pdf.*

would be recorded before the second event. For these cases, only the additional pre-crash data that occur during and between the events would need to be recorded as part of the subsequent event.

To prevent confusion between different multi-event crashes, we are proposing that if a crash includes an event that has a maximum delta-V of sufficient magnitude to warrant capturing the data relating to that event, all previously captured data in the EDR memory must be erased and replaced with that new data. We believe that unless this is done, events that occur days or months apart may be mistakenly interpreted as being part of the same crash.

E. Privacy

The recording of information by EDRs raises a number of potential privacy issues.[13] These include the question of who owns the information that has been recorded, the circumstances under which other persons may obtain that information, and the purposes for which those other persons may use that information.

We recognize the importance of these legal issues. The EDR Working Group, too, recognized their importance and devoted a considerable amount of time to discussing them. It also included a chapter on them in its August 2001 final report. Among other things, the chapter summarizes the positions that various participants in the EDR Working Group took on privacy issues.

We also recognize the importance of public acceptance of this device, whether voluntarily provided by vehicle manufacturers or required by the government. We note that General Motors informed the EDR Working Group (Docket No. NHTSA–99–5218–9; section 8.3.5) that it believes the risk of private citizens reacting negatively to the ''monitoring'' function of the EDR can be addressed through honest and open communications to customers by means of statements in owners' manuals informing them that such data are recorded. That company indicated that the recording of these data is more likely to be accepted if the data are used to improve the product or improve the general cause of public safety.

While we believe that continued attention to privacy issues is important, we observe that, from the standpoint of statutory authority, our role in protecting privacy is a limited one. For example, we do not have authority over such areas as who owns the information that has been recorded. Some of these areas are covered by a variety of Federal and State laws not administered by NHTSA.

Moreover, we believe that our proposed requirements would not create any privacy problems. We are not proposing to require the recording of any data containing any personal or location identifiers. In addition, given the extremely short duration of the recording of the information and the fact that it is only recorded for crashes, the required information could not be used to determine hours of service of commercial drivers.

The recorded information would be technical, vehicle-related information covering a very brief period that begins a few seconds before a crash and ends a few seconds afterwards. Many of these same data are routinely collected during crash investigations, but are based on estimations and reconstruction instead of direct data. For example, investigators currently estimate vehicle speed based on a variety of factors such as damage to the vehicle. The proposal would simply help ensure a more accurate determination of these factors by providing direct measurements of vehicle operation during a crash event.

To help address possible concerns about public knowledge about EDRs, we are proposing to require manufacturers of vehicles equipped with EDRs to include a standardized statement in the owner's manual indicating that the vehicles are equipped with an EDR and that the data collected in EDRs is used to improve safety.[14] The proposed statement would read as follows:

> This vehicle is equipped with an event data recorder. In the event of a crash, this device records data related to vehicle dynamics and safety systems for a short period of time, typically 30 seconds or less. These data can help provide a better understanding of the circumstances in which crashes and injuries occur and lead to the designing of safer vehicles. This device does not collect or store personal information.

Moreover, while access to data in EDRs is generally a matter of state law, we believe that access is and will continue to be possible in only limited situations. While the proposal would require public access to information on the protocol for downloading EDR data, this will not result in public access to EDR data. The interfaces for downloading EDR data will most likely be in a vehicle's passenger compartment. The interface locations will not be accessible to individuals unless they have access to the passenger compartment.

Further, in our own use of information from EDRs, we are careful to protect privacy. As part of our crash investigations, including those that utilize EDRs, we often obtain personal information. In handling this information, the agency complies with applicable provisions of the Privacy Act of 1974, the Freedom of Information Act (section (b)(6)), and other statutory requirements that limit the disclosure of personal information by Federal agencies. In order to gain access to EDR data to aid our crash investigations, we obtain a release for the data from the owner of the vehicle. We assure the owner that all personally identifiable information will be held confidential.

F. Leadtime

We are proposing an effective date of September 1, 2008. This would enable manufacturers to make design changes to their EDRs as they make other design changes to their vehicles, thereby minimizing costs.

G. Response to Petition From Dr. Martinez

As discussed earlier, in October 2001, the agency received a petition from Dr. Ricardo Martinez, President of Safety Intelligence Systems Corporation, asking us to ''mandate the collection and storage of onboard vehicle crash event data, in a standardized data and content format and in a way that is retrievable from the vehicle after the crash.'' We are granting the petition in part and denying it in part.

As discussed above, our proposed regulation would specify requirements concerning the collection and storage of onboard vehicle crash event data by EDRs, in a standard data and content format, and in a way that is retrievable from the vehicle after the crash. To that extent, we are granting Dr. Martinez's petition. We are not proposing to mandate EDRs, however, and to that extent we are denying the petition.

We believe that the motor vehicle industry is continuing to move voluntarily in the direction of providing EDRs. As indicated earlier, we estimate that 65 to 90 percent of model year 2004 passenger cars and other light vehicles have some recording capability, and that more than half record such things as crash pulse data.

The trends toward installation of EDRs in greater numbers of motor vehicles, and toward designing EDRs to record greater amounts of crash data, are

[13] We note that, in some press articles and op-ed pieces, persons have cited privacy issues as a reason for opposing the basic concept of EDRs.

[14] On September 20, 2003, the Governor of California approved a law requiring that manufacturers of new motor vehicles that are manufactured on or after July 1, 2004 and are equipped with EDRs must disclose the existence of the EDRs in the vehicle owner's manual.

continuing ones. General Motors (GM) first began installing EDRs in its air bag equipped vehicles in the early 1990's. In 1994, that company began phasing in upgraded EDRs that record crash pulse information. GM upgraded its EDRs again around 1999–2000 to begin recording pre-crash information such as vehicle speed, engine RPM, throttle position, and brake status.

Also around 1999–2000, Ford began equipping the Taurus with EDRs that recorded both longitudinal and lateral acceleration and several parameters associated with the restraint systems, including safety belt use, pretensioner deployment, air bag firing, and others. Also in the past few years, Toyota began installing EDRs in its vehicles.

As of now, GM, Ford and Toyota record what would be considered a large amount of crash data. Honda, BMW and some other vehicle manufacturers record small amounts of crash data.

Given these trends, we do not believe it is necessary for us to propose to require EDRs at this time.[15] Moreover, we believe that as manufacturers provide advanced restraint systems in their vehicles, such as advanced air bags, they will have increased incentives to equip their vehicles with EDRs. Vehicle manufacturers will want to understand the real world performance of the advanced restraint systems they provide. EDRs will provide important data to help them understand that performance.

We believe our focus should be on helping to ensure that when an EDR is provided in a vehicle, it will record appropriate data in a consistent format and will be accessible in a manner that makes it possible for crash investigators and researchers to use them easily.

We note that we believe our proposed regulation would not adversely affect the numbers of EDRs provided in motor vehicles.[16] We recognize that, if a regulation made EDRs costly, it could act as a disincentive to manufacturers' providing EDRs. However, as discussed earlier, vehicle manufacturers have minimized the costs of adding EDR capability by designing the air bag control system to capture into memory data that are already being processed by the vehicle. Similarly, in developing our proposal, we focused on the recording of the most important crash-related data that are already being processed by vehicles, and not using the rulemaking to require such things as additional accelerometers. The additional costs associated with an EDR meeting the proposed requirements, compared with those currently being provided voluntarily by the vehicle manufacturers, would therefore be small.

[15] If our expectations prove incorrect, we may revisit this issue.

[16] See the immediately previous footnote.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the potential impacts of this proposed rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This document was reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' This document has been determined to be significant under the Department's regulatory policies and procedures. While the potential cost impacts of the proposed rule are far below the level that would make this a significant rulemaking, the rulemaking addresses a topic of substantial public interest.

The agency has prepared a separate document addressing the benefits and costs for the proposed rule. A copy is being placed in the docket.

As discussed in that document and in the preceding sections of this NPRM, the crash data that would be collected by EDRs under the proposed rule would be extremely valuable for the improvement of vehicle safety by improving and facilitating crash investigations, the evaluation of safety countermeasures, advanced restraint and safety countermeasure research and development, and advanced ACN. However, the improvement in vehicle safety would not occur directly from the collection of crash data by EDRs, but instead from the ways in which the data are used by researchers, vehicle manufacturers, ACN and EMS providers, government agencies, and other members of the safety community. Therefore, it is not presently practical to quantify the safety benefits.

We estimate that about 67 to 90 percent of new light vehicles are already equipped with EDRs. As discussed earlier, vehicle manufacturers have provided EDRs in their vehicles by adding EDR capability to their vehicles' air bag control systems. The costs of EDRs have been minimized, because they involve the capture into memory of data that is already being processed by the vehicle, and not the much higher costs of sensing much of that data in the first place.

The costs of the proposed rule would be the incremental costs for vehicles equipped with EDRs to comply with the proposed requirements. As discussed in the agency's separate document on benefits and costs, we estimate the total annual costs of the proposed rule to range from $5.7 to $8.6 million. While the potential costs include technology costs, paperwork maintenance costs, and compliance costs, the paperwork maintenance and compliance costs are estimated to be negligible. The proposal would not require additional sensors to be installed in vehicles, and the major technology cost would result from a need to upgrade EDR memory chips. The total cost for the estimated 11.2 to 15.2 million vehicles that already have an EDR function to comply with the proposed regulation is estimated to be $5.7 to $7.7 million. If manufacturers were to provide EDRs in all 16.8 million light vehicles, the estimated total cost is $8.6 million. A complete discussion of how NHTSA arrived at these costs may be found in the separate document on benefits and costs.

B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). If adopted, the proposal would directly affect motor vehicle manufacturers, second stage or final manufacturers, and alterers. SIC code number 3711, Motor Vehicles and Passenger Car Bodies, prescribes a small business size standard of 1,000 or fewer employees. SIC code No. 3714, Motor Vehicle Part and Accessories, prescribes a small business size standard of 750 or fewer employees.

Only four of the 18 motor vehicle manufacturers affected by this proposal would qualify as a small business. Most of the intermediate and final stage manufacturers of vehicles built in two or more stages and alterers have 1,000 or fewer employees. However, these small businesses adhere to original equipment manufacturers' instructions in manufacturing modified and altered vehicles. Based on our knowledge, original equipment manufacturers do not permit a final stage manufacturer or alterer to modify or alter sophisticated devices such as air bags or EDRs. Therefore, multistage manufacturers and alterers would be able to rely on the certification and information provided by the original equipment manufacturer. Accordingly, there would be no significant impact on small businesses, small organizations, or small

governmental units by these amendments. For these reasons, the agency has not prepared a preliminary regulatory flexibility analysis.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. For the standardization and information collection requirements, NHTSA has submitted to OMB a request for approval of the following collection of information. Public comment is sought on the proposed collection.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Event Data Recorder Information Collection Requirements.

Type of Request: New collection.

OMB Clearance Number: None assigned.

Form Number: This collection of information will not use a standard form.

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information: To improve the availability and usability of data collected by motor vehicle sensors during a crash event, the proposed regulation would require manufacturers that voluntarily equip vehicles with an EDR to record specified data elements and to standardize the format of the resulting data.

Motor vehicle manufacturers voluntarily equipping vehicles with an EDR would also be required to submit information to the agency on accessing and retrieving the stored data. The technical specifications would be required to be of sufficient detail to permit an individual to design and build a tool for accessing and downloading the data in the specified format. This information would be required to be submitted not later than 90 days before the beginning of the production year in which the EDR equipped vehicles are to be offered for sale.

Description of the Need for the Information and Proposed Use of the Information: The information sought by NHTSA in this collection would be used by the agency and crash investigators (*e.g.,* other government agencies, police investigators, motor vehicle crash researchers, etc.) to access and retrieve standardized crash data from voluntarily installed EDRs. Improving the availability of crash event data would permit the agency to improve analysis of a restraint system's crash protection performance and the determination of crash-avoidance system effectiveness. Improving the data elements and data available to the agency would allow NHTSA to make more targeted rulemaking decisions, thus improving overall vehicle safety in the future.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information): NHTSA estimates that a maximum of 18 vehicle manufacturers would submit the required information. The manufacturers are makers of passenger cars, multipurpose passenger vehicles, trucks and buses that have a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds). For each report, a manufacturer would provide, in addition to its identity: (1) Non-proprietary technical information of sufficient detail to permit an individual to design and build a tool to download the EDR data in the specified format and (2) information of sufficient detail to permit access to the data in each vehicle make and model produced by the manufacturer that is equipped with an EDR.

Manufacturers would be required to submit the above information once per year.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: NHTSA estimates that each manufacturer would incur a total of 30 burden hours per year under this collection. The agency estimates that each manufacturer would incur 20 burden hours per year to comply with the information collection and 10 burden hours per year for data standardization. The estimate for the hour burden arising from the information submission is based on the fact that manufacturers would be submitting existing information from its vehicle production data and equipment specification data. As the industry voluntarily standardizes EDR output, the agency anticipates this burden would decrease because manufacturers will be able to cite voluntary industry standards in place of technical specifications. The burden arising from the recordkeeping portion of this request would be a result of manufacturers reprogramming existing sensor systems to meet the data standardization requirements of this program. Given the lead time of the proposed regulation, this reprogramming could be accomplished during a scheduled upgrade of a motor vehicle's sensor systems. This one time reprogramming cost is estimated between $100,000 and $180,000, for the entire industry. Once a manufacturer has standardized all of the existing sensors, we would anticipate this burden to be reduced to a minimal number.

NHTSA estimates the total annual burden hours to be $18,900. (30 burden hours × 18 manufacturers × $35/burden hour)

If a manufacturer needed to increase the electronic storage capability of the existing sensors to comply with the proposal, this would result in an additional cost of $0.50 per vehicle. As discussed above and in the separate document on costs and benefits, the estimated cost for the entire industry from the increased memory and software reprogramming is $5.7 to $8.6 million.

Persons desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC, 20503; Attention: Desk Officer for U.S. Department of Transportation.

The agency will consider comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of NHTSA, including whether the information will have a practical use;
- Evaluating 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;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to NHTSA on the proposed regulation.

NHTSA requests comments on its estimates of the total annual hour and cost burdens resulting from this collection of information. Please submit comments according to the instructions under the Comments heading of this

notice. Comments are due by August 13, 2004.

E. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA 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.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA may also not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The agency has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 13132 and has determined that, although the proposed regulation would preempt conflicting State law, it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

F. Executive Order 12778 (Civil Justice Reform)

This proposed rule would not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the state's use. This section would not apply to the proposed rule, because it would not be a Federal motor vehicle safety standard. General principles of preemption law would apply, however, to displace any conflicting state law or regulations. If the proposed rule were made final, there would be no requirement for submission of a petition for reconsideration or other administrative proceedings before parties could file suit in court.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

As discussed above, both the SAE Vehicle Event Data Interface (J1698–1) Committee and the IEEE Motor Vehicle Event Data Recorder (MVDER) working group (P1616) are developing standards specific to EDRs. While there are currently no voluntary consensus standards for EDR data elements or data format, the agency will consider such standards when they are available. Where appropriate, the agency has incorporated by reference SAE J211, Class 60 for the specified data filtering requirements.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $ 100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA 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 NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. If adopted, this proposed rule would not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This proposed rule would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

IV. Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21) NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** You may also submit your comments to the docket electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.go.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing your comments electronically. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to

search and copy certain portions of your submissions.[17]

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR Part 512).

Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).
2. On that page, click on ''search.''
3. On the next page (*http://dms.dot.gov/search*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted 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 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 563

Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA proposes to amend chapter V of title 49 of the Code of Federal Regulations by adding 49 CFR part 563 to read as follows:

PART 563—EVENT DATA RECORDERS

Sec.

563.1 Scope.
563.2 Purpose.
563.3 Application.
563.4 Incorporation by reference.
563.5 Definitions.
563.6 Requirements for vehicles.
563.7 Data elements.
563.8 Data format.
563.9 Data capture.
563.10 Crash test performance and survivability.
563.11 Information in owner's manual.
563.12 Data retrieval information.

Authority: 49 U.S.C. 30111, 30115, 30117, 30166, 30168; delegation of authority at 49 CFR 1.50.

§ 563.1 Scope.

This part specifies uniform, national requirements for vehicles equipped with event data recorders (EDRs) concerning the collection, storage and retrievability of onboard motor vehicle crash event data. It also specifies requirements for vehicle manufacturers to make publicly available information that would enable crash investigators and researchers to retrieve data from EDRs.

§ 563.2 Purpose.

The purpose of this part is to help ensure that EDRs record, in a readily usable manner, the data necessary for effective crash investigations, analysis of the performance of safety equipment, *e.g.*, advanced restraint systems, and automatic crash notification systems. These data will help provide a better understanding of the circumstances in which crashes and injuries occur and will lead to the designing of safer vehicles.

§ 563.3 Application.

This part applies to passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service, that are equipped with an event data recorder (EDR) and to manufacturers of these vehicles.

§ 563.4 Incorporation by reference.

The Society of Automotive Engineers (SAE) Recommended Practice J211–1, March 1995, ''Instrumentation For Impact Test—Part 1—Electronic Instrumentation'' (SAE J211–1) is incorporated by reference, and is hereby made part of this regulation. The Director of the Federal Register approved the material incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (*see* § 571.5 of this part). A copy of SAE J211–1 may be obtained from SAE at the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. A copy of SAE J211–1 may be inspected at NHTSA's technical reference library, 400 Seventh Street, SW., Room 5109, Washington, DC, or at the Office of the Federal Register, 900 North Capitol Street, NW., Suite 700, Washington, DC.

§ 563.5 Definitions.

(a) *Motor vehicle safety standard definitions.* Unless otherwise indicated, all terms that are used in this part and are defined in the Motor Vehicle Safety

[17] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

Standards, part 571 of this subchapter, are used as defined therein.

(b) *Other definitions.*

ABS activity means the anti-lock brake system (ABS) is actively controlling the vehicle's brakes.

Capture means the process of saving recorded data.

Delta-v means, for vehicles with only longitudinal acceleration measurement capability, the change in velocity of the vehicle along the longitudinal axis, and for vehicles with both longitudinal and lateral acceleration measurement capability, the change in velocity of the resultant of the longitudinal and lateral vehicle velocity time-histories, within the time interval starting from the time zero and ending 500 ms after time zero.

Deployment level means the highest-level inflator ignited in an air bag deployment.

Disposal means the deployment of the second (or higher, if present) stage of a frontal air bag for the purpose of disposing the propellant from the air bag device.

Engine RPM means, for vehicles powered by internal combustion engines, the number of revolutions per minute of the main crankshaft of the vehicle's engine, and for vehicles not powered by internal combustion engines, the number of revolutions per minute of the motor shaft at the point at which it enters the vehicle transmission gearbox.

Engine throttle, percent full means, for vehicles powered by internal combustion engines, the percent of the engine throttle opening compared to the full open position of the engine throttle opening, and for vehicles not powered by internal combustion engines, the percent of vehicle accelerator depression compared to the fully depressed position.

Event means a crash or other physical occurrence that causes the trigger threshold to be met or exceeded after the end of the 500 ms period for recording data regarding the immediately previous event.

Event data recorder (EDR) means a device or function in a vehicle that records any vehicle or occupant-based data just prior to or during a crash, such that the data can be retrieved after the crash. For purposes of this definition, vehicle or occupant-based data include any of the data elements listed in Table I of this part.

Forward seat position means a seat position that is in the forwardmost third of the measured distance between the full forward and the mid-track positions of the seat.

Frontal air bag means the primary inflatable occupant restraint device that is designed to deploy in a frontal crash to protect the front seat occupants.

Ignition cycle, crash means the number (count) of the ignition key applications sufficient to start the engine and/or the power vehicle accessories, from the date of manufacture to and including the time of the event.

Ignition cycle download means the number (count) of the ignition key applications sufficient to start the engine and/or the power vehicle accessories, from the date of manufacture to and including the time when the data are downloaded from the EDR.

Lateral acceleration means the component of the vector acceleration of a point in the vehicle in the y-direction. The lateral acceleration is positive from left to right, from the perspective of the driver when seated in the vehicle facing the direction of forward vehicle travel.

Longitudinal acceleration means the component of the vector acceleration of a point in the vehicle in the x-direction. The longitudinal acceleration is positive in the direction of forward vehicle travel.

Multi-event crash means the occurrence of 2 or more events, the first and last of which begin not more than 5 seconds apart.

Normal acceleration means the component of the vector acceleration of a point in the vehicle in the z-direction. The normal acceleration is positive in a downward direction.

Occupant size classification means, for the right front passenger, the classification of an occupant as an adult or a child occupant, and for the driver, the classification of the driver as being or not being a small female.

Pretensioner means a device that is activated by a vehicle's crash sensing system and removes slack from a vehicle belt system.

Record means the process of storing data into volatile memory for later use.

Safety belt status means an occupant's safety belt is buckled or not buckled.

Seat position means the position of a seat along the track for moving the seat in a forward or rearward direction.

Service brake, on, off means the vehicle's service brake is being applied or not being applied.

Side air bag means any inflatable occupant restraint device that is mounted to the seat or side structure of the vehicle interior at or below the window sill, and that is designed to deploy and protect the occupants in a side impact crash.

Side curtain/tube air bag means any inflatable occupant restraint device that is mounted to the side structure of the vehicle interior above the window sill, and that is designed to deploy and protect the occupants in a side impact crash or rollover.

Speed, vehicle indicated means the speed indicated on the vehicle's speedometer.

Stability control means any device that is not directly controlled by the operator (*e.g.,* steering or brakes) and is intended to prevent loss of vehicle control by sensing, interpreting, and adjusting a vehicle's driving and handling characteristics.

Steering wheel angle means the angular displacement of the steering wheel measured from the straight-ahead position (position corresponding to zero average steer angle of a pair of steered wheels).

Suppression switch status means the status of the switch indicating whether an air bag suppression system is on or off.

Time to deploy means the elapsed time between time zero and the time when the inflator of a side air bag or side curtain/tube air bag is fired.

Time to first stage means the elapsed time between time zero and the time when the first stage of a frontal air bag is fired.

Time to nth stage means the elapsed time between time zero and the time when the second stage of a frontal air bag is fired.

Time zero means the beginning of the first 20 ms interval in which the trigger threshold is met during an event.

Trigger threshold means a change in vehicle velocity, in the longitudinal direction for vehicles with only longitudinal acceleration measurements or in the horizontal plane for vehicles with both longitudinal and lateral measurements, that equals or exceeds 0.8 km/h within a 20 ms interval.

Vehicle roll angle means the angle between the vehicle y-axis and the ground plane.

X-direction means in the direction of the vehicle X-axis, which is parallel to the vehicle's longitudinal centerline.

Y-direction means in the direction of the vehicle Y-axis, which is perpendicular to its X-axis and in the same horizontal plane as that axis.

Z-direction means in the direction of the vehicle Z-axis, which is perpendicular to its X and Y-axes.

§ 563.6 Requirements for vehicles.

Each vehicle equipped with an EDR must meet the requirements specified in § 563.7 for data elements, § 563.8 for data format, § 563.9 for data capture, § 563.10 for crash test performance and survivability, and § 563.11 for information in owner's manual.

§ 563.7 Data elements.

(a) *Data elements required for all vehicles.* Each vehicle equipped with an EDR must record all of the data elements listed in Table I, during the interval/time and at the sample rate specified in that table.

TABLE I.—DATA ELEMENTS REQUIRED FOR ALL VEHICLES EQUIPPED WITH AN EDR

Data element	Recording interval/time (relative to time zero)	Data sample rate samples per second
Longitudinal acceleration	−0.1 to 0.5 sec	500
Maximum delta-V	Computed after event	N.A.
Speed, vehicle indicated	−8.0 to 0 sec	2
Engine RPM	−8.0 to 0 sec	2
Engine throttle, % full	−8.0 to 0 sec	2
Service brake, on/off	−8.0 to 0 sec	2
Ignition cycle, crash	−1.0 sec	N.A.
Ignition cycle, download	At time of download	N.A.
Safety belt status, driver	−1.0 sec	N.A.
Frontal air bag warning lamp, on/off	−1.0 sec	N.A.
Frontal air bag deployment level, driver	Event	N.A.
Frontal air bag deployment level, right front passenger	Event	N.A.
Frontal air bag deployment, time to deploy, in the case of a single stage air bag, or time to first stage deployment, in the case of a multi-stage air bag, driver.	Event	N.A.
Frontal air bag deployment, time to deploy, in the case of a single stage air bag, or time to first stage deployment, in the case of a multi-stage air bag, right front passenger.	Event	N.A.
Multi-event, number of events (1, 2, 3)	Event	N.A.
Time from event 1 to 2	As needed	N.A.
Time from event 1 to 3	As needed	N.A.
Complete file recorded (yes, no)	Following other data	N.A.

(b) *Data elements required for vehicles under specified conditions.* Each vehicle equipped with an EDR must record each of the data elements listed in column 1 of Table II for which the vehicle meets the condition specified in column 2 of that table, during the interval/time and at the sample rate specified in that table.

TABLE II.—DATA ELEMENTS REQUIRED FOR VEHICLES UNDER SPECIFIED CONDITIONS

Data element name	Condition for requirement	Recording interval/time (relative to time zero)	Data sample rate (per second)
Lateral acceleration	If vehicle is equipped to measure acceleration in the vehicle's lateral (y) direction.	–0.1 to 0.5 sec	500
Normal acceleration	If vehicle is equipped to measure acceleration in the vehicle's normal (z) direction.	–0.1 to 0.5 sec	500
Vehicle roll angle	If vehicle equipped to measure or compute vehicle roll angle.	–1.0 to 6.0 sec	10
ABS activity (engaged, non-engaged)	If vehicle equipped with ABS	–8.0 to 0 sec	2
Stability control, on, off, engaged	If vehicle equipped with stability control, ESP, or other yaw control system.	–8.0 to 0 sec	2
Steering input (steering wheel angle)	If vehicle equipped to measure steering wheel steer angle.	–8.0 to 0 sec	2
Safety belt status, right front passenger (buckled, not buckled).	If vehicle equipped to measure safety belt buckle latch status for the right front passenger.	–1.0 sec	N.A.
Frontal air bag suppression switch status, right front passenger (on, off, or auto).	If vehicle equipped with a manual switch to supress the frontal air bag for the right front passenger.	–1.0 sec	N.A.
Frontal air bag deployment, time to nth stage, driver [1].	If vehicle equipped with a driver's frontal air bag with a multi-stage inflator.	Event	N.A.
Frontal air bag deployment, time to nth stage right front passenger [1].	If vehicle equipped with a right front passenger's frontal air bag with a multi-stage inflator.	Event	N.A.
Frontal air bag deployment, nth stage disposal, driver, Y/N (whether the nth stage deployment was for occupant restraint or propellant disposal purposes) [1].	If vehicle equipped with a driver's frontal air bag with a multi-stage that can be ignited for the sole purpose of disposing of the propellant.	Event	N.A.
Frontal air bag deployment, nth stage disposal, right front passenger, Y/N (whether the nth stage deployment was for occupant restraint or propellant disposal purposes) [1].	If vehicle equipped with a right front passenger's frontal air bag with a multistage that can be ignited for the sole purpose of disposing of the propellant.	Event	N.A.
Side air bag deployment, time to deploy, driver	If the vehicle is equipped with a side air bag for the driver.	Event	N.A.
Side air bag deployment, time to deploy, right front passenger.	If the vehicle is equipped with a side air bag for the right front passenger.	Event	N.A.

TABLE II.—DATA ELEMENTS REQUIRED FOR VEHICLES UNDER SPECIFIED CONDITIONS—Continued

Data element name	Condition for requirement	Recording interval/time (relative to time zero)	Data sample rate (per second)
Side curtain/tube air bag deployment, time to deploy, drive side.	If the vehicile is equipped with a side curtain or tube air bag for the driver.	Event	N.A.
Side curtain/tube air bag deployment, time to deploy, drive side.	If the vehicile is equipped with a side curtain or tube air bag for the right front passenger.	Event	N.A.
Pretensioner deployment, time to fire, driver	If the vehicle is equipped with a pretensioner for the driver safety belt system.	Event	N.A.
Pretensioner deployment, time to fire, right front passenger.	If the vehicle is equipped with a pretensioner for the right front passenger safety belt system.	Event	N.A.
Seat position, driver (whether or not the seat is in a forward seat position).	If the vehicle is equipped to determine whether or not the seat is in a forward seat position.	–1.0	N.A.
Seat position, passenger (whether or not the right front passenger seat is in a forward seat position).	If the vehicle is equipped to determine whether or not the right front passenger seat is in a forward seat position.	–1.0	N.A.
Occupant size classification, driver	If the vehicle is equipped to determine the size classification of the driver.	–1.0	N.A.
Occupant size classification, right front passenger	If the vehicle is equipped to determine the size classification of the right front passenger.	–1.0	N.A.
Occupant position classification, driver	If the vehicle is equipped to dynamically determine position of the driver.	–1.0	N.A.
Occupant position classification, right front passenger.	If the vehicle is equipped to dynamically determine position of the right front occupant.	–1.0	N.A.

[1] List this element n – 1 times, once for each stage of a multi-stage air bag system.

§ 563.8 Data format.

(a) The data elements listed in Tables I and II, as applicable, must be recorded in accordance with the range, accuracy, precision, and filter class specified in Table III.

TABLE III.—RECORDED DATA ELEMENT FORMAT

Data element	Range	Accuracy	Precision	Filter class
Longitudinal acceleration	–100G to +100G	±1G	1G	SAE J211, Class 60.
Lateral acceleration	–100G to +100G	±1G	1G	SAE J211, Class 60.
Normal acceleration	–100G to +100G	±1G	1G	SAE J211, Class 60.
Delta-v	–100km/h to 100 km/h	±1 km/h	1 km/h	N.A.
Vehicle roll angle	–1080deg to +1080Deg	±10 deg	10 deg	N.A.
Speed, vehicle indicated	0 km/h to 200 km/h	±1 km/h	1 km/h	N.A.
Engine rpm	0 to 10,000 rpm	±100 rpm	100 km/h	N.A.
Engine throttle, percent full	0 to 100%	±5%	5 %	N.A.
Service brake, on, off	On and Off	N.A.	On and Off	N.A.
ABS activity	On and Off	N.A.	On and Off	N.A.
Stability control, on, off, engaged.	On, Off, Engaged	N.A.	On, Off, Engaged	N.A.
Steering wheel angle	–250 deg CW to +250 deg CCW.	±5 deg	5 deg	N.A.
Ignition cycle, crash	0 to 60,000	±1 cycle	1 cycle	N.A.
Ignition cycle, download	0 to 60,000	±1 cycle	1 cycle	N.A.
Safety belt status, driver	On or Off	N.A.	On or Off	N.A.
Safety belt status, right front passenger.	On or Off	N.A.	On or Off	N.A.
Frontal air bag suppression switch status, right front passenger.	On or Off	N.A.	On or Off	N.A.
Frontal air bag warning lamp, on, off.	On of Off	N.A.	On or Off	N.A.
Frontal air bag deployment level, driver.	1 to 100	±0	1	N.A.
Frontal air bag deployment level, right front passenger.	1 to 100	±0	1	N.A.
Frontal air bag deployment, time to deploy/first stage, driver.	0 to 250 ms	±2 ms	2 ms	N.A.
Frontal air bag deployment, time to deploy/first stage, right front passenger.	0 to 250 ms	±2 ms	2 ms	N.A.

TABLE III.—RECORDED DATA ELEMENT FORMAT—Continued

Data element	Range	Accuracy	Precision	Filter class
Frontal air bag deployment, time to nth stage, driver.	0 to 250 ms	±2 ms	2 ms	N.A.
Frontal air bag deployment, time to nth stage, right front passenger.	0 to 250 ms	±2 ms	2 ms	N.A.
Frontal air bag deployment, nth stage disposal, driver, y/n.	Yes/No	N.A.	Yes/No	N.A.
Frontal air bag deployment, nth stage disposal, right front passenger, y/n.	Yes/No	N.A.	Yes/No	N.A.
Side air bag deployment, time to deploy, driver.	0 to 250 ms	±2 ms	2 ms	N.A.
Side air bag deployment, time to deploy, right front passenger.	0 to 250 ms	±2 ms	2 ms	N.A.
Side curtain/tube air bag deployment, time to deploy, driver side.	0 to 250 ms	±2 ms	2 ms	N.A.
Side curtain/tube air bag deployment, time to deploy, right side.	0 to 250 ms	±2 ms	2 ms	N.A.
Pretensioner deployment, time to fire, driver.	0 to 250 ms	±2 ms	2 ms	N.A.
Pretensioner deployment, time to fire, right front passenger.	0 to 250 ms	±2 ms	2 ms	N.A.
Seat position, driver	Yes/No	N.A.	Yes/No	N.A.
Seat position, right front passenger.	Yes/No	N.A.	Yes/No	N.A.
Occupant size driver occupant 5th female size y/n.	Yes/No	N.A.	Yes/No	N.A.
Occupant size right front passenger child y/n.	Yes/No	N.A.	Yes/No	N.A.
Occupant position classification, driver oop y/n.	Yes/No	N.A.	Yes/No	N.A.
Occupant position classification, right front passenger oop y/n.	Yes/No	N.A.	Yes/No	N.A.
Multi-event, number of events (1,2,3).	1,2 or 3	N.A.	1,2 or 3	N.A.
Time from event 1 to 2	0 to 5.0	0.1 sec	0.1 sec	N.A.
Time from event 1 to 3	0 to 5.0	0.1 sec	0.1 sec	N.A.
Complete file recorded (Yes/No).	Yes/No	N.A.	Yes/No	N.A.

(b) Acceleration Time-History data and format: The longitudinal, lateral, and normal acceleration time-history data, as applicable, must be recorded to include:

(1) The Time Step (TS) that is the inverse of the sampling frequency of the acceleration data and which has units of seconds;

(2) The number of the first point (NFP), which is an integer that when multiplied by the TS equals the time relative to time zero of the first acceleration data point;

(3) The number of the last point (NLP), which is an integer that when multiplied by the TS equals the time relative to time zero of the last acceleration data point; and

(4) NLP–NFP+1 acceleration values sequentially beginning with the acceleration at time NFP*TS and continue sampling the acceleration at TS increments in time until the time NLP*TS is reached.

§ 563.9 Data capture.

The EDR must collect and store the data elements for events in accordance with the following conditions and circumstances:

(a) The EDR collects data for an event, starting at time zero and ending 500 ms later.

(b) The EDR must be capable of recording not less than 3 events in a multi-event crash.

(c) The highest delta-v of any of the events in a crash sequence is used to quantify the maximum delta-v for a multi-event crash.

(d) If an air bag, either side or frontal, deployment occurs in a single or multi-event crash, the data captured from any previous crash must be deleted, the data related to that deployment must be captured and the memory must be locked to prevent any future overwriting of these data.

(e) If an air bag deployment does not occur and if the absolute value of the maximum delta-v recorded from a multi-event crash is greater than the absolute value of the maximum delta-v currently stored in the EDR's memory, delete all previously captured data in the EDR's memory and capture the current data.

(f) If an air bag deployment does not occur and if the absolute value of the maximum delta-v from a multi-event crash is less than or equal to the

absolute value of the maximum delta-v currently in the EDR's memory, do not capture the recorded data.

§ 563.10 Crash test performance and survivability.

(a) Each vehicle subject to the requirements of S13 of § 571.208, *Occupant crash protection,* must comply with the requirements in subpart (d) of this section when tested according to S13 of § 571.208. Any vehicle subject to the requirements of S5, S14.5 or S17 of § 571.208 must comply with the requirements in subpart (d) of this section when tested according to S5, S8, and S18 of § 571.208.

(b) Any vehicle subject to the requirements of § 571.214, *Side impact protection,* must comply with the requirements of subpart (d) of this section when tested in a 33.5 miles per hour impact in which the car is struck on either side by a moving deformable barrier under the test conditions in S6 of § 571.214.

(c) Any vehicle subject to the requirements of S6.2 of § 571.301, *Fuel system integrity,* must comply with the requirements in subpart (d) of this section when tested according to the conditions in S7.3 of § 571.301.

(d) The data elements required by § 563.7 must be recorded in the format specified by § 563.8, exist at the completion of the crash test, and be retrievable by the methodology specified by the vehicle manufacturer under § 563.12 for not less than 30 days after the test and without external power, and the complete data recorded element must read yes after the test.

§ 563.11 Information in owner's manual.

The owner's manual must contain the following statement: ''This vehicle is equipped with an event data recorder. In the event of a crash, this device records data related to vehicle dynamics and safety systems for a short period of time, typically 30 seconds or less. These data can help provide a better understanding of the circumstances in which crashes and injuries occur and lead to the designing of safer vehicles. This device does not collect or store personal information.''

§ 563.12 Data retrieval information.

(a) *Information filing requirements.*

(1) Each manufacturer of a motor vehicle equipped with an EDR must furnish non-proprietary technical specifications at a level of detail sufficient to permit companies that manufacture diagnostic tools to develop and build a device capable of accessing, retrieving, interpreting, and converting the data stored in the EDR that are required by this part.

(2) The technical information provided under paragraph (a)(1) must identify the make, model, and model year of each vehicle equipped with an EDR, specify the interface locations and permit the access, retrieval, interpretation and conversion of the data in an identifiable manner consistent with the requirements of this part for each vehicle of every identified make, model, and model year. If the information differs for different vehicles of same make, model, and model year, the information provided must explain how the VINs for the vehicles of that make, model and model year can be used to determine which aspects of the information apply to a particular vehicle.

(b) *Submission of information.*

(1) This information must be submitted to Docket No. (a specific docket number would be included in the final rule) Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, the information may be submitted electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov,* using the same docket number.

(2) The manufacturer must submit such information not later than 90 days prior to the start of production of the EDR-equipped makes and models to which that information relates. In addition, the manufacturer must update the information, as necessary to keep it accurate, not later than 90 days prior to any changes that would make the previously submitted information no longer valid.

Issued on: June 7, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–13241 Filed 6–9–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 588

[Docket No. NHTSA–2004–17745]

RIN 2127–AI95

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Child Restraint Systems Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend the content of the owner registration form required by the Federal child restraint standard to allow information about registering on-line to be on the card. The proposed amendments would enhance the opportunity of consumers to register their restraints online, which may increase registration rates. The proposal would also better enable manufacturers to supplement recall notification via first-class mail with e-mail notification, which may increase the number of owners learning of a recall and responding to it. This NPRM also proposes that the telephone number that manufacturers must provide on child restraint labels for the purpose of enabling consumers to register by telephone must be a U.S. number.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than August 13, 2004.

ADDRESSES: You may submit comments (identified by the DOT DMS Docket Number) by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: (202) 493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comments heading under the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to http://dms.dot.gov, including any personal information provided. Please see the information regarding the Privacy Act under the Comments heading.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration:

For non-legal issues: Mr. Tewabe Asebe of the NHTSA Office of Rulemaking at (202) 366–2365.

For legal issues: Mr. Christopher Calamita of the NHTSA Office of Chief Counsel at (202) 366–2992.

You may send mail to both of these officials at the National Highway Traffic and Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Background
III. CRS Registration and Internet Resources
a. Changes to the Registration Form.
1. Manufacturer's Internet Address.
2. Space for Consumers' E-Mail Addresses.
b. The Electronic Registration Form
c. Registration by Telephone
IV. New NHTSA Hotline Number.
V. Rulemaking Analyses and Notices
VI. Submission of Comments

I. Introduction

To improve recall effectiveness, this document proposes to permit manufacturers of child restraint systems (CRSs) to include on the mandatory CRS registration form information pertaining to the opportunity of owners to register online and a field for customer e-mail addresses. The proposed rule would enhance the existing regulations intended to improve the percentage of recalled restraints that are remedied in a recall campaign for a noncompliance or defect. If a manufacturer were to voluntarily collect e-mail addresses as part of a CRS registration program, a record of these addresses would have to be maintained for six years in the same manner as is currently required for all CRS registration information.

II. Background

Federal Motor Vehicle Safety Standard No. 213, ''Child Restraint Systems'' (49 CFR 571.213) establishes an owner registration program for child restraint systems. NHTSA implemented the program to improve the effectiveness of manufacturer campaigns to recall child restraints that contain a safety-related defect or that fail to conform to FMVSS No. 213. By increasing the number of identified child restraint purchasers, the program increases the manufacturers' ability to inform owners of restraints about defects or noncompliances in those restraints.

Under the program, child restraint manufacturers are required to provide a registration form attached to each child restraint (S5.8). The registration form must conform in size, content and format to forms depicted in the standard (figures 9a and 9b). Each form must include a detachable postage-paid postcard which provides a space for the consumer to record his or her name and address, and must be preprinted with the restraint's model name or number and its date of manufacture. Except for information that distinguishes a particular restraint from other systems, no other information is permitted to appear on the postcard. CRS manufacturers are also required to supply a telephone number on CRS labels to enable owners (particularly second-hand owners) to register over the telephone. NHTSA requires manufacturers to keep a record of registered owner information along with the relevant CRS information (restraint model, serial number, and manufactured dates) for not less than six years from the date of manufacture of the CRS (49 CFR Part 588, *Child restraint systems recordkeeping requirements*).

In the event of a recall, manufacturers must send notification by first-class mail to the registered CRS users. (Public notice of the recall can be also required.) Prior to the registration requirement,[1] an estimated 3 percent of consumers registered their CRSs. Currently, according to data from NHTSA's Office of Defect Investigation, the registration rate is at 27 percent.

Since the CRS registration requirement became effective, access to the Internet by the general public has risen significantly. The September 2001 U.S. Census Bureau report, *Home Computer and Internet Use in the United States: August 2000,* revealed that more than half of the United States population has home computers; greater than a twofold increase from 1993. The report also stated that forty-two percent of all households had at least one household member who used the Internet at home in 2000. Accompanying this increase in Internet access has been a substantial rise in online consumer spending. According to a February 15, 2001, U.S. Census Bureau news release, online consumer spending jumped from $7.7 billion in 1998 to $17.3 billion in 1999. From the statistics above, it is apparent that the Internet, as an electronic media, has a major role in business transactions and information dissemination in the U.S. today. The rapid growth of the Internet and Internet access provides an opportunity to improve the effectiveness of CRS recall campaigns through increased owner registration.

III. CRS Registration and Internet Resources

This document proposes to permit CRS manufacturers the option of including specified wording in the CRS registration form to provide for online registration of CRSs. NHTSA does not currently prohibit CRS manufacturers from using the Internet in their owner registration programs. However, wording about registering online cannot currently appear on the card.

The proposed amendments would facilitate online registration of child restraints, which may increase registration rates. The proposal would also better enable manufacturers to supplement recall notification via first-class mail with e-mail notification, which may increase the number of owners learning of a recall and responding to it.

a. Changes To The Registration Form

The proposed rule would permit manufacturers to add to the registration form: (a) Specified statements informing CRS owners that they may register online; (b) the Internet address for registering with the company; (c) revisions to statements reflecting use of the Internet to register; and (d) a space for the consumer's e-mail address. For those CRS owners with access to the Internet, online registration may be a preferred method of registering a CRS. Providing for another means of registration could help increase the number of registered CRSs.

Under today's NPRM, each CRS manufacturer would decide on its own whether to include the new wording on its registration forms.[2] NHTSA is not mandating that all registration forms have the wording because such a requirement would implicitly require manufacturers to have and maintain an internet registration system. While over forty percent of U.S. households had internet access in 2000, a majority did not. Further, it is uncertain how many households in that forty percent had consistent access to the internet.

[1] The final rule establishing the registration requirement was published September 10, 1992 and became effective March 9, 1993. (57 FR 41428).

[2] Manufacturers could choose whether to include the wording, but they would not be permitted to vary it.

1. Manufacturer's internet Address

Manufacturers choosing the option would be required to provide an internet address that directly links consumers to the registration form. By preventing the consumer from having to search for the form on the manufacturer's Web site, the ease and convenience of registering is increased.

2. Space for Consumers' E-Mail Addresses

Registration cards are currently required to provide space for a CRS owner to provide his or her name, street address, city, state, and ZIP Code, enabling a manufacturer to send recall notification by first-class mail as required by 49 U.S.C. 30119(d)(2).

In October 2002, the agency published a technical report titled, ''Evaluation of Child Safety Seat Registration,'' [3] which, among other things, evaluated tools that could be used to increase the number of CRS owner registrations. The report suggested the use of online registration and notification, stating: ''Adding a space for an e-mail address on the registration form could make initial recall notification faster. It could also be helpful in locating seat owners that have changed residence but retained their e-mail address.''

By permitting the collection of e-mail addresses on the CRS registration form as proposed in this NPRM, manufacturers would have the ability to provide e-mail notification of a recall in conjunction with the mandatory first-class mail notification. Providing an additional method of notifying CRS owners of a recall would increase the likelihood of a recalled CRS being remedied.

Collection of customer e-mail addresses could also make initial recall notification faster. A CRS customer can receive an e-mail notification within a very short time frame after being issued. Conversely, first-class mail notification can take up to several days to reach the intended customer, and even longer if the letter must be forwarded to a new address. Further, a CRS owner may maintain the same e-mail address even after moving to a new street address, resulting in an e-mail notification reaching the owner even if mail forwarding has been discontinued.

With less than half of the nation having access to e-mail in the home, a voluntary collection of e-mail addresses provides manufacturers with the flexibility of supplementing first-class mail notification without imposing potentially prohibitive costs. While the collection of e-mail addresses would be voluntary, if a manufacturer were to collect e-mail addresses it would be required to maintain a record of all collected e-mails for a period of 6 years, just as with the other registration information.

Question For Comment: 49 U.S.C. 30119(d)(2) specifies that recall notification shall be sent by first class mail to the most recent purchaser known to the manufacturer.[4] The amendments proposed in this document would establish a means by which CRS manufacturers would have CRS owners' e-mail addresses in addition to first class mail addresses. Comments are requested on the costs and benefits of having manufacturers e-mail the recall notice if they have already provided notification by first-class mail. Under what circumstances should manufacturers be required to provide recall notification using both e-mail and first-class mail?

Separate List. In developing the current registration requirements, focus groups reacted favorably to the idea of being assured by the manufacturer that information retained in these records would not be used for commercial mailing lists. We expect that the public would respond similarly to assurances that a registered e-mail address would not result in unsolicited e-mails. NHTSA expects that manufacturers will respect owners' preferences that this information, along with other registration information, will be kept separate from other customer lists.

b. The Electronic Registration Form

FMVSS No. 213 mandates that CRS manufacturers provide a standardized registration form because a standardized format increases registration rates.[5] To increase the likelihood that owners will find online registration user-friendly, the proposed rule would standardize the appearance of the online registration form presented to the consumer. That is, similar to the standardized mail-in registration form, the only fields that would be permitted on an online form would be those for: (a) The owner's name and address; (b) the restraint model and serial number; (c) date of manufacture of the CRS; and (d) at the manufacturer's option, the owner's e-mail address. Comments are requested on whether the above fields should be required fields, *i.e.*, the registration will not be ''accepted'' unless the information is provided. The online form would be required to contain relevant portions of the standardized warnings and other information mandated for mail-in registration cards, (including the restraint owner's name and address; the restraint model and serial number; the restraint manufacture date; and at the manufacturer's option, the restraint owner's e-mail address).

The only additional information permitted on the online form would be information identifying the manufacturer and a link to the manufacturer's Web site home page. Further, manufacturers would be prevented from having additional screens or advertisement banners appear as a result of a CRS owner accessing the Web page that contains the registration form (*e.g.*, ''pop-up advertisements'' would be prohibited). By preventing additional information or advertising from appearing on the registration page or as a result of accessing the registration page, the benefits of a standardized registration form would be maintained, helping to improve the rate of registration. Comments are requested on whether some additional information should be permitted or required on the form, *e.g.*, instructions to the consumer as to where the restraint's model name and number can be found. Unlike the registration form that is attached to the child restraint, the electronic registration form would not have the model name and number pre-printed on the form, so consumers must enter this information themselves. Comments are requested on how to facilitate a convenient and accurate entering of this information by the consumer.

c. Registration By Telephone

When the agency established the CRS registration form requirement, we also established a requirement for CRS manufacturers to label each CRS with a telephone number that consumers could use to register their restraints in the event the mail-in form wasn't used. This is particularly important for persons owning secondhand restraints that are missing the original registration form.

NHTSA was asked in a request for an interpretation of FMVSS No. 213 whether the telephone number must be a U.S. number. Our answer was the standard does not require a U.S. number, but we were concerned that the use of a non-U.S. telephone number would present a high cost to a CRS owner seeking to register a CRS and

[3] DOT HS 809 518, NHTSA Technical Report.

[4] That section also provides that in addition, if the Secretary decides that public notice is required for motor vehicle safety, public notice shall be given in the way required by the Secretary after consulting with the manufacturer.

[5] In developing the mail-in registration form, the agency found that focus groups ''widely and enthusiastically accepted the text and format of the parts of the form that did not vary among the proposed options.'' 57 FR 414321.

would be a disincentive for consumers to register.[6]

We are unaware of any manufacturer currently providing a non-U.S. telephone number. However, in order to address this foreseeable impediment to registration of owners (particularly owners of secondhand restraints), we are proposing to require that the telephone number labeled on the CRS for registration purposes must be a U.S. number.

IV. New NHTSA Hotline Number

CRS manufacturers are required to provide the telephone number for the U.S. Government's (NHTSA's) Auto Safety Hotline on both CRS labels and the accompanying printed instructions. The Auto Safety Hotline provides CRS owners with information on product recalls. Previously, manufacturers were required to provide two phone numbers; a toll-free number and a number for the District of Columbia area. The separate phone number for the District of Columbia area is no longer needed, as the toll-free number now functions for the entire U.S. Accordingly, child restraint labels and instructions would only need to refer to the toll-free number. This change would reduce the amount of wording on the child restraint label, which should help increase the readability of the label.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''nonsignificant'' under the Department of Transportation's regulatory policies and procedures. We do not anticipate this proposal to result in any costs for CRS manufacturers. The proposed rule would not establish any new requirements for manufacturers of CRSs unless a manufacturer chooses to collect e-mail addresses voluntarily or provide an Internet address on the CRS registration card. If a manufacturer were to voluntarily collect customer e-mail addresses and provide for online registration of restraints, the anticipated costs for the recordkeeping requirements would be minimal.

Many CRS manufacturers already provide an electronic product registration service and by encouraging online registration, manufacturers could reduce the number of postage-paid registration cards returned, thereby reducing postage fees for the manufacturer.[7] Manufacturers that collect customer e-mail addresses could incorporate this information into the registration records currently maintained. Also, CRS owner information submitted online would be in electronic format, minimizing the data entry burden required to record owner information and reduce recordkeeping costs.

While the use of online resources for CRS registration has the potential for increased CRS registration and enhanced recall notification, we are not requiring manufacturers to have a means by which consumers can register their CRSs via the Internet. We want to avoid imposing potentially prohibitive costs on manufacturers not currently equipped to incorporate Internet resources into CRS registration. Manufacturers not currently situated for Internet registration would have the cost of developing an Internet system to process registrations as well as the costs associated with revising the mandated registration forms and modifying recordkeeping procedures. If and when Internet and e-mail access becomes more universal, the benefit of mandatory Internet registration provisions can be evaluated.

B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. The proposed rule would not impose any new requirements on manufacturers that produce CRSs. The proposal would provide flexibility in CRS registration by allowing manufacturers to promote electronic registration.

C. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The rule proposed in this document would reconfigure the information collection and recordkeeping requirements of FMVS No. 213 and 49 CFR part 588, which have been approved under OMB No. 2127–0576. The agency does not anticipate this reconfiguration to increase the cost or burden of the approved collection.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Voluntary Child Safety Registration Form.

Type of Request: Reconfiguration of existing collection.

OMB Clearance Number: 2127–0576.

Form Number: None.

Summary of the Collection of Information

Under the rule proposed in this document, if a CRS manufacturer were to voluntarily collect an e-mail address as part of the CRS registration, then the manufacturer would be required to maintain a record of that information. The recordkeeping format and retention requirements for CRS owner e-mail addresses would be identical to the format and retention requirements currently mandated for owner registration under 49 CFR part 588. The proposed rule would also require that if a manufacturer were to voluntarily provide for electronic registration, then the manufacturer would be required to use a standardized format similar to the format currently required for the postage-paid registration form.

The proposed rule would not mandate the collection of e-mail addresses or the use of electronic registration.

Description of the Need for the Information and Proposed Use of the Information

Public access and use of the Internet has increased exponentially since its inception. The proposed rule would permit manufacturers to take advantage of this growth in technology and use electronic registration as a supplement to registration by mail. This would provide CRS owners with an additional option for registering a CRS and increase the number of CRSs registered. By increasing the number of identified child restraint purchasers, the program increases the manufacturers' ability to inform owners of restraints about defects or noncompliances in those restraints.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

NHTSA estimates that twenty-three CRS manufacturers would be subject to the reconfigured collection requirements. If a manufacturer were to voluntarily collect a CRS owner's e-mail address as part of the CRS registration, then the manufacturer would be required to record and maintain that e-

[6] *http://www.nhtsa.dot.gov/cars/rules/interps/files/002775cmc_phoneno.html.*

[7] A manufacturer is not charged a fee by the post office for a postage pre-paid postcard until the card is actually sent through the mail.

mail address along with the registration information currently recorded and maintained. If a CRS manufacturer were to provide for electronic registration, the electronic registration form would be required to be in a format similar to the format for the postage-paid form.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information

NHTSA does not anticipate a significant change to the hour burden or costs associated with child restraint registration. By allowing manufacturers the ability to promote online registration, we anticipate a reduction in the collection and recordkeeping burden. Internet registration would reduce a manufacturer's postage costs by reducing the number of postage-paid registration cards sent through the mail. Registration information collected on the Internet would be in an electronic form, which could be more easily transferred and stored than paper registration cards. Registration information received in electronic form would reduce the data entry burden of CRS manufacturers. This reduction in burden would offset any burden created by the e-mail record keeping requirement and the standardized Internet registration form.

NHTSA requests comment on its estimates of the total annual hour and cost burdens resulting from this collection of information. Please submit any comments to the NHTSA Docket Number referenced in the heading of this notice or to: Mr. Tewabe Asebe of the NHTSA Office of Rulemaking at (202) 366–2365. Comments are due by August 13, 2004.

D. National Environmental Policy Act

NHTSA has analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that, if adopted, it would not have any significant impact on the quality of the human environment.

E. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA 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.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA may also not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The agency has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

F. Executive Order 12778 (Civil Justice Reform)

This proposed rule would not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The agency searched for, but did not find any voluntary consensus standards relevant to this proposed rule.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA 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 NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. If adopted, this proposed rule would not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This proposed rule would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

VI. Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21) NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

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How Can I Be Sure That My Comments Were Received?

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Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

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2. On that page, click on ''simple search.''

3. On the next page (*http://dms.dot.gov/search/searchFormSimple.cfm*) type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted 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 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires, Incorporation by Reference.

49 CFR Part 588

Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR parts 571 and 588 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFTEY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.213 would be amended to revise paragraph (m) of S5.5.2, paragraph (k) of S5.5.5, S5.6.1.7, S5.6.2.2, S5.8, and Figures 9(a) and 9(b), to read as follows:

§ 571.213 Standard No. 213; Child restraint systems.

* * * * *

S5.5.2 * * *

(m) One of the following statements, inserting an address, a U.S. telephone number, and at the manufacturer's option, Web site:

(1) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, e-mail address if available [preceding four words is optional] and the restraint's model number and manufacturing date to (*insert address*) or call (*insert a U.S. telephone number*). For recall information, call the U.S. Government's Auto Safety Hotline at 888–DASH–2–DOT.''

(2) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, e-mail address if available [preceding four words is optional], and the restraint's model number and manufacturing date to (*insert address*) or call (*insert a U.S. telephone number*) or register online at (*insert Web site for electronic registration form*). For recall

[8] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

information, call the U.S. Government's Auto Safety Hotline at 888–DASH–2–DOT.''

* * * * *

S5.5.5 * * *

(k) One of the following statements, inserting an address, a U.S. telephone number, and at the manufacturer's option, Web site:

(1) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, e-mail address if available (optional), and the restraint's model number and manufacturing date to (*insert address*) or call (*insert a U.S. telephone number*). For recall information, call the U.S. Government's Auto Safety Hotline at 888–DASH–2–DOT.''

(2) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, e-mail address if available (optional), and the restraint's model number and manufacturing date to (*insert address*) or call (*insert telephone number*) or register online at (*insert Web site for electronic registration form*). For recall information, call the U.S. Government's Auto Safety Hotline at 888–DASH–2–DOT.''

* * * * *

S5.6.1.7 The instructions shall include one of the following statements inserting an address, a U.S. telephone number, and at manufacturer's option, Web site:

(a) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, e-mail address if available (optional), and the restraint's model number and manufacturing date to (*insert address*) or call (*insert a U.S. telephone number*). For recall information, call the U.S. Government's Auto Safety Hotline at 888–DASH–2–DOT.''

(b) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, e-mail address if available (optional), and the restraint's model number and manufacturing date to (*insert address*) or call (*insert telephone number*) or register online at (*insert Web site for electronic registration form*). For recall information, call the U.S. Government's Auto Safety Hotline at 888–DASH–2–DOT.''

* * * * *

S5.6.2.2 The instructions for each built-in child restraint system other than a factory-installed restraint, shall include one of the following statements, inserting an address, a U.S. telephone number, and at the manufacturer's option, Web site:

(a) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, e-mail address if available [optional], and the restraint's model number and manufacturing date to (*insert address*) or call (*insert a U.S. telephone number*). For recall information, call the U.S. Government's Auto Safety Hotline at 888–DASH–2–DOT.''

(b) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, e-mail address if available [optional], and the restraint's model number and manufacturing date to (*insert address*) or call (*insert U.S. telephone number*) or register online at (*insert Web site for electronic registration form*). For recall information, call the U.S. Government's Auto Safety Hotline at 888–DASH–2–DOT.''

* * * * *

S5.8 Information requirements—attached registration form and electronic registration form.

S5.8.1 *Attached registration form.*

(a) Each child restraint system, except a factory-installed built-in restraint system, shall have a registration form attached to any surface of the restraint that contacts the dummy when the dummy is positioned in the system in accordance with S6.1.2 of Standard 213.

(b) Each attached form shall:

(1) Consist of a postcard that is attached at a perforation to an informational card;

(2) Conform in size, content and format to Figures 9a and 9b of this section; and

(3) Have a thickness of at least 0.007 inches and not more than 0.0095 inches.

(c) Each postcard shall provide the model name or number and date of manufacture (month, year) of the child restraint system to which the form is attached, shall contain space for the purchaser to record his or her name, mailing address, and at the manufacturer's option, e-mail address, shall be addressed to the manufacturer, and shall be postage paid. No other information shall appear on the postcard, except identifying information that distinguishes a particular child restraint system from other systems of that model name or number may be preprinted in the shaded area of the postcard, as shown in figure 9a.

(d) Manufacturers may voluntarily provide a Web address on the attached registration form enabling owners to register child restraints online, provided that the Web address is a direct link to the electronic registration form meeting the requirements of S5.8.2 of this section.

S5.8.2 *Electronic registration form.*

(a) Each electronic registration form must meet the requirements of this S5.8.2. Each form shall:

(1) Contain the following statements at the top of the form:

(i) ''FOR YOUR CHILD'S CONTINUED SAFETY'' (Displayed in bold type face, caps, and minimum 12 point type.)

(ii) ''Although child restraint systems undergo testing and evaluation, it is possible that a child restraint could be recalled.'' (Displayed in bold typeface, caps and lower case, and minimum 12 point type.)

(iii) ''In case of a recall, we can reach you only if we have your name and address, so please fill in the registration form to be on our recall list.'' (Displayed in bold typeface, caps and lower case, and minimum 12 point type.)

(2) Provide as required registration fields, space for the purchaser to record the model name or number and date of manufacture (month, year) of the child restraint system, and space for the purchaser to record his or her name and mailing address. At the manufacturer's option, a space is provided the purchaser to record his or her e-mail address.

(b) No other information shall appear on the electronic registration form, except for information identifying the manufacturer or a link to the manufacturer's home page. Accessing the Web page that contains the electronic registration form shall not cause additional screens or electronic banners to appear.

(c) The electronic registration form shall be accessed directly by the Web address that the manufacturer printed on the attached registration form. The form must appear on screen when the consumer has inputted the Web address provided by the manufacturer, without any further keystrokes on the keyboard or clicks of the mouse.

* * * * *

BILLING CODE 4910–59–P

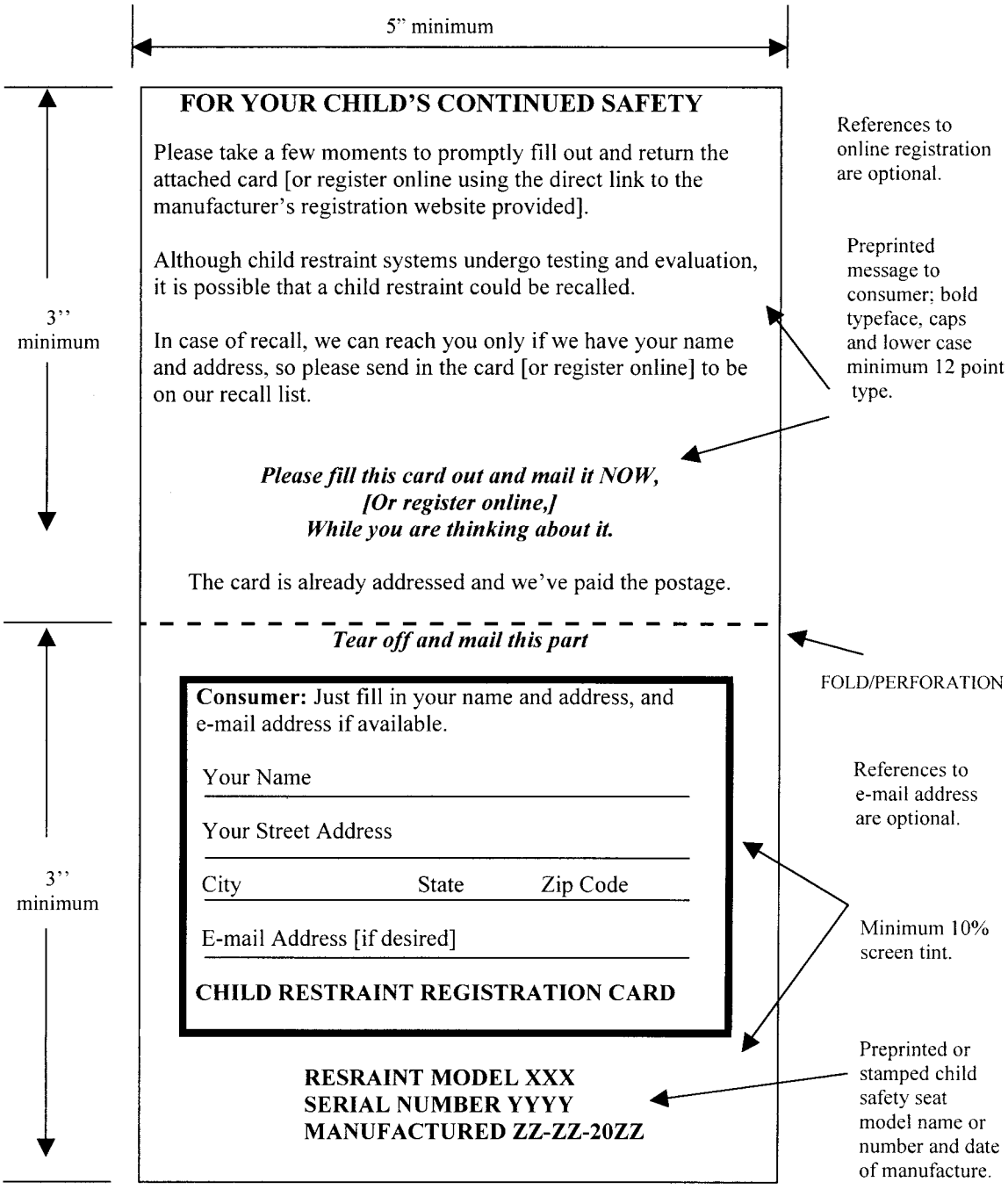

Figure 9a - Registration form for child restraint systems - product identification number and purchaser information side.

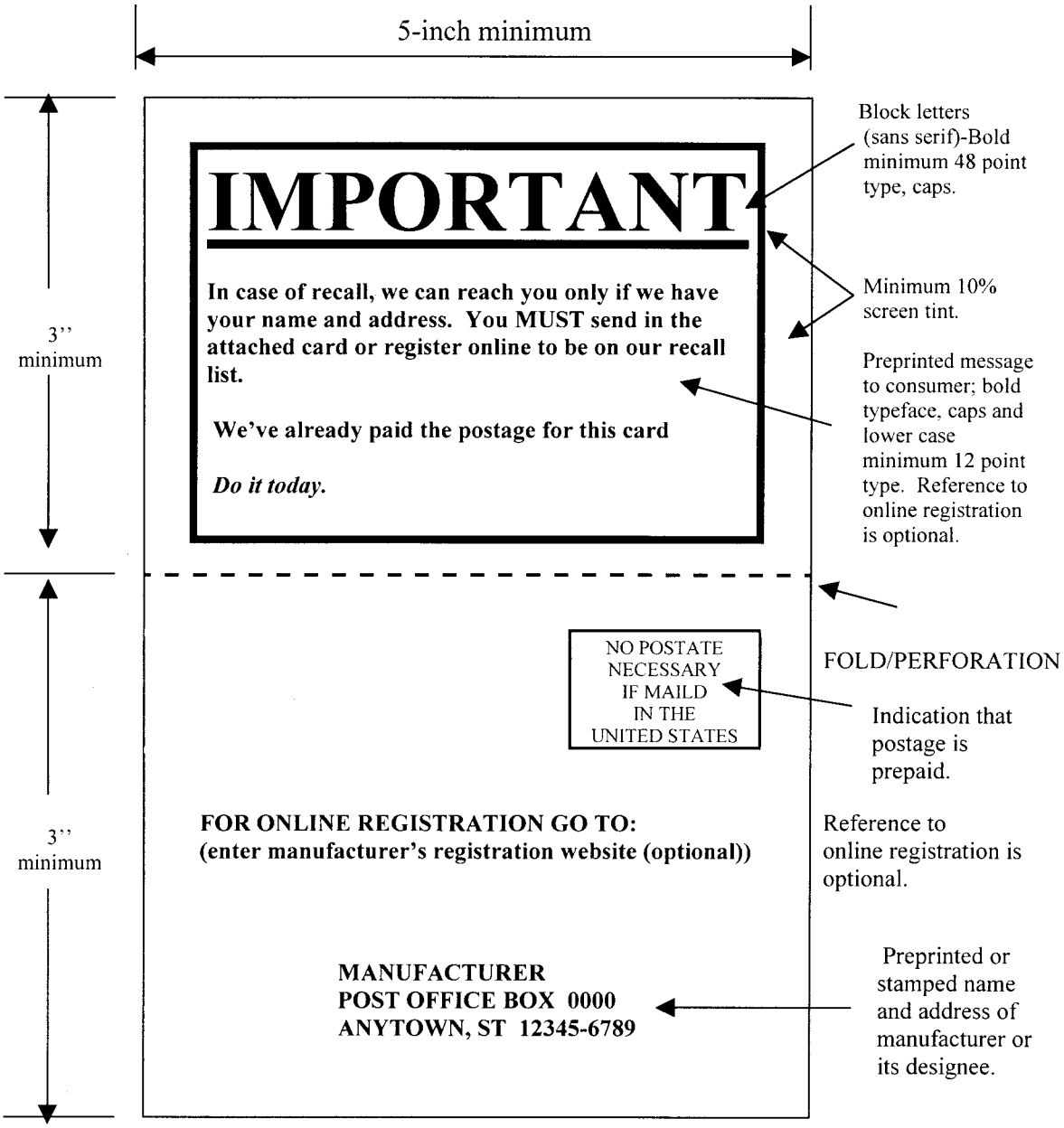

Figure 9b - Registration form for child restraint systems — address side.

BILLING CODE 4910–59–C

PART 588—CHILD RESTRAINT SYSTEMS RECORDKEEPING REQUIREMENTS

1. The authority citation for part 588 would be revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 588.5 would be revised to read as follows:

§ 588.5 Records.

Each manufacturer, or manufacturer's designee, shall record and maintain records of the owners of child restraint systems who have submitted a registration form. The record shall be in a form suitable for inspection such as computer information storage devices or card files, and shall include the names, mailing addresses, and if collected, e-mail addresses of the owners, and the model name or number and date of manufacture (month, year) of the owner's child restraint systems.

Issued on: June 4, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–13052 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–04–17571; Notice 1]

RIN 2127–AJ32

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document proposes to increase the maximum aggregate civil penalties for violations of statutes and regulations administered by NHTSA pertaining to motor vehicle safety, bumper standards, and consumer information. This action would be taken pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires us to review and, as warranted, adjust penalties based on inflation at least every four years.

DATES: Comments on the proposal are due August 13, 2004.

ADDRESSES: All comments on this document should refer to the docket and notice number set forth above and be submitted to Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. The docket room hours are from 9 a.m. to 5 p.m., Monday through Friday. Comments may also be submitted to the docket electronically. Documents may be filed electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. You may also visit the Federal E-Rulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Michael Kido, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, facsimile (202) 366–3820, 400 Seventh Street, SW., Washington, DC 20590.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, consumer group, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Notes, Public Law 101–410), as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134) (referred to collectively as the ''Adjustment Act'' or, in context, the ''Act''), requires us and other Federal agencies to regularly adjust civil penalties for inflation. Under the Adjustment Act, following an initial adjustment that was capped by the Act, these agencies must make further adjustments, as warranted, to the amounts of penalties in statutes they administer at least once every four years.

NHTSA's initial adjustment of civil penalties under the Adjustment Act was published on February 4, 1997. 62 FR 5167. At that time, we codified the adjustments in 49 CFR Part 578, Civil Penalties. On July 14, 1999, we further adjusted certain penalties involving odometer requirements and disclosure, consumer information, motor vehicle safety, and bumper standards. 64 FR 37876.On August 7, 2001, we also adjusted certain penalty amounts pertaining to odometer requirements and disclosure and vehicle theft prevention. 66 FR 41149. In addition to increases in authorized penalties under the Adjustment Act, the Transportation Recall Enhancement, Accountability, and Documentation (''TREAD'') Act increased penalties under the National Traffic and Motor Vehicle Safety Act as amended (sometimes referred to as the ''Motor Vehicle Safety Act''). We codified those amendments on November 14, 2000. 65 FR 68108.

We have reviewed the amounts of civil penalties authorized in Part 578 and propose in this notice to adjust those penalties where warranted under the Adjustment Act. Those civil penalties that we are proposing to adjust address violations pertaining to motor vehicle safety, bumper standards, and consumer information regarding crashworthiness and damage susceptibility.

Method of Calculation

Under the Adjustment Act, we determine the inflation adjustment for each applicable civil penalty by increasing the maximum civil penalty amount per violation by a cost-of-living adjustment, and then applying a rounding factor. Section 5(b) of the Adjustment Act defines the ''cost-of-living'' adjustment as:

The percentage (if any) for each civil monetary penalty by which—

(1) The Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds

(2) The Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Since the proposed adjustment is intended to be effective before December 31, 2004, the ''Consumer Price Index [CPI] for the month of June of the calendar year preceding the adjustment'' would be the CPI for June 2003. This figure, based on the Adjustment Act's requirement of using the CPI ''for all-urban consumers published by the Department of Labor'' is 550.4.[1] The penalty amounts that NHTSA seeks to adjust based on the Act's requirements were last adjusted in 1999 for violations related to bumper standards and consumer information regarding crashworthiness and damage susceptibility and in 2000 for violations

[1] Individuals interested in deriving the CPI figures used by the agency may visit the Department of Labor's Consumer Price Index Home Page at *http://www.bls.gov/cpi/home.htm.* Select ''US ALL ITEMS 1967=100—CUUR0000AA0'', select the appropriate time frame covering the information sought, and select ''Retrieve Data'' from the menu.

related to motor vehicle safety. The CPI figures for June 1999 and June 2000 were 497.9 and 516.5, respectively. Accordingly, the factors that we are using in calculating the increase, are 1.10 (550.4/497.9) for adjustments to the bumper standard and consumer information penalties and 1.07 (550.4/516.5) for adjustments to the motor vehicle safety penalties. Using 1.10 and 1.07 as the inflation factors, calculated increases under these adjustments are then subject to a specific rounding formula set forth in section 5(a) of the Adjustment Act. 28 U.S.C. 2461, notes. Under that formula:

Any increase shall be rounded to the nearest

(1) Multiple of $10 in the case of penalties less than or equal to $100;

(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) Multiple of $25,000 in the case of penalties greater than $200,000.

Review of Civil Penalties Prescribed by Section 578.6

Section 578.6 contains the civil penalties authorized for the statutes that we enforce. We have reviewed these penalties, applied the formula using the appropriate CPI figures, considered the nearest higher multiple specified in the rounding provisions, and tentatively concluded that only the penalties discussed below may be increased.

Motor Vehicle Safety Act, 49 U.S.C. Chapter 301 (49 CFR 578.6(a))

The maximum civil penalty for a related series of violations of sections 30112, 30115, 30117 through 30122, 30123(d), 30125(c), 30127, or 30141 through 30147 of title 49 of the United States Code or a regulation thereunder is $15,000,000, as specified in 49 CFR 578.6(a)(1). Likewise, the maximum penalty for a related series of daily violations of 49 U.S.C. 30166 or a regulation thereunder is $15,000,000, as specified in 49 CFR 578.6(a)(2). The agency has not adjusted these penalty amounts since the enactment of the TREAD Act. Under the rounding formula set by the Adjustment Act, any increase in a penalty shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. Applying the formula using the appropriate inflation factor (1.07) and the accompanying rounding rules, the increase in the penalty amounts would be $1,050,000. Accordingly, we propose that 49 CFR 578.6(a)(1) and (a)(2) be amended to increase the maximum civil penalty to $16,050,000 for a related series of motor vehicle safety violations. However, the maximum civil penalties for a single violation would remain at $5,000 under 49 CFR 578.6(a) because the inflation-adjusted figures are not yet at a level to be increased under the Adjustment Act.

Bumper Standards, 49 U.S.C. Chapter 325 (49 CFR 578.6(c)(2))

The agency last adjusted its civil penalties for violations of bumper requirements under 49 U.S.C. chapter 325 in 1999. The maximum civil penalty for a related series of violations of 49 U.S.C. 32506(a) is $925,000, as specified in 49 CFR 578.6(c)(2). Applying the appropriate inflation factor (1.10) to the calculation raises this figure to $1,017,500, an increase of $92,500. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. In this case, the increase would be $100,000. Accordingly, we propose that section 576.8(c)(2) be amended to increase the maximum civil penalty to $1,025,000 for a related series of violations of the bumper standard provisions. However, the maximum civil penalty for a single violation remains at $1,100 because the inflation-adjusted figure is not yet at a level to be increased.

Consumer Information, 49 U.S.C. Chapter 323 (Crashworthiness and Damage Susceptibility (Section 578.6(d))

The civil penalties related to consumer information regarding crashworthiness and damage susceptibility were last adjusted in 1999. Under 49 CFR 578.6(d), the maximum civil penalty for a related series of violations of 49 U.S.C. 32308(a) is $450,000. Applying the appropriate inflation factor (1.10) raises this figure to $495,000, which is an increase of $45,000. Under the formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. In this instance, the rounding rules provide for an increase of $50,000. Accordingly, we propose that section 576.8(d) be amended to increase the maximum civil penalty to $500,000 for a related series of violations that pertain to NHTSA's crashworthiness and damage susceptibility consumer information provisions. However, the maximum penalty for a single violation remains at $1,100 because the inflation-adjusted figure is not yet at a level to be increased.

Effective Date

The amendments would be effective 30 days after publication of the final rule in the **Federal Register**. The adjusted penalties would apply to violations occurring on and after the effective date.

Request for Comments

How Do I Prepare and Submit Comments?

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Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

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your confidentiality claim. A request for confidential treatment that complies with 49 CFR part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of Part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES.** In accordance with our policies, to the extent possible, we will also consider comments that Docket Management receives after the specified comment closing date. If Docket Management receives a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

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(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were ''NHTSA–2001–1234,'' you would type ''1234.''

(4) After typing the docket number, click on ''search.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

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Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866, ''Regulatory Planning and Review.'' This action is limited to the proposed adoption of adjustments of civil penalties under statutes that the agency enforces, and has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that a final rule based on this proposal will not have a significant economic impact on a substantial number of small entities. The following provides the factual basis for this certification under 5 U.S.C. 605(b). The proposed amendments almost entirely potentially affect manufacturers of motor vehicles and motor vehicle equipment.

The Small Business Administration's regulations define a small business in part as a business entity ''which operates primarily within the United States.'' 13 CFR 121.105(a). SBA's size standards were previously organized according to Standard Industrial Classification Codes (''SIC''), SIC Code 3711 ''Motor Vehicles and Passenger Car Bodies,'' which used a small business size standard of 1,000 employees or fewer. SBA now uses size standards based on the North American Industry Classification System (''NAICS''), Subsector 336—Transportation Equipment Manufacturing, which provides a small business size standard of 1,000 employees or fewer for automobile manufacturing businesses. Other motor vehicle-related industries have lower size requirements that range between 500 and 750 employees.[2]

Many small businesses are subject to the penalty provisions of 49 U.S.C. chapters 301 (motor vehicle safety), 325 (bumpers) or 323 (consumer information) and therefore may be affected by the adjustments that this NPRM proposes to make. For example, based on comprehensive reporting pursuant to the early warning reporting (EWR) rule under the Motor Vehicle Safety Act, 49 CFR part 579, out of 72 reporting we are aware of approximately 50 light vehicle manufacturers that are small businesses. In addition, there are other, relatively low production light vehicle manufacturers that are not subject to comprehensive EWR reporting. Additionally, many of the more than 70 manufacturers of medium-heavy medium heavy vehicles and buses, the more than 150 trailer manufacturers, and the 12 motorcycle manufacturers providing comprehensive EWR reports are small businesses and there are numerous others that are below the production threshold for comprehensive reporting. There are over 6 manufacturers of child restraints and 18 tire manufacturers that are reporting pursuant to the EWR rule. Also, there are numerous other low-volume specialty tire manufacturers that do not provide comprehensive EWR reports. Furthermore, there are about 160 registered importers. Equipment manufacturers are also subject to penalties under 49 U.S.C. 30165.

The bumper and consumer information statutes addressed by this proposal cover passenger motor vehicles, which are within the compass of the Motor Vehicle Safety Act. As a result, the discussion of the numbers and sizes of light vehicle manufacturers above also covers those statutes.

As noted throughout this preamble, this proposed rule would only increase the maximum penalty amounts that the agency could obtain for violations of provisions related to motor vehicle safety, bumper standards, and certain consumer information. The proposed rule does not set the amount of penalties for any particular violation or series of violations. Under the motor vehicle safety and consumer information statutes, the penalty provisions require the agency to take into account the size of a business when determining the appropriate penalty in an individual case. See 49 U.S.C. 30165(b) (motor

[2] For example, according to the new SBA coding system, businesses that manufacture truck trailers, travel trailers/campers, carburetors, pistons, piston rings, valves, vehicular lighting equipment, motor vehicle seating/interior trim, and motor vehicle stamping qualify as small businesses if they employ 500 or fewer employees. Similarly, businesses that manufacture gasoline engines, engine parts, electrical and electronic equipment (non-vehicle lighting), motor vehicle steering/suspension components (excluding springs), motor vehicle brake systems, transmissions/power train parts, motor vehicle air-conditioning, and all other motor vehicle parts qualify as small businesses if they employ 750 or fewer employees. *See http://www.sba.gov/size/sizetable.pdf* for further details.

vehicle safety) and 49 U.S.C. 32308(b)(3) (consumer information). While the bumper standards penalty provision does not specifically require the agency to consider the size of the business, the agency would consider business size under its civil penalty policy when determining the appropriate civil penalty amount. See 62 FR 37115 (July 10, 1997) (NHTSA's civil penalty policy under the Small Business Regulatory Enforcement Fairness Act (''SBREFA'')). The penalty adjustments that are being proposed would not affect our civil penalty policy under SBREFA. As a matter of policy, we intend to continue to consider the appropriateness of the penalty amount to the size of the business charged.

Since this regulation would not establish penalty amounts, this proposal will not have a significant economic impact on small businesses.

Further, small organizations and governmental jurisdictions would not be significantly affected as the price of motor vehicles and equipment ought not to change as the result of this proposed rule. As explained above, this action is limited to the proposed adoption of a statutory directive, and has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, Public Law 96–511, we state that there are no requirements for information collection associated with this rulemaking action.

National Environmental Policy Act

We have also analyzed this rulemaking action under the National Environmental Policy Act and determined that it has no significant impact on the human environment.

Executive Order 12612 (Federalism)

We have analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612, and have determined that it has no significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104–4 requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million effect, no Unfunded Mandates assessment will be prepared.

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires, Penalties.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 578 as follows:

PART 578—CIVIL AND CRIMINAL PENALTIES

1. The authority citation for 49 CFR part 578 would continue to read as follows:

Authority: Pub. L 101–410, Pub. L. 104–134, 49 U.S.C. 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32912, and 33115; delegation of authority at 49 CFR 1.50.

2. Section 578.6 would be amended by revising paragraphs (a)(1), (a)(2), (c)(2), and (d) to read as follows:

* * * * *

§ 578.6 Civil penalties for violations of specified provisions of title 49 of the United States Code.

(a)(1) *Motor vehicle safety.* A person who violates any of sections 30112, 30115, 30117 through 30122, 30123(d), 30125(c), 30127, or 30141 through 30147 of title 49 of the United States Code or a regulation prescribed under any of those sections is liable to the United States Government for a civil penalty of not more than $5,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum civil penalty under this paragraph for a related series of violations is $16,050,000.

(2) *Section 30166.* A person who violates section 30166 of title 49 of the United States Code or a regulation prescribed under that section is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum penalty under this paragraph is $5,000 per violation per day. The maximum penalty under this paragraph for a related series of violations is $16,050,000.

* * * * *

(c) *Bumper standards.* (1) * * *

(2) The maximum civil penalty under this paragraph (c) for a related series of violations is $1,025,000.

(d) *Consumer information regarding crashworthiness and damage susceptibility.* A person that violates 49 U.S.C. 32308(a) is liable to the United States Government for a civil penalty of not more than $1,100 for each violation. Each failure to provide information or comply with a regulation in violation of 49 U.S.C. 32308(a) is a separate violation. The maximum penalty under this paragraph for a related series of violations is $500,000.

* * * * *

Issued on: June 4, 2004.

Jacqueline Glassman,

Chief Counsel.

[FR Doc. 04–13056 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ16

Endangered and Threatened Wildlife and Plants; Extension of the Public Comment Period on the Proposed Designation of Critical Habitat for the California Red-legged Frog (*Rana aurora draytonii*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the extension of the public comment period on the proposed designation of critical habitat for the California red-legged frog (*Rana aurora draytonii*). The comment period will provide the public, and Federal, State, and local agencies and Tribes with an opportunity to submit written comments on the proposal. Comments previously submitted for this proposal need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decision.

DATES: The original comment period is scheduled to close on June 14, 2004 (69 FR 19620, April 13, 2004). The public comment period for this proposal is now extended for an additional 30 days. We will now accept comments and

information until 5 p.m. July 14, 2004. Any comments received after the closing date may not be considered in the final decisions on these actions.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W. 2605, Sacramento, California 95825.

2. You may hand-deliver written comments and information to our Sacramento Fish and Wildlife Office, at the above address, or fax your comments to 916/414–6712.

3. You may send your comments by electronic mail (e-mail) to *fw1crlf@r1.fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section below. In the event that our internet connection is not functional, please submit comments by the alternate methods mentioned above.

All comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For general information, and for information about Alameda, Butte, Contra Costa, El Dorado, Fresno, Kern, Marin, Mariposa, Merced, Napa, Plumas, San Joaquin, San Mateo, Santa Clara, Solano, Sonoma, Stanislaus, Tehama, and Tuolumne Counties, contact Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W. 2605, Sacramento, California 95825 (telephone 916/414–6600; facsimile 916/414–6712).

For information about Los Angeles, Monterey, San Benito, San Luis Obispo, Santa Barbara, Santa Cruz, and Ventura Counties, contact Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2394 Portola Road, Suite B, Ventura, California 93003 (telephone 805/644–1766; facsimile 805/644–3958).

For information about areas in the San Gabriel Mountains of Los Angeles County or Riverside and San Diego Counties, contact Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008 (telephone 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

It is our intent that any final action resulting from the April 13, 2004, proposed designation of critical habitat for the California red-legged frog (*Rana aurora draytonii*) (69 FR 19620) will be as accurate as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. On the basis of public comment, during the development of the final rule we may find that areas proposed are not essential, appropriate for exclusion under section 4(b)(2), or not appropriate for exclusion, in which case they would be removed from or made part of the final designation. We particularly seek comments concerning:

(1) The reasons why any areas should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from the designation;

(2) Specific information on the amount and distribution of California red-legged frog and its habitat, and which habitat or habitat components are essential to the conservation of this species and why;

(3) Whether the primary constituent elements for the California red-legged frog as defined in this proposal are biologically and scientifically accurate, specifically,

(a) Whether aquatic habitat used for breeding must have a minimum deep water depth of 0.5 meters (m) (20 inches (in));

(b) Whether aquatic components must consist of two or more breeding sites located within 2 kilometers (km) (1.25 miles (mi)) of each other;

(c) Should the primary constituent elements be more descriptive of the variations in habitat preference throughout the range of the subspecies;

(4) Whether the two recently discovered populations of California red-legged frogs in Youngs Creek, in Calaveras County, and in artificial ponds in Nevada County are essential to the conservation of the subspecies and should be included in designated critical habitat;

(5) Land use designations and current or planned activities in or adjacent to the areas proposed and their possible impacts on proposed critical habitat;

(6) Any foreseeable economic or other potential impacts resulting from the proposed designation, in particular, any impacts on small entities;

(7) Some of the lands we have identified as essential for the conservation of the California red-legged frog are not being proposed as critical habitat. We specifically solicit comment on the inclusion or exclusion of such areas and:

(a) Whether these areas are essential;

(b) Whether these areas warrant exclusion; and

(c) The basis for not designating these areas as critical habitat (section 3(5)(A) or section 4(b)(2) of the Act);

(8) With specific reference to the recent amendments to sections 4(a)(3) and 4(b)(2) of the Act, we request information from the Department of Defense to assist the Secretary of the Interior in excluding critical habitat on lands administered by or under the control of the Department of Defense based on the benefit of an Integrated Natural Resources Management Plan (INRMP) to the conservation of the species; and information regarding impacts to national security associated with proposed designation of critical habitat; and

(9) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: RIN 1018–AJ16'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Sacramento Fish and Wildlife Office at phone number 916/414–6600. Please note that the e-mail address fw1crlf@r1.fws.gov will be closed out at the termination of the public comment period. In the event that our internet connection is not functional, please submit comments by the alternate methods mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your

name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Background

A final rule designating critical habitat for the California red-legged frog (*Rana aurora draytonii*) was signed on March 1, 2001, and published in the **Federal Register** on March 13, 2001 (66 FR 14626).

On June 8, 2001, the Home Builders Association of Northern California, California Chamber of Commerce, California Building Industry Association, California Alliance for Jobs, and the Building Industry Legal Defense Fund filed a lawsuit in the U.S. District Court for the District of Columbia challenging the Service's designation of critical habitat for the California red-legged frog. *Home Builders Ass'n of Northern California, et al.* v. *Norton, et al.*, Civ. No. 01–1291 (RJL) (D. D.C.). On November 6, 2002, the court entered a consent decree remanding the designation to the Service to conduct an economic analysis in accordance with the Tenth Circuit's decision in *New Mexico Cattle Growers Ass'n* v. *U.S. Fish and Wildlife Service,* 248 F.3d 1277 (10th Cir. 2001). The consent decree vacated the critical habitat designation for the California red-legged frog with the exception of Units 5 and 31, units not known to be occupied by the frog, and ordered the Service to promulgate a proposed revised designation by March 2004, and a final revised rule by November 2005. A proposed rule designating critical habitat for the California red-legged frog was published on April 13, 2004 (69 FR 19620). A public comment period on the proposal was open for 60 days following its publication. By this notice, we are hereby extending the public comment period on the proposal for an additional 30 days.

Author

The primary author of this notice is Douglas Krofta, Division of Conservation and Classification, U.S. Fish and Wildlife Service, Arlington, Virginia.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 8, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–13400 Filed 6–9–04; 12:37 pm]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 69, No. 113
Monday, June 14, 2004

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.

AFRICAN DEVELOPMENT FOUNDATION

African Development Meeting; Board of Directors Meeting

Time: 11 a.m. to 5 p.m.
Place: ADF Headquarters.
Date: Wednesday, 16 June 2004.
Status: Open (11 a.m. to 3 p.m.), Closed Executive Session (3 p.m. to 5 p.m.).

Agenda

11 a.m.—Chairman's Report
11:30 a.m.—President's Report
3 p.m.—Closed Executive Session
5 p.m.—Adjournment

If you have any questions or comments, please direct them to Doris Martin, General Counsel, who may be reached at (202) 673–3916.

Nathaniel Fields,
President.
[FR Doc. 04–13357 Filed 6–8–04; 4:18 pm]
BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 7, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela__Beverly__OIRA__Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Food Aid Request Entry System (FARES).
OMB Control Number: 0560–0225.
Summary of Collection: The Agricultural Trade Development and Assistant Act of 1954, as amended (Title II, P.L. 480), Section 416(b) of the Agricultural Act of 1949, as amended, (Section 416(b)), Food for Progress Act of 1985, as amended (Food for Progress), and the International School Lunch Program, known as the Global Food for Education and Child Nutrition Act, authorizes Commodity Credit Corporation Export Operations Division and Bulk Commodities Division to procure, sell, transport agricultural commodities and obtain discharge/delivery survey information. Commodities are delivered to foreign countries through voluntary agencies, United Nations World Food Program, the Foreign Agricultural Service, and the Agency for International Development. The program information will be electronically captured, requirements validated, and improved commodity request visibility will be provided via FARES a web-based application technology tool for the customers to submit online to process the commodity request electronically and to access the information.
Need and Use of the Information: The Farm Service Agency will collect the following information from FARES: The name of the Private Voluntary Organization, the program, the types of commodities being requested for export, quantities of commodities, destinations of commodities, special requirements for packaging. Without this information collection process, Kansas City Commodity Office would not be able to meet program requirements.
Description of Respondents: Not-for-profit institutions; Business or other-for-profit, Federal Government.
Number of Respondents: 300.
Frequency of Responses: Reporting: Other (bi-weekly/bi-monthly).
Total Burden Hours: 1,813.

Animal Plant and Health Inspection Service

Title: Karnal Bunt; Compensation for the 1999–2000 Crop Season.
OMB Control Number: 0579–0182.
Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine have regulations in place to prevent the interstate spread of Karnal bunt, a fungal disease of wheat. These regulations, contained in 7 CFR 301.89 through 301.89–16, authorize the Administrator, APHIS, to regulate each State, or portion of a State that is infected with Karnal bunt. APHIS has offered compensation as part of its Karnal bunt regulatory program since the 1995–1996-crop season. APHIS pays compensation in order to reduce the economic impact of its Karnal bunt quarantine on wheat producers and other individuals, and to help obtain their cooperation in its Karnal bunt eradication efforts.
Need and Use of the Information: APHIS' Karnal bunt compensation program requires program participants to engage in information collection activities (including the completion of a Karnal bunt compensation worksheet

and compensation claim form) that are necessary for APHIS to run an effective compensation program. Growers, seed companies, and owners of grain storage facilities, flour millers, strew producers and handlers complete the worksheet with assistance from the Farm Service Administration personnel. The worksheet contains information concerning how much wheat the applicant produced during the growing season and the amount of money, if any, the applicant received for the products. The information on the worksheet enables APHIS to determine how much compensation the applicant is entitled to receive. The compensation claim form is the applicant's formal request for compensation and is the counterpart to the worksheet.

Description of Respondents: Business or other for profit; Individuals or households; Farms.

Number of Respondents: 170.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 86.

Food Safety and Inspection Service

Title: Specified Risk Materials.

OMB Control Number: 0583–0127.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EIPA) (21 U.S.C. 1031 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS established new, flexible procedures to actively encourage the development and use of new technologies in meat and poultry establishments and egg products plants. The new procedures will facilitate notification to the Agency of any new technology that is intended for use in meat and poultry establishments and egg products plants so that the agency can decide whether the new technology requires a pre-use review. A pre-use review often includes an in-plant trial.

Need and Use of the Information: FSIS will collect information to determine if an in-plant trial is necessary. FSIS will request that the firm submit a protocol that is designed to collect relevant data to support the use of the new technology. To not collect this information would reduce the effectiveness of the meat, poultry, and egg products inspection program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 250.

Frequency of Responses: Recordkeeping; Reporting: on occasion.

Total Burden Hours: 8,400.

Food Safety and Inspection Service

Title: Specified Risk Materials.

OMB Control Number: 0583–0129.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*). This statute mandates that FSIS protect the public by ensuring that meat products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS requires that official establishments that slaughter cattle and or process carcasses or parts of cattle develop written procedures for the removal, segregation, and disposition of specified risk materials (SRMs). FSIS is requiring that these establishments maintain daily records sufficient to document the implementation and monitoring of their procedures for the removal, segregation, and disposition of SRMs, and any corrective actions taken to ensure that such procedures are effective.

Need and Use of the Information: FSIS will collect information from establishments to ensure that cattle slaughtered for meat product are free from Bovine Spongiform Encephalopathy.

Description of Respondents: Business or other for-profit.

Number of Respondents: 2,500.

Frequency of Responses: Recordkeeping; Reporting: Other (Daily).

Total Burden Hours: 107,500.

Food and Nutrition Service

Title: 7 CFR Part 210 National School Lunch Program.

OMB Control Number: 0584–0006.

Summary of Collection: The National School Lunch Act of 1946, as amended, authorizes the National School Lunch Program (NSLP). The NSLP is a food assistance program. The Department of Agriculture provides States with general and special cash assistance and donations of foods to assist schools in serving nutritious lunches to children each school day. Participating schools must serve lunches that are nutritionally adequate and to the extent practicable ensuring that participating children gain a full understanding of the relationship between proper eating and good health. The Food and Nutrition Service (FNS) will collect information using form FNS–640, Data Report Coordinated Review Effort.

Need and Use of the Information: The states will use form FNS–640 to report on an annual basis the results of comprehensive on-site administrative evaluations they conduct of school food authorities and schools operating the school lunch program. Data from the report is compiled and evaluated by FNS and used in responding to inquiries regarding program operations at the local level.

Description of Respondents: State, local or tribal government; Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government.

Number of Respondents: 121,165.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly; Annually; Semi-annually.

Total Burden Hours: 10,448,411.

Food and Nutrition Service

Title: 7 CFR Part 220, School Breakfast Program.

OMB Control Number: 0584–0012.

Summary of Collection: Section 4 of the Child Nutrition Act (CNA) of 1966, as amended, authorizes the School Breakfast Program (SBP). It provides for the appropriation of ''such sums as are necessary to enable the Secretary to carry out a program to assist the States and the Department of Defense through grants-in-aid and other means to initiate, maintain, or expand nonprofit breakfast programs in all schools which make application for assistance and agree to carry out a nonprofit breakfast program in accordance with the Act.'' The Food and Nutrition Service (FNS) administers the School Breakfast Program on behalf of the Secretary of Agriculture so that needy children may receive their breakfasts free or at a reduced price.

Need and Use of the Information: School food authorities provide information to State agencies. The State agencies report to FNS. FNS use the information submitted to determine the amount of funds to be reimbursed, evaluate and adjust program operations, and to develop projections for future program operations.

Description of Respondents: State, local or tribal government; Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government.

Number of Respondents: 81,747.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly; Semi-annually; Annually.

Total Burden Hours: 4,564,772.

Food and Nutrition Service

Title: Civil Rights Title VI—Collection Reports—FNS–191 and FNS–101.

OMB Control Number: 0584–0025.

Summary of Collection: Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs receiving federal financial assistance. Title 28 of the Code of Federal Regulations (CFR), Section 42.107(b), require all Federal Departments to provide for the collection of racial/ethnic data and information from applicants for and recipients of Federal assistance sufficient to permit effective enforcement of Title VI. In order to comply with the Civil Rights Act, Department of Justice regulations and the Department's nondiscrimination policy and regulations (7 CFR Part 15), the Department's Food and Nutrition Service (FNS) requires State agencies to submit data on the racial/ethnic categories of person receiving benefits from FNS food assistance programs. FNS will collect information using forms FNS 191 and FNS 101.

Need and Use of the Information: FNS will collect the names, address, telephone number, and number of clinics to compile a local agency directory which serves as the primary source of data on number and location for local agencies and number of clinics operating Commodity Supplemental Food Program (CSF). FNS will also collect information on the number of CFSP individuals (women, infant, children, and elderly) in each racial/ethnic category for one month of he year. The information will be used in the Department's annual USDA Equal Opportunity Report. If the information is not collected, FNS could not track racial/ethnic data for program evaluation.

Description of Respondents: State, local or tribal government.

Number of Respondents: 2,973.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 6,662.

Forest Service

Title: 36 CFR Part 228, Subpart C—Disposal of Mineral Materials.

OMB Control Number: 0596–0081.

Summary of Collection: The Forest Service (FS) is responsible for overseeing the management of National Forest System land. The Multiple-Use Mining Act of 1955 (30 U.S.C. 601, 603, 611–615) gives the FS specific authority to manage the disposal of mineral materials mined from National Forest land. FS uses form FS–2800–9, ''Contract for the Sale of Mineral Materials,'' to collect detailed information on the planned mining and disposal operations as well as a contract for the sale of mineral materials.

Need and Use of the Information: FS will use information collected from the public to ensure that environmental impacts of mineral material disposal are minimized. A review of the operating plan provides the authorized officer the opportunity to determine if the proposed operation is appropriate and consistent with all applicable land management laws and regulations. The information also provides the means of documenting planned operations and the terms and conditions that the FS deems necessary to protect surface resources. If FS did not collect this information, a self-policing situation would exist.

Description of Respondents: Business or other for-profit; Individuals or households.

Number of Respondents: 6,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 15,000.

Forest Service

Title: Predecisional Objection Process for Hazardous Fuel Reduction Projects Authorized by Healthy Forest Restoration Act of 2003.

OMB Control Number: 0596–0172.

Summary of Collection: On December 3, 2003, President Bush signed into law the Healthy Forests Restoration Act of 2003 to reduce the threat of destructive wildfires while upholding environmental standards and encouraging early public input during review and planning processes. One of the provisions of the Act, in Section 105 requires that not later than 30 days after the date of the enactment of this Act, the Secretary of Agriculture shall promulgate interim final regulations to establish a predecisional administrative review process. This process services as the sole means by which a person can seek administrative review regarding an authorized hazardous fuel reduction project on Forest Service (FS) land. Those choosing to participate in the pre-decisional administrative review process must provide information the FS needs to respond to their concern. This written information needs to include the objector's name, address, phone number; the name of the project; name and title of the Responsible Official; the project location; and sufficient narrative description of those parts of the project that are objected to; specific issues related to the proposed decision, and suggested remedies which would resolve the objection.

Need and use of the Information: The collected information will be used by the Reviewing Officer in responding to those who participate in the objection process prior to a decision by the Responsible Official. FS could not meet the intent of Congress without collecting this information.

Description of Respondents: Individuals or households; State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 121.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 968.

Forest Service

Title: Understanding the Relationship Between People, Local Land Use, and the Francis Marion National Forest.

OMB Control Number: 0596-New.

Summary of Collection: The National Forest-Dependent rural Communities Economic Diversification Act of 1990 (Pub. L. 101–624) provides the Forest Service (FS) with an opportunity to help eligible rural communities located in or near national forests to organize, plan, and implement rural development efforts. FS is seeking to conduct a proposed study that includes a survey of rural residents in an area adjacent to a national forest. The study seeks to gain information on 1) resident perceptions of urban advancement and 2) resident recreational use of the Francis Marion National Forest.

Need and Use of the Information: FS will collect information to examine rural residents knowledge and opinions regarding commercial and residential development in rural, upper Charleston County, South Carolina. Also, FS will collect information to learn more about the kinds of recreational activities in which local residents participate while visiting the Francis Marion National Forest. If the information is not collected, data concerning rural resident reactions to encroaching development will not be available to local, State, or governmental agencies.

Description of Respondents: Individuals or households.

Number of Respondents: 400.

Frequency of Responses: Reporting: On Occasion.

Total Burden Hours: 132.

Rural Development Services

Title: 7 CFR 1956–B, Debt Settlement—Farm Programs and Multiple Family Housing.

OMB Control Number: 0575–0118.

Summary of Collection: The Farm Service Agency's Farm Loan Program provides supervised credit in the form of loans to family farmers and ranchers

to purchase land and finance agricultural production. The Rural Housing Service (RHS) provides supervised credit in the form of Multi-Family Housing loans to provide eligible persons with economically designed and constructed rental or cooperative housing and related facilities suited to the living requirements. This regulation defines the requirements for debt settlement and the factors the agency considers in approving or rejecting the offer submitted by the borrowers.

Need and Use of the Information: The information submitted by the borrowers is used to determine, if acceptance of the settlement offers on debts owed is in the best interest of the Government. If the information were not collected, outdated and inaccurate information would cause increased losses to the government.

Description of Respondents: Farms; Individuals or households, Business or other for profit; State, local or tribal government.

Number of Respondents: 2,400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 20,400.

Risk Management Agency

Title: Apiculture Survey.

OMB Control Number: 0563–NEW.

Summary of Collection: The Risk Management Agency is responsible for promoting, supporting, and regulating a broad array of market-based, risk management programs for agricultural producers. In legislation enacted in 2000 and 2002, Congress authorized and directed the agency to ''increase participation by producers of underserved agricultural commodities, including specialty crops'' and to ''enter into contracts to carry out research and development'' to achieve this end.

Need and Use of the Information: RMA and its contractors will evaluate use the information to assess the feasibility of providing a risk management program to apiculture producers. RMA will collect information on levels of production, yields, costs and revenues that cross several years as the basis for constructing an actuarial profile. If this information were not collected, it would not be possible to prepare an actuarially sound profile of the industry.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, local or tribal government

Number of Respondents: 1,000.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 2,477.

Agricultural Marketing Service

Title: Export Fruit Regulations.

OMB Control Number: 0581–0143.

Summary of Collection: Fresh apples and grapes grown in the United States shipped to any foreign destination must meet minimum quality and other requirements established by regulations issued under the Export Apple Act (7 CFR Part 33) and the Export Grape and Plum Act (7 CFR Part 35). These Acts were designed to promote the foreign trade of the United States in apples and grapes; to protect the reputation of these American-grown commodities; and to prevent deception or misrepresentation of the quality of such products moving in foreign commerce. Currently, plum and pear provisions are not covered under the Export Grape and Plum Act. The regulation issued under the Export Grape and Plum Act (7 CFR Part 35) cover fresh grapes grown in the United States and shipped to foreign destinations, except Canada and Mexico.

Need and Use of the Information: Person who ship fresh apples and grapes grown in the U.S. to foreign destinations must have such shipment inspected and certified by Federal or Federal-State Inspection Service (FSIS) inspectors. Agriculture Marketing Service administers the FSIS. Official FSIS inspection certificates and phytosanitary certificates issued by USDA's Animal and Plant Health Inspection Service provide the needed information for USDA. Export carriers are required to keep on file for three years copies of inspection certificates for apples and grapes.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 100.

Frequency of Responses: Recordkeeping; Reporting; On occasion, Monthly, Annually.

Total Burden Hours: 25.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–13294 Filed 6–10–04; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Health Screening Questionnaire

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the continuation of the information collection process for health screening of individuals who seek certification or recertification for firefighter positions. This process is known as the Health Screening Questionnaire. The process applies to individuals applying for firefighter positions and to Forest Service firefighters to determine if they meet the qualifications to safely perform assigned duties as a Forest Service firefighter.

DATES: Comments must be received in writing on or before August 13, 2004.

ADDRESSES: Comments concerning this notice should be addressed to Ed Hollenshead, National Safety Officer, National Interagency Fire Center, Forest Service, USDA, 3833 South Development Avenue, Boise, ID 83705–5354.

Comments also may be submitted via facsimile to (208) 387–5398 or by e-mail to: *ehollenshead@fs.fed.us.*

The public may inspect comments received at the National Safety Office , National Interagency Fire Center, Forest Service, USDA, 3833 Development Avenue, Boise, ID, from 8 a.m. to 4:30 p.m. Monday though Friday m.d.t. Visitors are encouraged to call ahead to (208) 387–5102 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Ed Hollenshead, National Safety Officer, at (208) 387–5102.

SUPPLEMENTARY INFORMATION:

Title: Health Screening Questionnaire.

OMB Number: 0596–0164.

Expiration Date of Approval: June 12, 2004.

Type of Request: Extension with Revision.

Abstract: The Protection Act of 1922 (16 U.S.C. 594) authorizes the Forest Service to fight fires on National Forest System lands. The individuals that perform firefighter jobs are subjected to strenuous working conditions requiring long hours of arduous labor. It is imperative they be in peak physical condition to avoid injury to themselves or their coworkers.

Current or prospective firefighters must complete the Health Screening Questionnaire (HSQ) when seeking employment as a new firefighter with the Forest Service or recertification as a Forest Service firefighter. The information collected pertains to the individuals health status and health history in an effort to determine if any physical conditions exist or have developed that might result in injury or death during fitness testing or when fighting a National Forest wildfire. Forest Service employees will evaluate

the collected information to determine if the individual seeking certification or recertification may begin a fitness program to train for the arduous level ''Pack Test'' of the Work Capacity Tests. If Forest Service employees determine, based on the collected information, that an individual may not be physically able to train for the arduous level of the Work Capacity Test, the agency will require the individual to undergo a physical examination from a physician.

Information collected will be evaluated by a human resource specialist within the specific unit office to ensure that individuals applying for a position or seeking recertification meet the fitness requirements of the position. Forest Service employees will collect general information about the current health of the individual such as height, weight, current level of fitness activity, previous serious health injuries, diseases, or heart conditions, and special current conditions such as allergies and diabetes. The Forest Service will revise the form by dropping the words ''or over the counter'' from the second item under ''Section A'' under subhead ''Other Health Issues.'' This change is requested as prescription medications indicate a condition being treated by a physician, and therefore, represents an indication of the individual's health. Individual's determined to be in sufficient health will be asked to complete the ''Work Capacity Tests,'' which would include testing the level of an individual's aerobic fitness, level of muscular strength, and muscle endurance.

Failure to collect this data will result in a higher number of unwanted injuries, or even deaths, during the ''Work Capacity Test'' and while working on wildland fires. If the data is not collected annually, there will be no way to determine if an individual's condition has changed since the previous year.

The information provided by an individual will be placed in the person's Official Employee Medical File and any release of the information will be in accordance with the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552). Data gathered in this information collection is not available from other sources.

Estimate of Annual Burden: 5 minutes.

Type of Respondents: Current employees requesting certification or recertification as a firefighter (Red-Card) and applicants seeking Forest Service firefighter positions.

Estimated Annual Number of Respondents: 15,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,250 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: June 3, 2004.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 04–13317 Filed 6–10–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Woodsy Owl Official Licensee Royalty Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to extend an information collection. The collected information will enable the Forest Service to collect royalty fees for the commercial use of the Woodsy Owl symbol and to assess the effectiveness of licensing the Woodsy Owl symbol for commercial use. Information will be collected from individuals and from for-profit businesses and non-profit organizations.

DATES: Comments must be received in writing on or before August 13, 2004.

ADDRESSES: Comments concerning this notice should be addressed to the Office of Conservation Education, National Symbols Coordinator, Forest Service, USDA, 1400 Independence Avenue, SW., Mail Stop 1147, Washington, DC 20250–0033.

Comments also may be submitted via facsimile to (202) 690–5658 or by e-mail to *scummings@fs.fed.us.*

The public may inspect comments received at the Office of Conservation Education, Room 1C, Forest Service, USDA, 201 14th Street, SW., Washington, DC. Visitors are urged to call ahead to (202) 205–5681 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Iris Velez, Office of Conservation Education, at (202) 205–5681.

SUPPLEMENTARY INFORMATION:

Background

The Woodsy Owl-Smoky Bear Act of 1974 established the Woodsy Owl symbol and slogan, authorized the Forest Service to manage the use of the slogan and symbol, authorized the licensing of the symbol for commercial use, and provided for continued protection of the symbol. The Woodsy Owl symbol may only be used by permission of the Forest Service. Part 272 of title 36 of the Code of Federal Regulations authorizes the Chief of the Forest Service to approve commercial use of the Woodsy Owl symbol and to collect royalty fees. Commercial use includes replicating Woodsy Owl as a plush toy and replicating the Woodsy Owl symbol or logo on items, such as tee shirts, mugs, pins, figurines, ornaments, storybooks, stickers, and toys.

The message to the public inherent with the Woodsy Owl symbol is about caring for the environment. Slogans associated with Woodsy Owl are ''Give a Hoot, Don't Pollute'' and ''Lend a Hand, Care for the Land.'' The goal of Woodsy Owl is to inspire children to observe the natural world around them, to teach children ecological principles, and to motivate children to join in specific actions to help care for the environment.

Description of Information Collection

The following describes the information collection to be extended:

Title: Woodsy Owl Official Licensee Royalty Statement.

OMB Number: 0596–0087.

Expiration Date of Approval: March 31, 2004.

Type of Request: Extension.

Abstract: The Forest Service National Symbols Coordinator will evaluate the data to determine if an individual, corporation, or organization, requesting a license to use the Woodsy Owl symbol

commercially, should be granted a license or, if currently licensed, to determine the royalty fee the licensed entity must pay to the agency based on a percentage of the licensee's total sales and whether the licensed entity has met its stated objectives.

An individual or corporation may apply for a Woodsy Owl license by contacting Forest Service personnel by telephone, fax, e-mail, or by writing to the address listed in the address section of this notice. In the course of communicating with the potential applicant, the agency will learn how long the individual, corporation, or organization has been in business; the products the individual, corporation or organization sells or plans to sell; the geographical location from which the products will be sold; the projected sales volume; and how the individual, corporation, or organization plans to market the products.

If Forest Service personnel determine that granting a license to the individual, corporation, or organization for the purpose of using the Woodsy Owl symbol for commercial use would be in the best interest of the agency and would promote the Woodsy Owl messages, a license contract would be mailed to the individual, corporation or organization. The contract would have to be completed and returned to the Forest Service. Once the contract has been by signed by an authorized Forest Service employee and by the individual or the corporate or organizational representative, the newly licensed entity will have to submit to the Forest Service the agreed upon advanced guaranteed royalty payment. The individual, corporation, or organization also will submit a quarterly report to the agency, using the Woodsy Owl Licensee Royalty Statement Form, along with any royalty fees garnered from sales that have exceeded the advanced guaranteed royalty payment.

When making the quarterly reports, individuals, corporations, or organizations will be asked to provide information that includes the following: a list of each item that will be sold with the Woodsy Owl symbol; the projected sales of each item; the price at which each item will be sold; the total sales amount subject to the agency royalty fee; the royalty fee due based on sales quantity and price; a description and itemization of any deductions, such as fees waived or previously paid as part of the advance royalty payment which is their sales quantity guarantee; the new total royalty fee the business or organization must pay after deductions; the running total amount of royalties accrued in that fiscal year; and the typed name and signature of the business or organizational employee certifying the truth of the report.

Data gathered in this information collection are not available from other sources.

Estimate of Annual Burden: 30 minutes.

Type of Respondents: For-profit businesses and non-profit organizations currently holding a Woodsy Owl license or applying for such license.

Estimated Annual Number of Respondents: 10.

Estimated Annual Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 20 hours.

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments, including name and address when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 4, 2004.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 04–13318 Filed 6–10–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet at the Trinity County Office of Education in Weaverville, California, June 28, 2004. The purpose of these meetings is to discuss proposed projects under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: June 28, 2004.

ADDRESSES: Trinity County Office of Education, 201 Memorial Drive, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: Michael R. Odle, Assistant, Public Affairs Officer and RAC Coordinator.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Resource Advisory Committee.

Dated: June 3, 2004.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 04–13220 Filed 6–10–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Michigan

AGENCY: Natural Resources Conservation Service (NRCS) in Michigan, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in NRCS-Michigan FOTG, Section IV for review and comment.

SUMMARY: It is the intention of NRCS in Michigan to issue revised conservation practice standards in Section IV of the FOTG. The revised standards include:

Upland Wildlife Habitat Management (645)
Wetland Creation (658)
Wetland Enhancement (659)
Wetland Restoration (657)
Restoration and Management of Declining Habitats (643)
Invasive Plant Species Control in Natural Habitats (797)
Forest Harvest Trails and Landings (655)
Alley Cropping (311)
Herbaceous Wind Barriers (603)

DATES: Comments will be received for a 30-day period commencing with this date of publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Kevin Wickey, Assistant State Conservationist-Technology, Natural Resources

Conservation Service, 3001 Coolidge Road, Suite 250, East Lansing, MI 48823. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to *Kevin.Wickey@mi.usda.gov*, Kevin Wickey (517) 324–5279.

SUPPLEMENTARY INFORMATION: Section 393 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Michigan will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Michigan regarding disposition of those comments and a final determination of change will be made.

Dated: June 2, 2004.

Ronald C. Williams,

State Conservationist, East Lansing, Michigan.

[FR Doc. 04–13233 Filed 6–10–04; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 14, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products:

Product/NSN: Belt, Rigger's.
8415–01–517–0305 (Size 34, Color: Black);
8415–01–517–0308 (Size 40, Color: Black);
8415–01–517–0310 (Size 46, Color: Black);
8415–01–517–0946 (Size 34, Color: Brown);
8415–01–517–0948 (Size 40, Color: Brown);
8415–01–517–0949 (Size 46, Color: Brown);
8415–01–517–0951 (Size 34, Color: Gray);
8415–01–517–0954 (Size 46, Color: Gray);
8415–01–517–0961 (Size 40, Color: Gray);
8415–01–517–1046 (Size 34, Color: Green);
8415–01–517–1051 (Size 40, Color: Green);
8415–01–517–1055 (Size 46, Color: Green);
8415–01–517–1079 (Size 34, Color: Tan);
8415–01–517–1081 (Size 40, Color: Tan); and
8415–01–517–1083 (Size 46, Color: Tan).

NPA: Travis Association for the Blind, Austin, Texas.

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Product/NSN: Side Rack, Vehicle 2510–00–590–9734.

NPA: Tuscola County Community Mental Health Services, Caro, Michigan.

Contract Activity: U.S. Army Tank Acquisition Center, Warren, Michigan.

Product/NSN: Tabs, Index.
7530–01–368–3489 (Assorted Colors—Tabs 1 through 10);
7530–01–368–3490 (Assorted Colors—Tabs January through December);
7530–01–368–3491 (Clear—Tabs January through December);
7530–01–368–3492 (Assorted Colors—Tabs A through Z); and
7530–01–368–3493 (Assorted Colors—Index Sheets 1 through 31).

NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Tray, Mess, Compartmented, 7350–01–411–5266.

NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana.

Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Services:

Service Type/Location: Custodial & Grounds Maintenance. Federal Building, 100 Bluestone Road, Mount Hope, West Virginia.

NPA: Wyoming County Workshop, Inc., Maben, West Virginia.

Contract Activity: GSA, PBS, Region 3 (3PMT), Philadelphia, Pennsylvania.

Service Type/Location: Custodial Services. Naval Reserve Center, White River Junction, Vermont.

NPA: Northern New England Employment Services, Portland, Maine.

Contract Activity: Naval Facilities Engineering Command—Portsmouth, Portsmouth, New Hampshire.

Service Type/Location: Custodial Services, USDA AMS S&T FLS, National Science Laboratory, Gastonia, North Carolina.

NPA: Gaston Skills, Inc., Gastonia, North Carolina.

Contract Activity: USDA, Animal & Plant Health Inspection Service, Minneapolis, Minnesota.

Service Type/Location: Custodial Services, Veterans Administration Community Based Outpatient Clinic, Traverse City, Michigan.

NPA: GTP Industries, Inc., Traverse City, Michigan.

Contract Activity: VA Medical Center—Saginaw, Michigan.

Service Type/Location: Custodial Services (Base-wide), Yuma Proving Ground (Excluding Buildings 3013, 611, and 3189), Yuma, Arizona.

NPA: Yuma WORC Center, Inc., Yuma, Arizona.

Contract Activity: Army Contracting Agency, Yuma Proving Ground, Arizona.

Service Type/Location: Grounds Maintenance, Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, Virginia.

NPA: Richmond Area Association for Retarded Citizens, Richmond, Virginia.

Contract Activity: Defense Supply Center Richmond, Richmond, Virginia.

Service Type/Location: Medical Transcription. 355th Medical Supply-F5HOSP, Davis-Monthan AFB, Arizona.

NPA: National Telecommuting Institute, Inc., Boston, Massachusetts.

Contract Activity: 355th Contracting Squadron, Davis-Monthan AFB, Arizona.

Service Type/Location: Post-wide Administrative Services, Fort McPherson, Georgia.

Service Type/Location: Post-wide Administrative Services, Fort Gillem, Georgia.

NPA: WORKTEC, Jonesboro, Georgia.

Contract Activity: U.S. Army, ACA SRCC, Fort McPherson, Georgia.

Service Type/Location: Telephone/Switchboard Operator, VA Northern California Health Care System, VA Sacramento Medical Center at Mather Field, Mather, California.

NPA: Project HIRED, Santa Clara, California.

Contract Activity: VISN 21 Consolidated Contracting Activity, San Francisco, California.

Sheryl D. Kennedy,

Director, Information Management.

[FR Doc. 04–13295 Filed 6–10–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: July 14, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On April 16, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 20591) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the government.

2. The action will result in authorizing small entities to furnish the services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Custodial Services, Federal Building, Courthouse, Raleigh, North Carolina; Federal Building, Post Office, Century Station, Raleigh, North Carolina; Federal Building, Post Office, Courthouse, Elizabeth City, North Carolina; U.S. Courthouse, Greenville, North Carolina.

NPA: Orange Enterprises, Inc., Hillsborough, North Carolina.

Contract Activity: GSA, Property Management Center (4PMC), Charlotte, North Carolina.

Service Type/Location: Janitorial/Grounds and Related Services, Clearfield Federal Depot, Buildings C–6, C–7, D–5 and 2, Clearfield, Utah.

NPA: Pioneer Adult Rehabilitation Center Davis County School District, Clearfield, Utah.

Contract Activity: GSA, Mountain Plains Service Center, Salt Lake City, Utah.

Deletions

On April 16, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 20591/20592) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Cloth, Super Wipe, M.R. 565.

NPA: Industries of the Blind, Inc., Greensboro, North Carolina.

Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Product/NSN: Cup, Drinking, Styrofoam, M.R. 537.

NPA: The Oklahoma League for the Blind, Oklahoma City, Oklahoma.

Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Product/NSN: Ergonomic Kitchen Gadgets (Ergo Nylon Square Turner), M.R. 880.

NPA: Cincinnati Association for the Blind,

Cincinnati, Ohio.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
Product/NSN: Kitchen, Utensils (Spatula, Plate and Bowl), M.R. 832.
NPA: Dallas Lighthouse for the Blind, Dallas, Texas.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
Product/NSN: Mophead, Cotton Yarn, Wet, M.R. 937.
NPA: Arizona Industries for the Blind, Phoenix, Arizona.
NPA: New York Association for the Blind, Long Island, New York.
NPA: Mississippi Industries for the Blind, Jackson, Mississippi.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
Product/NSN: Scrubber, Pat & Dish and Refill, M.R. 592.
NPA: Lighthouse International, New York, New York.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
Product/NSN: Sponge, Bath, M.R. 593.
NPA: Industries for the Blind, Greensboro, North Carolina.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
Product/NSN: Vegetable, Peeler, Stainless Steel, M.R. 825.
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–13296 Filed 6–10–04; 8:45 am]

BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: June 16, 2004; 1 p.m.–4:15 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: June 8, 2004.

Carol Booker,

Legal Counsel.

[FR Doc. 04–13436 Filed 6–9–04; 1:23 pm]

BILLING CODE 8230–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Vermont Advisory Committee will convene at 2 p.m., and adjourn at 2:30 p.m. Tuesday, June 15, 2004. The purpose of the conference call is to discuss housing discrimination issues in Vermont.

This conference call is available to the public through the following call-in number: 1–800–923–4210, access code: 24400780. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Barbara de La Viez of the Eastern Regional Office at 202–376–7533 by 4 p.m. on Monday, June 14, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 4, 2004.

Dawn Sweet,

Editor.

[FR Doc. 04–13332 Filed 6–10–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[I.D. 060704B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Natural Resource Damage Assessment Restoration Project Information Sheet.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 55.

Number of Respondents: 33.

Average Hours Per Response: 0.33.

Needs and Uses: The Natural Resource Damage Assessment (NRDA) Restoration Project Information Sheet is designed to facilitate the collection of information on existing, planned, or proposed restoration projects. This information will be used by the Natural Resource Trustees to develop potential restoration alternatives for natural resource injuries and service losses requiring restoration during the restoration planning phase of the NRDA process.

Affected Public: State, local or tribal government; individuals or households; business or other for-profit organizations; not-for-profit institutions; farms; Federal Government.

Frequency: On occasion, at least once per year.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202–395–7285, or *David__Rostker@omb.eop.gov*.

Dated: June 4, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–13205 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 03–BIS–06]

In the Matter of Arian Transportvermittlungs GmbH

On Tuesday, May 18, 2004, the **Federal Register** published the May 12, 2004 Decision and Order issued by the Under Secretary of Commerce, Bureau of Industry and Security (BIS), United States Department of Commerce in the above-referenced matter (69 FR 28120). However, the April 8, 2004 Recommended Decision and Order of the Administrative Law Judge (ALJ) was inadvertently not published with the Order of the Under Secretary. The Recommended Decision and Order of the ALJ shall hereby be published in the **Federal Register.**

Dated: June 7, 2004.

Kenneth I. Juster,

Under Secretary of Commerce for Industry and Security.

In the Matter of: Arian Transportvermittlungs GmbH, Morsestrasse 1, D–50769 Koln, Germany, Respondent.

Recommended Decision and Order

On May 15, 2003, the Bureau of Industry and Security, United States Department of Commerce (BIS or Agency), issued a charging letter initiating this administrative enforcement proceeding against Arian Transportvermittlungs GmbH (Arian). The charging letter alleged that Arian committed two violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730-774 (2003)) (the Regulations),[1] issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the Act).[2]

Specifically, the charging letter alleged that on or about June 17, 1999, Arian re-exported computers and software, items subject to the Regulations and classified under Export Control Classification Numbers 4A994 and 5D002, from Germany to Iran without obtaining a license from BIS as required by Section 746.7 of the Regulations. BIS alleged that, by re-exporting the computers and software, Arian committed one violation of Section 764.2(a) of the Regulations.

The charging letter also alleged that in connection with the reexport, Arian caused the transport of computers and software to Iran with knowledge that a violation of the Regulations would occur in connection with those items. BIS alleged that, by causing the re-export of items with knowledge that a violation of the Regulations would occur, Arian committed one violation of Section 764.2(e) of the Regulations.

The record provides that BIS mailed its May 15, 2003 Charging Letter to Mr. Mehdi Moghimi, Managing Director for Arian Transportvermittlungs GMBH located at Bremerhavener Str. 23, 50835 Cologne, Germany. On May 28, 2003, the ALJ Docketing Center notified the parties of the assignment of a case docket number for this matter. This letter was subsequently returned to the ALJ Docketing Center as being undeliverable. On July 18, 2003, BIS provided a new address for Mr. Moghimi and Arian Transportvermittlungs GmbH at Morsestrasse 1, D–507669 Koln, Germany.

On March 11, 2004, BIS filed a Motion for Default Order (Motion) in this matter stating that Arian had failed to file an Answer to its Charging Letter as required by 15 CFR 766.3(b)(1). On March 15, 2004, this matter was assigned to the Undersigned. In its Motion, BIS states that it sent notice the of issuance of the Charging Letter to Arian by registered mail and submits Government Exhibit 1, showing a registered mail receipt dated July 15, 2003 addressed to Arian in Koln, Germany. BIS also submits Government Exhibit 2 showing that Arian received this notice on July 22, 2003. The record is devoid of any response or Answer filed by Arian. Under section 766.3(b)(1), the notice of issuance of a charging letter is required to be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at the respondent's last know address. The Agency's actions as stated above constitute proper service on Arian.

Section 766.6(a) of the Regulations provides, in pertinent part, that ''[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter[.]'' Since service was effected on July 22, 2003, Arian's answer to the Charging Letter was due no later than August 21, 2003. As of this date, Arian has not filed an Answer to the Charging Letter.

The default procedures set forth in Section 766.7 state ''[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear * * * '' and ''* * * on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter * * *.'' Based on the above, the facts as alleged in the Charging Letter are hereby held to constitute the findings of fact in this matter and thereby establish that Arian committed one violation of Section 764.2(a) of the Regulations and one violation of Section 764.2(e) of the Regulations.

Section 764.3 of the Regulations sets forth the sanctions BIS may seek for violations of the Regulations. The applicable sanctions as set forth in the Regulations are a civil monetary penalty, suspension from practice before the Department of Commerce, and denial of export privileges. *See* 15 CFR 764.3 (2003).

Because Arian violated the Regulations by causing the re-export of items that were subject to the Regulations with knowledge that a violation of the Regulations would occur, BIS requests that Arian's export privileges be denied for ten years.

BIS has proposed this sanction because Arian's actions in committing a knowing violation of the Regulations evidences a disregard for U.S. export control laws. Further, BIS indicates that Iran is a country against which the United States maintains an economic embargo because of Iran's support for international terrorism.

Finally, BIS states that imposition of a civil penalty in this case may be ineffective, given the difficulty of collecting payment against a party outside of the United States. In light of these circumstances, BIS proposes that the appropriate sanction to be assessed is the denial of Arian's export privileges for ten years.

Given the foregoing, I recommend that the Under Secretary enter an Order denying Arian's export privileges for a period of ten years. Such a denial order is consistent with penalties imposed in recent cases under the Regulations involving shipments to Iran. *See, In the Matter of Jabal Damavand General Trading Company,* 67 FR 32009 (May 13, 2002) (affirming the recommendations of the Administrative

[1] The violations charged occured in 1999. The Regulations governing the violations at issue are found in the 1999 version of the Code of Federal Regulations (15 CFR Parts 730–774 (1999)). The 2003 Regulations establish the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 30, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 FR 47833, August 11, 2003), continues the Regulations in effect under IEEPA.

Law Judge that a ten year denial was appropriate where violations involved shipments of EAR99 items to Iran) and *In the Matter of Abdulamir Mahdi,* 68 FR 57406 (October 3, 2003) (affirming the recommendations of the Administrative Law Judge that a twenty year denial was appropriate where violations involved shipments of EAR99 items to Iran as a part of a conspiracy to ship such items through Canada to Iran).

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary for review and final action for the agency, without further notice to the Respondent, as provided in Section 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order *See* 15 CFR 766.22(c).

Done and dated this 8th day of April, at New York, NY.

Walter J. Brudzinski,

Administrative Law Judge.

[FR Doc. 04–13275 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830; A–274–804]

Carbon and Certain Alloy Steel Wire Rod From Mexico and Trinidad and Tobago: Extension of Preliminary Results of 2002/2003 Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl at (202) 482–1767, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On November 28, 2003, the Department published a notice of initiation of the administrative reviews of the antidumping duty orders on carbon and certain alloy steel wire rod from Mexico and Trinidad and Tobago, covering the period April 10, 2002 to September 30, 2003 (68 FR 66799). The preliminary results are currently due no later than July 2, 2004.

Extension of Preliminary Results of Reviews

The Department received sales-below-cost allegations concerning all five respondents in these cases. We are in the process of analyzing those allegations. Furthermore, we are in the process of working out sales and cost verification schedules with respondents. We therefore determine that it is not practicable to complete the preliminary results of these reviews within the original time limits, and we are extending the time limits for completion of the preliminary results until no later than October 30, 2004.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: June 7, 2004.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 04–13329 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to requests from the Crawfish Processors Alliance and its members (together with the Louisiana Department of Agriculture & Forestry, and Bob Odom, commissioner), and the Domestic Parties (collectively, the Domestic Interested Parties) and from exporters Hubei Qianjiang Houhu Cold & Processing Factory (Hubei Houhu), Shouzhou Huaxiang Foodstuffs Co., Ltd. (Shouzhou Huaxiang), Qingdao Jinyongxiang Aquatic Foods Co., Ltd. (Qingdao JYX) and North Supreme Seafood. The period of review (POR) is from September 1, 2002 through August 31, 2003.

We preliminarily determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess the *ad valorem* margins against the entered value of each entry of the subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. *See* the ''Preliminary Results of Review'' section of this notice.

EFFECTIVE DATE: June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Matthew Renkey, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1386 or (202) 482–2312, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the PRC on September 15, 1997. *See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 48218 (September 15, 1997). Based on timely requests from various interested parties, the Department initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC for the period of September 1, 2002 through August 31, 2003 covering 30 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 60910 (October 24, 2003) (*Notice of Initiation*).

On May 13, 2004, based on the Domestic Interested Parties' timely withdrawal of their requests for review of a number of companies, as well as

respondent North Supreme Seafood's withdrawal of its own request for review, we rescinded this administrative review with respect to 25 companies. *See Freshwater Crawfish Tailmeat from the People's Republic of China: Notice of Rescission, in Part, of Antidumping Duty Administrative Review for the Period September 1, 2002 through August 31, 2003*, 69 FR 29267 (May 21, 2004). This administrative review now covers the following companies: Hubei Houhu, Shouzhou Huaxiang, Qingdao JYX, Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean Flavor), and Nantong Shengfa Frozen Food Co., Ltd. (Nantong Shengfa). Due to the unexpected emergency closure of the main Commerce building on Tuesday, June 1, 2004, the Department has tolled the deadline for these preliminary results by one day to June 2, 2004.

Scope of the Antidumping Duty Order

The product covered by this antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the CBP in 2000, and HTS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Intent to Rescind Administrative Review, in Part

The Department's regulations provide that the Department ''may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.'' *See* 19 CFR 351.213(d)(3). On December 8, 2003, Shanghai Ocean Flavor informed the Department that, other than the sales which are currently subject to its new shipper review (NSR) for the period September 1, 2002 through February 28, 2003, it did not export, or produce for export, to the United States, nor did it produce and sell subject merchandise to the United States through other companies during the POR. The Department reviewed data on entries under the order during the period of review from CBP, and found no U.S. entries, exports, or sales of subject merchandise by Shanghai Ocean Flavor during the POR, other than those sales covered by its NSR. Therefore, absent the submission of any evidence that Shanghai Ocean Flavor had other U.S. entries, exports, or sales of subject merchandise during the POR, the Department intends to rescind the administrative review with respect to this company, in accordance with 19 CFR 351.213(d)(3).

Application of Facts Available

1. Nantong Shengfa

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Tariff Act of 1930, as amended (the Act), the Department determines that the application of total AFA is warranted for respondent Nantong Shengfa. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. Nantong Shengfa failed to file its response to the Department's quantity and value questionnaire in a timely manner. *See* the Department's letter to Nantong Shengfa dated May 6, 2004.

The Department sent a quantity and value questionnaire to Nantong Shengfa on November 28, 2003, via international express mail, with a response due by December 16, 2003. In the cover letter for the quantity and value questionnaire, we stated ''Please be advised that if you are non–cooperative (*e.g.*, non–responsive) to the Department's request for information, the antidumping duty margin applied by the Department to your company may be based on adverse facts available.'' We also stated in the cover letter ''If you are unable to respond to these questions within the specified time limits or are unable to provide the information in the form requested, please contact Department officials immediately.'' We confirmed through the delivery service that Nantong Shengfa had received our correspondence on December 1, 2003. The Department did not receive any correspondence from Nantong Shengfa indicating that it needed additional time to respond to the quantity and value questionnaire, or that it was having difficulty responding.

On March 18, 2004, more than three months after the due date, Nantong Shengfa submitted a response to our quantity and value letter. Nantong Shengfa stated that while it received the quantity and value in December 2003, it sent the document to a translation service since none of its staff reads English. Nantong Shengfa stated that it received the translation in March 2004, and then contacted counsel.

Nantong Shengfa failed to provide information explicitly requested by the Department in a timely manner; therefore, we must resort to the facts otherwise available. As noted in the Department's May 6, 2004 letter to Nantong Shengfa, the company has participated in prior antidumping duty reviews, so it was familiar with the Department's requirements for filing documents in a timely manner. Section 782(c)(1) of the Act does not apply because Nantong Shengfa did not indicate that it was unable to submit the information required by the Department.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department finds that, by not providing a timely response to the quantity and value questionnaire issued by the Department, Nantong Shengfa failed to cooperate to the best of its ability.

Therefore, in selecting from the facts available, the Department determines that an adverse inference is warranted. In accordance with sections 776(a)(2)(A) and (B), as well as section 776(b) of the Act, we are applying total AFA to Nantong Shengfa. As part of this AFA determination, we find that Nantong Shengfa did not demonstrate its eligibility for a separate rate, and have preliminarily determined that it is subject to the PRC–wide rate. As noted above, as AFA, and as the PRC–wide rate, the Department is assigning the rate of 223.01 percent, which is the highest rate determined in the current or any previous segment of this proceeding. *See 1999–2000 Final Results*. As discussed below, this rate has been corroborated.

2. Hubei Houhu, Shouzhou Huaxiang and Qingdao JYX

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and

section 776(b) of the Act, the Department determines that the application of total adverse facts available (AFA) is warranted for respondents Hubei Houhu, Shouzhou Huaxiang, and Qingdao JYX. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts otherwise available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required.

On September 30, 2003, the Department received requests for review from Hubei Houhu, Shouzhou Huaxiang, and Qingdao JYX. On January 2, 2004, the Department sent each of the three companies a full questionnaire, including sections A, C, and D, which had a due date of February 9, 2004. In a letter dated February 6, 2004, counsel for Hubei Houhu and Shouzhou Huaxiang stated that it was withdrawing its representation of those two companies, but that Qingdao JYX intended to participate fully in this review. Neither Hubei Houhu nor Shouzhou Huaxiang had submitted a response to the Department's initial Section A, C and D Questionnaire. On February 20, 2004, we sent letters directly to Hubei Houhu and Shouzhou Huaxiang via both fax and international express mail, inquiring as to whether those companies still intended to participate in the review. We confirmed through the delivery service that both companies received our February 20, 2004 letter. We did not receive a response to our letter from either company. Thus, because Hubei Houhu and Shouzhou Huaxiang failed to respond to the Department's initial Section A, C and D questionnaire, pursuant to sections 776(a)(2)(A) and (B) of the Act, the Department determines that the application of facts otherwise available is warranted.

Qingdao JYX submitted its response to the Department's initial Section A, C and D Questionnaire on February 17, 2004, after having been granted an extension from the original due date of February 9, 2004. On March 14, 2004, the Department issued a supplemental questionnaire to Qingdao JYX, with a response due on March 30, 2004. Qingdao JYX twice requested extensions for the supplemental response due date, which were granted. On April 13, 2004, the date on which its supplemental response was due, Qingdao JYX informed the Department, via letter, that it did not intend to respond to the Department's supplemental questionnaire or participate in verification, and was, thus, terminating its participation in this review. Because Qingdao JYX failed to respond to the Department's supplemental questionnaire, pursuant to sections 776(a)(2)(A) and (B) of the Act, the Department determines that the application of facts otherwise available is warranted.

These three companies failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Section 782(c)(1) of the Act does not apply because none of the companies indicated that they were unable to submit the information required by the Department.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a respondent, if it determines that a party has failed to cooperate to the best of its ability. As noted above, Hubei Houhu and Shouzhou Huaxiang failed to provide any response to the Department's initial questionnaire, and Qingdao JYX failed to respond to the Department's supplemental questionnaire. Because the Department concludes that these three companies failed to cooperate to the best of their ability, in applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act. In the absence of verifiable information establishing these companies' eligibility for a separate rate, we have preliminarily determined that they are subject to the PRC–wide rate. As AFA, and as the PRC–wide rate, the Department is assigning the rate of 223.01 percent, which is the highest rate determined in the current or any previous segment of this proceeding. *See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) (*1999–2000 Final Results*). As discussed further below, this rate has been corroborated.

Corroboration of Secondary Information Used As AFA

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant.We are applying as AFA the highest rate from any segment of this administrative proceeding, which is a rate calculated in the 1999–2000 review. *See 1999–2000 Final Results*. Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations. The information upon which the AFA rate is based in the current review was calculated during the 1999–2000 administrative review. *See 1999–2000 Final Results*. Furthermore, the AFA rate we are applying for the current review was corroborated in reviews subsequent to the 1999–2000 review to the extent that the Department referred to the history of corroboration and found that the Department received no information that warranted revisiting the issue. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19508 (April 21, 2003). No information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated).

The information used in calculating this margin was based on sales and production data of a respondent in a prior review, together with the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in that review, as well as gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. *See 1999–2000 Final Results*. Moreover, as there is no

information on the record of this review that demonstrates that this rate is not appropriately used as AFA, we determine that this rate has relevance. As the rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the highest rate from any segment of this administrative proceeding (*i.e.*, the calculated rate of 223.01 percent, which is the current PRC–wide rate) is in accord with section 776(c)'s requirement that secondary information be corroborated (*i.e.*, that it have probative value).

Separate Rates

As discussed above in the *Facts Available* section, only one company, Qingdao JYX, provided a response to the Department's initial Section A, C and D Questionnaire. Qingdao JYX subsequently stated that it would not respond to the Department's supplemental questionnaire and that it would not participate in verification. In the absence of verifiable information from any company in this review establishing its eligibility for a separate rate, we have determined that no company subject to this administrative review is eligible to considered for a separate rate.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer and Exporter	Period of Review	Margin (percent)
PRC–Wide Rate[1]	9/1/02–8/31/03	223.01

[1] Shouzhou Huaxiang, Qingdao JYX, Hubei Houhu, and Nantong Shengfa are included in the PRC–wide rate.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for previously–reviewed PRC and non–PRC exporters with separate rates, the cash deposit rate will be the company–specific rate established for the most recent period; (2) for PRC exporters which do not have a separate rate, including the exporters named in the footnote above, the cash deposit rate will be the PRC–wide rate, 223.01 percent; and (3) for all other non–PRC exporters of the subject merchandise, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non–PRC exporter.

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We will direct CBP to assess the resulting *ad valorem* rates against the entered value of each entry of the subject merchandise during the POR. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

Comments and Hearing

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Normally, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, not later than 120 days after publication of these preliminary results, unless extended.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221.

Dated: June 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–13327 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–830]

Stainless Steel Bar From Germany: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of 2001–2003 administrative review.

SUMMARY: On February 5, 2004, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from Germany. The period of review is August 2, 2001, through February 28, 2003. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made certain changes for the final results. Consequently, the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Andrew Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.,

Washington, DC 20230; telephone: (202) 482–1276.

SUPPLEMENTARY INFORMATION:

Background

Since the February 5, 2004 publication of the preliminary results in this review (*see Stainless Steel Bar from Germany: Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 5493 (February 5, 2004) (''*Preliminary Results*'')), the following events have occurred:

We invited parties to comment on the *Preliminary Results* of the review. On March 8, 2004, Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America (AFL–CIO/CLC) (collectively, ''petitioners''), and the respondent BGH Edelstahl Freital GmbH, BGH Edelstahl Lippendorf GmbH, BGH Edelstahl Lugau GmbH, and BGH Edelstahl Siegen GmbH (collectively, ''BGH'') filed case briefs. On March 15, 2004, BGH filed a rebuttal brief. On March 2, 2004, BGH requested a hearing by letter. On March 16, 2004, BGH withdrew its March 2, 2004, request for a hearing. Since BGH was the only party to request a hearing, no public hearing was held.

Scope of the Review

For the purposes of this review, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), angles, shapes and sections.

The stainless steel bar subject to this review is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Period of Review

The period of review (''POR'') is August 2, 2001, through February 28, 2003.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum'' from Jeffrey May, Deputy Assistant Secretary, Import Administration to James J. Jochum, Assistant Secretary, Import Administration, dated June 4, 2004 (''*Decision Memorandum*''), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memorandum.* Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, located in Room B–099 of the main Department building (''CRU''). In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Fair Value Comparisons

To determine whether sales of stainless steel bar by BGH to the United States were made at less than normal value (''NV''), we compared export price (''EP'') to NV. Our calculations followed the methodologies described in the *Preliminary Results,* except as noted below and in the final results calculation memoranda cited below, which are on file in the CRU.

Export Price

We calculated EP in accordance with section 772(a) of the Tariff Act of 1930, as amended, (''the Act'') because the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter/producer outside the United States and because constructed export price methodology was not otherwise warranted. We calculated EP based on the same general methodology described in the *Preliminary Results.*

Normal Value

We used the same general methodology as that described in the *Preliminary Results* to determine the cost of production and the NV, except that we reclassified the level of trade for certain home market sales. We continue to find that certain sales by BGH were made at separate and distinct levels of trade. Specifically, for these final results, based upon our determination to rely upon actual ''other revenue'' charged, rather than quantity sold, as a benchmark for defining service center selling functions, we have revised our level of trade findings. The category home market level of trade 1 (''LOTH 1'') is now comprised of distribution channels 1 and 2, as well as distribution channels 3 and 4 sales made from inventory for which no additional ''other revenue'' charges were reported on the sales invoice. These distribution channel 3 and 4 sales from warehouse with no additional ''other revenue'' charges are similar to BGH's distribution channel 1 and 2 sales with respect to sales process, freight services, and warranty service. The category home market level of trade 2 (''LOTH 2'') differs from our *Preliminary Results* in that it now only includes distribution channel 3 and 4 sales from inventory with service center selling functions, as indicated by the ''other revenue'' charges. Because of the presence of these service center selling functions, LOTH 2 differs significantly from LOTH 1 with respect to sales process and inventory maintenance. Based upon our overall analysis in the home market, we find that LOTH 1 and LOTH 2 constitute two different levels of trade.

We continue to find that LOTH 1 is similar to the category U.S. market level of trade 1 (''LOTU 1'') with respect to sales process, freight services, warehouse/inventory maintenance and warranty service. Consequently, we matched the U.S. LOTU 1 sales to sales at the same level of trade in the home market (LOTH 1). Where no matches at the same level of trade were possible, we matched to sales in LOTH 2 and made a level of trade adjustment. *See* section 773(a)(7)(A) of the Act.

Changes From the Preliminary Results

Based on our review of the comments received, we have made certain changes

to the calculations for the final results. These changes are discussed in the *Decision Memorandum* and in the final referenced calculation memorandum. *See* ''Final Results Calculation Memorandum for the BGH Group of Companies'' dated June 4, 2004 which is on file in the CRU; *see also Decision Memorandum.*

Final Results of the Review

We determine that the following percentage margin exists for the period August 2, 2001, through February 28, 2003:

Exporter/manufacturer	Weighted-average margin percentage
BGH	0.52

Assessment Rates

The Department shall determine, and United States Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer (or customer)-specific assessment rates for merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per-unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of stainless steel bar from Germany entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above (except no cash deposit will be required if a company's weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 16.96 percent, the ''all others'' rate established in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Germany,* 67 FR 3159 (January 23, 2002) and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Bar from Germany,* 67 FR 10382 (March 7, 2002).

These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 14, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix I—List of Comments in the Issues and Decision Memorandum

Comment 1: Level of Trade Adjustment
Comment 2: Indirect Selling Expenses
Comment 3: U.S. Commissions
Comment 4: Gross Unit Price Clerical Error
Comment 5: Adjustment in Quantity Clerical Error
Comment 6: Arm's Length Test Matching Criteria

[FR Doc. 04–13197 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–829]

Stainless Steel Bar from Italy: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of 2001–2003 administrative review.

SUMMARY: On February 5, 2004, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from Italy. The period of review is August 2, 2001, through February 28, 2003. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made certain changes for the final results. The final weighted–average dumping margins for the two manufacturer/exporters are listed below in the ''Final Results of the Review'' section of this notice.

EFFECTIVE DATE: June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4207.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the preliminary results in this review (*see Stainless Steel Bar from Italy: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 5488 (February 5, 2004) (''Preliminary

Results''), the following events have occurred:

We invited parties to comment on the preliminary results of the review. On March 9, 2004, Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America (AFL–CIO/CLC) (collectively, ''petitioners''), filed a case brief. On March 15, 2004, the respondent Foroni S.p.A. (''Foroni'') filed a rebuttal brief. At the request of the Department, the petitioners filed a revised case brief on March 19, 2004.

Scope of the Order

For the purposes of this order, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold–finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which, if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness or, if 4.75 mm or more in thickness have a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), angles, shapes and sections.

The stainless steel bar subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Period of Review

The period of this review (''POR'') is August 2, 2001, through February 28, 2003.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum'' from Jeffrey May, Deputy Assistant Secretary, Import Administration to James J. Jochum, Assistant Secretary, Import Administration, dated June 4, 2004 (''*Decision Memorandum*''), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Department's Central Records Unit (''CRU''). In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Facts Otherwise Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (''the Act''), provides that the Department shall apply ''facts otherwise available'' if, *inter alia*, a respondent (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of Section 782; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified.

As discussed in the *Preliminary Results*, Ugine Savoie–Imphy S.A. (''Ugine'') did not respond to the Department's questionnaire. For the reasons stated in the *Preliminary Results* (69 FR at 5489), we continue to find that the use of adverse facts available is appropriate in this review. As noted in the *Preliminary Results*, Ugine has failed to cooperate to the best of its ability by not responding to the Department's antidumping questionnaires. As adverse facts available, we have assigned Ugine a margin of 33.00 percent for the final results, the highest margin from any segment of the proceeding, which is also the highest margin alleged in the petition, in accordance with section 776(b)(1) of the Act.

Fair Value Comparisons

To determine whether sales of stainless steel bar by Foroni to the United States were made at less than normal value (''NV''), we compared, as appropriate, constructed export price (''CEP'') to NV. Our calculations followed the methodologies described in the *Preliminary Results*, except as noted below and in the final results calculation memoranda cited below, which are on file in the CRU.

Changes from the Preliminary Results

For Foroni, in our calculation of NV, we have adjusted the financial expense factor. *See* Memorandum from Blanche Ziv to the File, ''Final Results Calculation Memorandum for Foroni S.p.A. and Foroni Metals of Texas,'' dated June 4, 2004 (''*Final Calc Memo*''); Memorandum to Neal Halper from LaVonne Clark, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Results,'' dated June 4, 2004; and *Decision Memorandum*, at Comment 3. We revised Foroni's U.S. indirect selling expenses to include property taxes. *See Final Calc Memo* and *Decision Memorandum*, at Comment 1. We also corrected clerical errors in the calculation program that resulted in an understatement of CEP profit. *See Final Calc Memo* and *Decision Memorandum*, at Comment 5.

Final Results of the Review

We determine that the following percentage margins exist for the period August 2, 2001, through February 28, 2003:

Exporter/manufacturer	Weighted–average margin percentage
Foroni S.p.A. and Foroni Metals of Texas	4.03
Ugine Savoie–Imphy S.A.	33.00

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 C.F.R. § 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for merchandise subject to this review. To determine whether the duty assessment rates were *de minimis* (*i.e.*, at or above 0.5 percent), in accordance with the requirement set forth in 19 C.F.R. § 351.106(c)(1), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all

U.S. sales to that importer (or customer) and dividing this amount by the entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importer's/customer's entries during the review period.

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of stainless steel bar from Italy entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) for Bedini, because its estimated weighted–average final dumping margin established in the *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy*, 67 FR 3155 (January 23, 2002), *as amended*, 67 FR 8288 (February 22, 2002) (''*LTFV Investigation*'') was *de minimis*, no antidumping duty deposit will be required on merchandise produced and exported by Bedini; (2) the cash deposit rates for the reviewed companies will be the rates listed above (except no cash deposit will be required if a company's weighted–average margin is *de minimis, i.e.*, less than 0.5 percent); (3) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (4) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, for manufacturers other than Bedini, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (5) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, or an exporter without its own rate is exporting Bedini merchandise, the cash deposit rate will be 3.81 percent, the ''all others'' rate established in the *LTFV Investigation*.

These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 C.F.R. § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 C.F.R. § 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 4, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Issues and Decision Memorandum

Comment 1: Foroni S.p.A's Indirect Selling Expenses
Comment 2: Foroni's Director's Fees and Auditor's Fees in its Reported Cost Data
Comment 3: Foroni's Financial Expense Ratio
Comment 4: Additional Adjustments to Foroni's Cost Data
Comment 5: Understatement of Foroni's Constructed Export Price Profit
*Comment 6:*Total Adverse Facts Available for Ugine Savoie–Imphy S.A.
*Comment 7:*Collapsing of Ugine and Trafilerie Bedini S.p.A.

[FR Doc. 04–13326 Filed 6–10–04; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Panel Decision

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of panel decision.

SUMMARY: On June 7, 2004, the binational panel issued its decision in the review of the final results of the affirmative countervailing duty re-determination on remand made by the International Trade Administration (ITA) respecting Certain Softwood Lumber Products from Canada (Secretariat File No. USA–CDA–2002–1904–03) affirmed in part and remanded in part the determination of the Department of Commerce. The Department will return the second determination on remand no later than July 30, 2004. A copy of the complete panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

Panel Decision

On March 5, 2004, the Binational Panel remanded the Department of Commerce's final countervailing duty determination on remand. The following issues were remanded to the Department at the Department's request:

With the exception of its requests to correct a conversion factor, which is rendered moot by our decision, and to revise its profit adjustment with respect to Alberta, which is addressed in our discussion of profit adjustments, the Panel grants the remand sought by the Department to reconsider certain

limited implementation issues. The issues for which this remand is granted are as follows:

(1) To consider the issue of adjustment for harvesting costs for Manitoba and Saskatchewan;

(2) To re-examine the calculation of the numerator in British Columbia;

(3) To correct its omission of Douglas-fir from the Vancouver Log Market prices used as domestic log prices in the British Columbia Coast species matching;

(4) To exclude the following categories of building logs in the Vernon price list from the benchmark calculation in Interior British Columbia: ''spruce bldg logs,'' ''spruce bldg logs (dry),'' ''white pine (dry) bldg logs,'' pine bldg logs'' and ''cedar bldg logs;''

(5) To exclude from the benchmark calculation for British Columbia the Revelstoke Community Forest Corp Log Sale Prices;

(6) To make the adjustments both downward and upward with respect to certain harvesting costs in Québec;

(7) To re-evaluate whether Québec mills use pulpwood imports to produce softwood lumber; and

(8) To exclude price listings for ''pine'' logs that were actually listings for ''White Pine'' logs in calculating the benchmark in Ontario.

The Panel further remanded on the following issues:

(1) The Department is directed to recalculate the benchmark price for stumpage in British Columbia taking into account the actual market conditions that govern the sale of timber harvesting authority in that province, including the fact that Crown stumpage fees are charged for stands rather than for the individual species.

(2) The Department is directed to recalculate the benchmark price in Ontario taking into account the actual market conditions that govern the sale of timber harvesting authority in that province.

(3) The Department is directed to recalculate the benchmark log prices for Québec without use of the Sawlog Journal data. In the recalculation the Department must weight-average the import and Syndicates prices.

(4) The Department is directed to recalculate the Ontario benchmarks, without use of the Sawlog Journal data, and weight-average the imports with the KPMG domestic log sales information.

(5) The Department is directed to recalculate the benchmark log price for Manitoba without use of the import data.

(6) The Department is directed to recalculate the benchmark log price for Saskatchewan without use of the import data.

(7) The Department is directed to recalculate the benchmark log price for Alberta without use of the import data.

(8) The Department is directed to recalculate the benchmark for British Columbia and to explain the basis for its action. If the Department is able to calculate a benchmark with weight-averaging of the domestic and import data, it is directed to calculate a benchmark with weight-averaging of the domestic and import prices. In its recalculation the Department must determine whether there is substantial evidence to support the Douglas fir benchmark.

(9) The Department is directed to reconsider the adjustment for profit with respect to the benchmarks for all provinces. The Panel recognizes that it may not be unreasonable for the Department to reconsider the method used to estimate profit in Alberta, and accordingly, grants the remand request on this point. However, if the Investigating Authority cannot determine a better estimate of the amount of profit for Alberta, it is not authorized to change it.

(10) The Department is directed to recalculate the denominator to include the appropriate proportion of the production of smaller sawmills in all provinces, and to provide a reasoned explanation of any deviation from the proportion included in respect of the production of the large sawmills.

(11) The Department is directed to recalculate its exclusion analysis for Materiaux Blanchet's St. Pamphile Border Mill on a mill-based subsidy rate as it had determined in the original investigation.

The Investigating Authority is ordered to complete its remand determination by the firm date of July 30, 2004.

Dated: June 7, 2004.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 04–13237 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Performance Review Board Members

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: 5 CFR 430.310 requires agencies to publish notice of Performance Review Board appointees in the **Federal Register** before their service begins. This notice announces the names of new and existing members of the International Trade Administration's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Darlene Haywood, International Trade Administration, Office of Human Resources Management, at (202) 482–2850, Room 7060, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The purpose of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, pay adjustments, bonuses, and Presidential Rank Awards for members of the Senior Executive Service. The Deputy Under Secretary, International Trade Administration, Timothy J. Hauser, has named the following members of the International Trade Administration Performance Review Board:

1. Linda Cheatham, Chief Financial Officer and Director of Administration (Chairperson).
2. Eric Stewart, Deputy Assistant Secretary for Europe (new).
3. Carlos Montoulieu, Director, Office of Environmental Technologies Industries (new).
4. Walter Bastian, Deputy Assistant Secretary for Western Hemisphere (new).
5. Nealton J. Burnham, Deputy Assistant Secretary for Domestic Operations (new).
6. Holly Kuga, Senior Director (new).
7. Eleanor Lewis, Chief Counsel for International Commerce, Department of Commerce (outside reviewer).
8. Darlene F. Haywood, Executive Secretary, ITA Office of Human Resources Management.

Dated: June 8, 2004.

Doris W. Brown,

Human Resources Officer.

[FR Doc. 04–13289 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–25–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: The Director of the National Institute of Standards and Technology announces that the National Construction Safety Team Federal Advisory Committee will meet on June 22–23, 2004.

DATES: The meeting will convene on June 22, 2004, at 8 a.m. and will adjourn at 4 p.m. on June 23, 2004. Members of the public wishing to attend the meeting must notify Stephen Cauffman by close of business on Friday, June 18, 2004, per instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephen Cauffman, National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, MS 8611, Gaithersburg, Maryland 20899–8611, telephone (301) 975–6051, fax (301) 975–6122, or via e-mail at *stephen.cauffman@nist.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the National Construction Safety Team (NCST) Advisory Committee (Committee), National Institute of Standards and Technology (NIST), will meet Tuesday, June 22, 2004, from 8 a.m. to 5 p.m. and Wednesday, June 23, 2004, from 8 a.m. to 4 p.m. at NIST headquarters in Gaithersburg, Maryland.

The Committee was established pursuant to Section 11 of the National Construction Safety Team Act (15 U.S.C. 7310). The Committee is composed of nine members appointed by the Director of NIST who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting teams established under the NCST Act. The Committee will advise the Director of NIST on carrying out investigations of building failures conducted under the authorities of the NCST Act that became law in October 2002 and will review the procedures developed to implement the NCST Act and reports issued under section 8 of the NCST Act. Background information on the NCST Act and information on the NCST Advisory Committee is available at *http://www.nist.gov/ncst.*

The primary purpose of this meeting is to provide an update on the World Trade Center (WTC) Investigation. The agenda will also include a discussion on the Rhode Island Nightclub Investigation. The agenda may change to accommodate Committee business. The final agenda will be posted on the Internet at *http://www.nist.gov/ncst.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs, the WTC Investigation, or the Rhode Island Investigation are invited to request a place on the agenda. On June 22, 2004, approximately one hour will be reserved for public comments, and speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be 5 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, MS 8611, Gaithersburg, Maryland 20899–8611, via fax at (301) 975–6122, or electronically via e-mail to *ncstac@nist.gov.*

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 28, 2004, that portions of the meeting of the National Construction Safety Team Advisory Committee that involve discussions regarding the proprietary information and trade secrets of third parties, personal privacy of third parties, preliminary findings the disclosure of which might jeopardize public safety, data collection status and the issuance of subpoenas, and matters the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action may be closed in accordance with 5 U.S.C. 552b(c)(4), (6), (3), (10), and (9)(B), respectively. The closed portion of the meeting is scheduled to begin at 3 p.m. and to end at 4 p.m. on June 23, 2004. All other portions of the meeting will be open to the public.

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by close of business Friday, June 18, 2004, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Stephen Cauffman and he will provide you with instructions for admittance. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Mr. Cauffman's e-mail address is *stephen.cauffman@nist.gov* and his phone number is (301) 975–6051.

Dated: June 3, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–13398 Filed 6–9–04; 12:37 pm]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060704A]

Proposed Information Collection; Comment Request; NOAA Customer Surveys

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 13, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Eugene McDowell, NOAA CIO/PPA1, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–3333 x207).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration (NOAA) is planning to seek renewed Paperwork Reduction Act approval for a generic clearance for customer surveys conducted by NOAA's program offices. Under the generic clearance, specific surveys are submitted to OMB for fast-track approval if they are consistent with the types of questions approved in the generic clearance. NOAA uses the surveys to determine whether customers

are satisfied with products and services received and to solicit suggestions for improvements.

II. Method of Collection

Various methods are used, but the primary method is either a paper or electronic form.

III. Data

OMB Number: 0648-0342.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals and households, Business and other for-profit organizations, Not-for-profit institutions, and State, Local, or Tribal government.

Estimated Number of Respondents: 70,000.

Estimated Time Per Response: Response times vary with the specific survey, but average 15 minutes or less.

Estimated Total Annual Burden Hours: 8,000.

Estimated Total Annual Cost to Public: $10,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 4, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–13199 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060704D]

Proposed Information Collection; Comment Request; Western Alaska Community Development Quota Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 13, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Becky Carls, 907–586–7322 or *becky.carls@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Western Alaska Community Development Quota (CDQ) Program allocates a portion of the quota for certain species in the Bering Sea and Aleutian Islands Management Area, in the Exclusive Economic Zone off the coast of Alaska to Western Alaska communities. So that the communities can start and support regionally-based commercial seafood or other fisheries-related businesses. NOAA Fisheries, Alaska Region needs to collect information to administer and manage the program. The information collected will be used to determine whether communities applying for allocations under the CDQ Program meet regulatory requirements, whether vessels and processors utilizing CDQ species meet operational requirements, and to monitor whether quotas have been harvested or exceeded.

II. Method of Collection

Community Development Plans (CDPs) are paper submissions. Substantial and technical amendments to the CDPs may be submitted by FAX or as paper submissions. The annual progress, budget, and budget reconciliation reports are paper submissions. CDQ Delivery Reports and CDQ Catch Reports are submitted by FAX or other electronic means. Observers are given their prior notice verbally.

III. Data

OMB Number: 0648–0269.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions and Business or other for-profits organizations.

Estimated Number of Respondents: 85.

Estimated Time Per Response: Proposed CDP, 520 hours; substantial amendment, 8 hours; technical amendment, 4 hours; annual progress report, 40 hours; annual budget report, 20 hr; annual budget reconciliation report, 8 hours; CDQ delivery report, 1 hour; CDQ catch report, 15 minutes; prior notice of offloading, 2 minutes; and prior notice of haul or set, 2 minutes.

Estimated Total Annual Burden Hours: 3,746.

Estimated Total Annual Cost to Public: $1,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 4, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–13206 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060704C]

Proposed Information Collection; Comment Request; Assessing Stakeholder Attitudes and Concerns Toward Ecosystem Management

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 13, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Rita Curtis, Department of Commerce, NOAA, National Marine Fisheries Service, 1315 East West Highway, #12752, Silver Spring, MD 20910 (301–713–2328).

SUPPLEMENTARY INFORMATION:

I. Abstract

The objective of the survey will be to elicit the range of concerns regarding the use of ecosystem-based management measures, the types of goals and objectives that should be pursued (e.g., in developing guidelines), and overall attitudes and concerns regarding the use of ecosystem approaches in fisheries management. Given the increasing emphasis on ecosystem issues in the Councils and in impending legislation, the questionnaire survey is well timed to establish a baseline for outreach and planning and as an approach that will potentially have applicability nation-wide.

II. Method of Collection

The survey will be conducted as a mail survey.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; Federal Government; state, local or tribal government.

Estimated Number of Respondents: 10,000.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 3,333.

Estimated Total Annual Cost to Public: $3,700.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 4, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–13207 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060104B]

Nominations for the Marine Fisheries Advisory Committee (MAFAC)

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

ACTION: Notice of request for nominations.

SUMMARY: The Marine Fisheries Advisory Committee (the ''Committee) is the only Federal Advisory Committee with the responsibility to advise the Secretary of Commerce (Secretary) on all matters concerning living marine resources that are the responsibility of the Department of Commerce. The Committee makes recommendations to the Secretary to assist in the development and implementation of Departmental regulations, policies and programs critical to the mission and goals of the National Marine Fisheries Service. The Committee is composed of leaders in the commercial, recreational, environmental, academic, state, tribal, and consumer interests from the nation's coastal regions. The Department of Commerce is seeking up to four highly qualified individuals knowledgeable about fisheries and living marine resources to serve on the Committee.

DATES: Nominations must be postmarked on or before July 15, 2004.

ADDRESSES: Nominations should be sent to MAFAC, Office of Constituent Services, NMFS, 1315 East-West Highway, 9538, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Laurel Bryant, Designated Federal Official; (301) 713–1276 x 171. E-mail: *Laurel.Bryant@noaa.gov*.

SUPPLEMENTARY INFORMATION: The establishment of MAFAC was approved by the Secretary on December 28, 1970, and initially chartered under the Federal Advisory Committee Act, 5, U.S. C. App.2, on February17, 1971. The Committee meets twice a year with supplementary subcommittee meetings as determined necessary by the Secretary. Individuals serve for a term of three years for no more than two consecutive terms if reappointed. No less than 15 and no more than 21 individuals may serve on the Committee. Membership is comprised of highly qualified individuals representing commercial and recreational fisheries interests, environmental organizations, academic institutions, governmental, tribal and consumer groups from a balance of geographical regions, including the Hawaiian and the Pacific Islands, and the U.S. Virgin Islands.

Nominations are encouraged from all interested parties involved with or representing interests affected by the Agency's actions in managing living

marine resources. Nominees should possess demonstrable expertise in a field related to the management of living marine resources and be able to fulfill the time commitments required for two meetings annually.

A MAFAC member cannot be a Federal agency employee or a member of a Regional Fishery Management Council. Selected candidates must have security checks and complete financial disclosure forms. Membership is voluntary, and except for reimbursable travel and related expenses, service is without pay.

Each submission should include the submitting person's or organization's name and affiliation, a cover letter describing the nominee's qualifications and interest in serving on the Committee, a curriculum vitae or resume of nominee, and no more than three supporting letters describing the nominee's qualifications and interest in serving on the Committee. Self nominations are acceptable. The following contact information should accompany each nominee's submission: name, address, phone number, fax number, and e-mail address if available.

Nominations should be sent to (see **ADDRESSES**) and nominations must be received by (see *DATES*). The full text of the Committee Charter and its current membership can be viewed at the Agency's web page at *www.nmfs.noaa.gov/mafac.htm*.

Dated: June 4, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–13200 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 040517149–4149–01; I.D. 050304C]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the United States; Essential Fish Habitat

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

ACTION: Notice of receipt of rulemaking petition to protect deep-sea coral and sponge habitat and request for comments.

SUMMARY: NMFS announces receipt of a petition for rulemaking under the Administrative Procedure Act. Oceana, a non-governmental organization, has petitioned the U.S. Department of Commerce to promulgate a rule to protect deep-sea coral and sponge habitats in the United States' Exclusive Economic Zone (EEZ). The petition asserts that deep-sea coral and sponge communities are not adequately protected under existing fishery management plans (FMPs) or through pending rulemakings and that current efforts to identify and describe essential fish habitat (EFH) proceed too slowly to offer immediate protection to these habitats. The petition seeks a research and regulatory program that includes increased mapping of areas containing deep-sea coral and sponge habitat, and identification and description of such areas as both EFH and habitat areas of particular concern (HAPCs); increased protective measures for these habitats, including implementing additional closed areas, and increased enforcement and penalties; enhanced monitoring infrastructure for deep-sea corals and sponges; and increased funding for further research to identify, protect, and restore damaged deep-sea coral and sponge habitats.

DATES: Comments will be accepted through August 13, 2004.

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

- Federal e-Rulemaking Portal *http//www.regulations.gov*. Follow the instructions for submitting comments.
- Email: DSC-EFH@noaa.gov Include in the subject line of the e-mail comment the following identifier: DSC Petition
- Mail: Mr. Rolland A. Schmitten, Director, Office of Habitat Conservation, NOAA National Marine Fisheries Service, F/HC, 1315 East-West Highway, Silver Spring, MD 20910
- Fax: *(301) 427–2572*

The complete text of Oceana's petition is available via the internet at the following web address: *http://www.nmfs.noaa.gov/habitat/habitatconservation/DSC_petition/Oceana*. In addition, copies of this petition may be obtained by contacting NMFS at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Hourigan at 301–713–3459 Ext. 122.

SUPPLEMENTARY INFORMATION: The petition filed by Oceana states that deep-sea coral and sponge communities are comprised of long-lived, slow-growing organisms that are especially vulnerable to destructive fishing practices, such as the use of bottom-tending mobile fishing gear. The petition cites that without immediate protection, many of these sensitive deep-sea coral and sponge habitats will suffer irreparable harm.

The petition cites specific legal responsibilities of NMFS for EFH and HAPCs under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the EFH guidelines at 50 CFR 600, subparts J and K, and concludes that NMFS must: identify and describe deep-sea coral and sponge habitats as EFH; designate some, if not all, of these habitat types as HAPCs; and take appropriate measures to minimize to the extent practicable adverse fishing effects on this EFH; and protect such habitat from other forms of destructive activity. The petition gives a short overview of known deep-sea coral and sponge habitat in regions off the mainland United States, including areas known in the Alaska, Pacific, Northeast and Mid-Atlantic, Southeast, and Gulf of Mexico fishery management regions. The petition asserts that deep-sea coral and sponge habitats satisfy the definition of EFH in the Magnuson-Stevens Act and concludes that such areas must be identified and described as EFH under the relevant FMPs. In addition, the petition states that deep-sea coral and sponge habitats should be identified as HAPCs because they meet the definition of HAPC and satisfy one or more of the criteria set forth in the EFH guidelines for creating HAPCs. Further, the petition argues that the Magnuson-Stevens Act requires NMFS to protect areas identified as EFH and HAPC and that such protection, as articulated in the petition, is ''practicable.'' Finally, the petition asserts that deep-sea coral and sponge habitats must be protected for its own sake, meaning if the Secretary does not protect such habitats through existing FMPs, the Magnuson-Stevens Act requires the Secretary and the Regional Fishery Management Councils to develop FMPs specifically for the protection of deep-sea corals and sponges.

The petition specifically requests that NMFS immediately initiate rulemaking to protect deep-sea coral and sponge habitats in the U.S. EEZ by taking the following measures:

''1. Identify, map, and list all known sponge areas containing high concentations of deep-sea coral and sponge habitats;

''2. Designate all known areas containing high concentrations of deep-sea coral and sponge habitat as both EFH and 'habitat areas of particular concern' (HAPC) and close these HAPC to bottom trawling;

''3. Identify all areas not fished within the last three years with bottom-tending

mobile fishing gear, and close these areas to bottom trawling;

''4. Monitor bycatch to identify areas of deep-sea coral and sponge habitat that are currently fished, establish appropriate limits or caps on bycatch of deep-sea coral and sponge habitat, and immediately close areas to bottom trawling where these limits or caps are reached, until such time as the areas can be mapped, identified as EFH and HAPC, and permanently protected;

''5. Establish a program to identify new areas containing high concentrations of deep-sea coral and sponge habitat through bycatch monitoring, surveys, and other methods, designate these newly discovered areas as EFH and HAPC, and close them to bottom trawling;

''6. Enhance monitoring infrastructure, including observer coverage, vessel monitoring systems, and electronic logbooks for vessel fishing in areas where they might encounter high concentrations of deep-sea coral and sponge habitat (including encountering HAPC);

''7. Increase enforcement and penalties to prevent deliberate destruction of deep-sea coral and sponge habitat and illegal fishing in already closed areas; and

''8. Fund and initiate research to identify, protect, and restore damaged deep-sea coral and sponge habitat.≥

The exact and complete assertions of legal responsibilities under Federal law are contained in the text of Oceana's petition, which is available via internet at the following NMFS web address: *http://www.nmfs.noaa.gov/habitat/habitatconservation/ DSC__petition/ Oceana.* Also, anyone may obtain a copy of this petition by contacting NMFS at the above address.

The Assistant Administrator for Fisheries, NOAA has determined that the petition contains enough information to enable NMFS to consider the substance of the petition. NMFS will consider public comments received in determining whether to proceed with the development of the regulations requested by Oceana. Additionally, NMFS, by separate letter, has requested each Regional Fishery Management Council assist in evaluating this petition. Upon determining whether to initiate the requested rulemaking, the Assistant Administrator for Fisheries, NOAA, will publish in the **Federal Register** a notice of the agency's final disposition of the Oceana petition request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 4, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–13204 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051304B]

NOAA Recreational Fisheries Strategic Plan Public Meeting; Correction

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

ACTION: Notice of public meetings; correction.

SUMMARY: The National Marine Fisheries Service (NOAA Fisheries) published a document in the **Federal Register** on May 19, 2004, concerning a public meeting to present a draft of the NOAA Fisheries Strategic Plan for Recreational Fisheries 2005–2010. The primary goal of the meeting is to collect public input on the DRAFT plan. Additional meetings are planned for Texas, Alabama, and North Carolina. Specific dates, times, and locations to these meetings will be published in the **Federal Register**. This document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Michael Kelly, Division Chief, Office of Constituent Services at (301) 713–2379.

Correction

1. In the **Federal Register** of May 19, 2004, in FR Doc. 04–11351, on page 28882, in the second column, correct the ''DATES'' caption to read:

DATES: The meetings will be held on June 3, and June 23, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

2. On page 28882, for the meeting held in Honolulu, HI, in the third column, in the 17th line, correct ''June 26, 2004'' to read ''June 23, 2004.''

Dated: June 7, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–13208 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060304B]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), U. S. Department of Commerce.

ACTION: Notice of receipt of a permit application; request for comments.

SUMMARY: Notice is hereby given that NOAA Fisheries has received an application for a permit to conduct research for scientific purposes from Michael Clarke, City of San Luis Obispo, CA. The requested permit would affect the South Central California Coast Evolutionarily Significant Unit of steelhead trout (*Oncorhynchus mykiss*). The public is hereby notified of the availability of the permit application for review and comment before NOAA Fisheries either approves or disapproves the application.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) on or before July 14, 2004.

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

- Federal e-Rulemaking Portal http://www.regulations.gov. Following the instructions for submitting comments.
- E-mail: Include in the subject line of the e-mail comment the following identifier: FRNpermits.lb@noaa.gov
- Mail: Protected Resources Division, NOAA Fisheries, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- Fax: 562–980–4027.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted in writing to Anthony Spina, Protected Resources Division, NOAA Fisheries, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802 and to David Rostker, OMB, by email at *David__Rostker@omb.eop.gov* or by facsimile (Fax) to 202–395–7285

FOR FURTHER INFORMATION CONTACT: Anthony Spina at phone number 562–980–4045 or e-mail: *anthony.spina@noaa.gov*

SUPPLEMENTARY INFORMATION:

Authority: Authority

Issuance of permits, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531B1543) (ESA), is based on a

finding that such permits: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits are issued in accordance with and are subject to the ESA and NOAA Fisheries regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should provide the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NOAA Fisheries.

Permit Application Received.

Michael Clarke has applied for a permit to take the South Central California Coast Evolutionarily Significant Unit of steelhead trout (*Oncorhynchus mykiss*) and tissue collection from this species during a 2–year study (2004 and 2005) of the abundance and distribution of juvenile steelhead in the San Luis Obispo Creek watershed, San Luis Obispo County, California. Michael Clarke proposes electrofishing and direct underwater observation using mask and snorkel as the methods for estimating abundance and distribution of juvenile steelhead, and has requested an annual non-lethal take of 1620 juvenile steelhead, and annual collection and possession of up to 100 juvenile steelhead tissue samples, with the total possession for both years not exceeding 200 tissue samples. The proposed research would conclude October 31, 2005.

Dated: June 7, 2004.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–13203 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060404A]

Marine Mammals; Photography Permit Application No. 946–1747

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Ocean Futures Society (Jean-Michel Cousteau, Responsible Party), 325 Chapala Street, Santa Barbara, CA 93101, has been issued a permit to take gray whales (Eschrictius robustus) and killer whales (Orcinus orca) for purposes of commercial/educational photography.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jill Lewandowski, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 2, 2004, notice was published in the **Federal Register** (69 FR 17394) that a request for a photography permit to take the above-mentioned species of marine mammals for purposes of commercial/educational photography had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).The permit authorizes the applicant to take 100 gray whales and 50 killer whales by level B harassment during close approaches to obtain above- and below-water still photographs, video footage, and sound recordings of migrating gray whales and encounters of killer whales feeding on gray whales along the Mexican-U.S. border north to the Bering and Chukchi Seas. The purpose of this project is to educate the public on the state of the health of the oceans consistent with the six-part Ocean Futures Society/KQED-PBS partnership film series (Jean-Michel Cousteau's Ocean Adventures series). The permit will expire on May 31, 2006.

Dated: June 4, 2004.

Patrick Opay,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–13231 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.060704G]

Marine Mammals; File No. 1069–1756

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Charles W. Powers, The Institute for Responsible Management/CRESP, Robert Wood Johnson Medical School, 675 Hoes Lane, Piscataway, NJ, has applied for a permit to conduct scientific research on marine mammals.

DATES: Written, telefaxed, or e-mail comments must be received on or before July 14, 2004.

ADDRESSES: The application 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)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Written comments or requests for a public hearing on this application should be mailed 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 request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided

the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Additionally, comments may be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include File No. 1069–1756 as a document identifier in the subject line of the e-mail comment.

FOR FURTHER INFORMATION CONTACT: Dr. Tammy Adams or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests a permit for the intentional lethal take of 20 harbor seals (*Phoca vitulina*) in Alaska to determine the extent of radionuclide release from Amchitka Island and investigate levels of radionuclides in selected tissues of marine mammals from Amchitka Island and a reference site to be determined.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 8, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–13316 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060204G]

Endangered Species; File No. 1236

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

ACTION: Receipt of application for modification.

SUMMARY: Notice is hereby given that Virginia Institute of Marine Science (VIMS) (Gloucester Point, VA 23062) [Dr. John Musick, Principal Investigator], has requested a modification to scientific research Permit No. 1236.

DATES: Written, telefaxed, or e-mail comments must be received on or before July 14, 2004.

ADDRESSES: The modification request 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)713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

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 be submitted by facsimile at (301)713–0376, 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 email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1236.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1236, issued on October 10, 2000 (65 FR 62709) and modified on April 17, 2001 (66 FR 21912) 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. 1236 authorizes the permit holder to conduct two sea turtle research projects, one in the Chesapeake Bay and coastal waters of Virginia and the other in the U.S. Virgin Islands (USVI). The USVI project focuses on the habitat utilization of juvenile hawksbill (*Eretmochelys imbricata*) turtles at the Buck Island Reef National Monument off St. Croix. The Chesapeake Bay project studies the inter-nesting movements of sea turtles in Virginia via satellite telemetry and to assess the effects of beach replenishment on turtle activities. Both studies capture, handle, tag (PIT, flipper, satellite, radio and acoustic), collect biological samples (via humeral bone biopsy, blood samples and laparoscopy) and release loggerhead (*Caretta caretta*), green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), hawksbill and leatherback turtles (*Dermochelys coriacea*). Permit No. 1236 expires on July 31, 2005.

The permit holder requests authorization to hold a maximum of 20 of the loggerhead turtles that are already subject animals in the Chesapeake Bay project for up to one week to study turtle interactions with whelk pots. In an effort to reduce entanglement by sea turtles in the whelk pot fishery, VIMS proposes to test the ways in which turtles interact with various whelk pot designs. Healthy turtles will be transported to VIMS and maintained in indoor tanks until testing. During experimentation, a single turtle will be placed in an outdoor tank with one of the whelk pot designs, rigged and baited to imitate the fishery protocols. Observers will be present at all times to record turtle behavior. If a turtle becomes entangled for more than five minutes, the observer will disentangle the animal and the experiment will be concluded for the day. Turtles will have a day's rest between experiments and thus will interact with three designs over the course of a week. Turtles will be fed, examined, and monitored by a staff veterinarian. Once the experiment is complete turtles will be released. Currently VIMS is authorized to sample 100 loggerheads annually. The twenty turtles used in the whelk pot study will be a subset of those turtles. There is no increase in the number of loggerhead turtles captured under the permit. This modification would be valid through the life of the permit.

Dated: June 4, 2004.

Patrick Opay,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–13201 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051704F]

Endangered Species; File No. 1231

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

ACTION: Issuance of permit modification.

SUMMARY: Notice is hereby given that Llewellyn M. Ehrhart has been issued a modification to scientific research Permit No. 1231.

ADDRESSES: The modification 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)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 12, 2004, notice was published in the **Federal Register** (69 FR 11839) that a modification of Permit No. 1231, issued May 31, 2000 (65 FR 36666), had been requested by the above-named individual. The requested modification has been granted 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 222–226).

This modification will allow the permit holder to obtain additional information about green sea turtle movement patterns and their utilization of habitat. The permit holder will attach a transmitter and time-depth-temperature recorder to 14 green (Chelonia mydas) sea turtles using a tether and track them. Turtles will be also be sampled, measured, weighed, and tagged before being released. This research will take place in waters of the east coast of Florida for the remaining duration of the permit which expires on March 31, 2005.

Issuance of this modification, 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 the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 4, 2004.

Patrick Opay,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–13202 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–22–S

THE COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 16 June 2004 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa. gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Frederick J. Lindstrom, Acting Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 31 May 2004.

Frederick J. Lindstrom,

Acting Secretary.

[FR Doc. 04–13227 Filed 6–10–04; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: The notice sets forth the schedule and summary agenda for the meeting of the Board of Visitors (BoV) for the Western Hemisphere Institute for Security Cooperation (WHINSEC). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). This board was chartered on February 1, 202 (and subsequently re-chartered on February 1, 2004) in compliance with the requirements set forth in 10 U.S.C. 2166.

Dates: July 16, 2004.

Time: 8 a.m. to 4 p.m.

Location: Pratt Hall, Building 35, 7011 Morrison Ave., Fort Benning, GA 31905.

Proposed Agenda: The WHINSEC BoV will receive new members and advisors, elect its internal leadership, receive updates on the status of actions taken on past BoV recommendations and an update on new activities and efforts since December 2003; look into any matters it deems important; meet with groups of WHINSEC faculty and students; and prepare for its annual 2004 later in the year. The Board will also schedule its calendar for the remainder of 2004.

FOR FURTHER INFORMATION CONTACT: Ken LaPlante, Executive Liaison, WHINSEC, Army G–3 at (703) 692–7419 or LTC Linda Gould, Deputy DFO and Chief, Latin American Branch, Army G–3 at (703) 692–7419.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Please note that the Board members will arrive at various times on July 15 and may use available time for individual member reviews of special interest items (yet to be determined) and will convene in plenary session on July 16, 2004. On July 16 the Board will adjourn for lunch between 12 p.m. and 1:30 p.m. The DFO had set aside 3 p.m. to 3:30 p.m. on July 16 for public comments by individuals and organizations. Public comment and presentations will be limited to two minutes each and members of the public desiring to make oral statements or presentations must inform the contact personnel, in writing. Requests must be received before Friday, July 9, 2004. Mail written presentations and requests to register to attend the public sessions to: LTC Gould or Mr. LaPlante at HQDA, DA0–G35–R (Room 3B473), 400 Army Pentagon, Washington, DC 20310. Public seating is limited, and is available on a first come, first served basis.

Dated: June 7, 2004.

John C. Speedy, III,

Designated Federal Officer, WHINSEC BoV.

[FR Doc. 04–13268 Filed 6–10–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Detection of Oxidizing Agents in Urine

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application No. 60/529,700 entitled ''Detection of Oxidizing Agents in Urine,'' filed December 16, 2003 and U.S. Provisional Patent Application No. 60/479,187 entitled ''Six Spectroscopic Methods for Detection of Oxidants in Urine: Implications in Differentiation of

Normal and Adulterated Urine,'' filed June 18, 2003. Foreign rights are also available (PCT/US03/06283). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The present invention relates to methods and means for detecting oxidants in urine. More specifically, the present invention relates to methods and means for spectroscopic detection of oxidants and oxidizing agents in urine.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–13270 Filed 6–10–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning a Method and Apparatus for Generating Two-Dimensional Images of Cervical Tissue From Three-Dimensional Hyperspectral Cubes

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 10/051,286 entitled ''A Method and Apparatus for Generating Two-Dimensional Images of Cervical Tissue from Three-Dimensional Hyperspectral Cubes,'' filed January 22, 2002. Foreign rights are also available (PCT/US02/01585). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates to detection and diagnosis of cervical cancer. More particularly, this invention relates to methods and devices for generating images of the cervix, which allow medical specialists to detect and diagnose cancerous and pre-cancerous lesions.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–13269 Filed 6–10–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent to Prepare an Environmental Impact Statement for the Ala Wai Canal Project, Hawaii

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers and the State of Hawaii Department of Land and Natural Resources will prepare an Environmental Impact Statement (EIS) for the alternatives and potential impacts associated with the Ala Wai Canal Project Feasibility Study. This effort could result in a multi-purpose project being proposed under Section 209 of the Flood Control Act of 1962 (Pub. L. 87–874) and will incorporate both flood hazard reduction and ecosystem restoration components into a single, comprehensive strategy.

DATES: In order to be considered in the draft EIS (DEIS), comments and suggestions should be received no later than July 14, 2004.

ADDRESSES: Send written comments to U.S. Army Corps of Engineers, Honolulu District, ATTN: Mr. Derek Chow, Senior Project Manager, Civil and Public Works Branch (CEPOH–PP–C), Rm 312, Bldg 230, Fort Shafter, HI 96858–5440.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the proposed action should be addressed to Mr. Derek Chow, Project Manager, U.S. Army Corps of Engineers, Honolulu District, Civil Works Branch, Building 230, Fort Shafter, HI 96858–5440, telephone 808–438–7019, E-mail: *Derek.J.Chow@poh01.usace.army.mil* or Mr. Andrew Monden, Planning Branch Head, State of Hawaii Department of Land and Natural Resources, Engineering Division, P.O. Box 373, Honolulu, HI 96809, telephone 808–587–0227, E-mail: *Andrew.M.Monden@hawaii.gov.*

SUPPLEMENTARY INFORMATION: The 11,069-acre Ala Wai watershed is located in the southern portion of the island of Oahu and includes the sub-watersheds of Makiki, Manoa, Palolo, and Waikiki. Approximately 1,746 structures exist within the designated 100-year flood plain. The proposals being investigated incorporate both flood hazard reduction and ecosystem restoration into a single, comprehensive strategy. The Ala Wai Canal watershed is highly urbanized and characterized by significant environmental degradation, including heavy sedimentation, poor water quality, lack of habitat for native species, and a prevalence of alien species. Additionally, there exists a high potential for massive flood damage to the densely populated and economically critical area of Waikiki and the adjacent neighborhoods of McCully and Moilili. The EIS and the Feasibility Study for the Ala Wai Canal Project will be conducted concurrently. The EIS will evaluate potential impacts to the natural, physical, and human environment as a result of implementing any of the proposed flood hazard reduction and ecosystem restoration alternatives arising during the study.

Goals of the Ala Wai Canal Feasibility Study are to identify alternatives that will (1) Protect Waikiki and the surrounding areas from the 100-year flood event, (2) improve the migratory pathway for native amphidromous species, (3) reduce sediment buildup in the streams and Ala Wai Canal, and (4) enhance the physical quality of existing aquatic habitat for native species. Anticipated significant issues identified to date and to be addressed in the EIS include: (1) Impacts on flood control, (2) impacts on stream hydraulics, (3) impacts on fish and wildlife resources and habitats, (4) impacts on recreation and recreation facilities, and (5) other impacts identified by the Public, agencies, or USACE studies. Evaluation of the flood hazard reduction alternatives will take into account a cost-benefit analysis and minimization of impacts to social resources, aesthetics, recreation, historic and cultural resources, and native species habitat. Evaluation of the ecosystem

restoration alternatives will be based on the area of habitat they create, improve, or provide access to, as well as their ability to complement flood hazard reduction measures and minimize adverse impacts to social, economic, cultural, historic, and recreational resources.

A public scoping meeting will be held in the summer of 2004. The date and time of this meeting will be announced in general media and will be at a time and location convenient to the public. Interested parties are encouraged to express their views during the scoping process and throughout the development of the alternatives and the EIS. To be most helpful, comments should clearly describe specific environmental topics or issues which the commenter believes the document should address.

The DEIS is anticipated to be available for public review in early 2005, subject to the receipt of federal funding.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–13271 Filed 6–10–04; 8:45 am]

BILLING CODE 3710–NN–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—IDEA General Supervision Enhancement Grant; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326X.

Dates:

Applications Available: June 14, 2004.

Deadline for Transmittal of Applications: July 23, 2004.

Deadline for Intergovernmental Review: September 21, 2004.

Eligible Applicants: State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

Additional information concerning eligibility requirements is provided elsewhere in this notice under Section III., 1.

Eligible Applicants.

Estimated Available Funds: $6,700,000. Additional information concerning funding amounts is provided elsewhere in this notice under Section II. Award Information.

Estimated Average Size of Awards: See Section II. Award Information.

Estimated Number of Awards: 13. Additional information concerning the number of awards is provided elsewhere in this notice under Section II. Award Information.

Note: The Department is not bound by any estimates in this notice.

Project Period: October 1, 2004–September 30, 2005.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides technical assistance and information that (1) support States and local entities in building capacity to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address goals and priorities for improving State systems that provide early intervention, educational, and transitional services for children with disabilities and their families.

This competition contains one funding priority with four focus areas addressing services provided under Parts B and C of the Individuals with Disabilities Education Act, as amended (IDEA).

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (see sections 661(e)(2) and 685 of the IDEA).

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—IDEA General Supervision Enhancement Grant

Background of Priority: Consistent with the No Child Left Behind Act of 2001 (NCLB) and its focus on children with disabilities meeting State educational achievement standards, many States have begun the challenging but important process of—

(1) Developing outcome indicators for children with disabilities;

(2) Developing outcome indicators for infants and toddlers with disabilities;

(3) Developing or redesigning State academic standards and assessment systems using universal design principles; and

(4) Developing or enhancing State systems to disseminate research-based promising practices in education and early intervention.

States may obtain technical assistance on these processes from a variety of sources, including the Office of Special Education Programs (OSEP) funded Technical Assistance and Dissemination Centers such as the National Center on Special Education and Accountability Monitoring, the National Center on Educational Outcomes, the Early Childhood Outcomes Center, the National Dissemination Center for Children with Disabilities, the Regional Resource Centers, and other sources of technical assistance. States may find the technical assistance provided by the Early Childhood Outcomes Center particularly useful with regard to early intervention and preschool outcomes.

Statement of Priority: This priority is to support projects that address the technical assistance and dissemination needs of States to improve services and results for children with disabilities in one or more of the following four focus areas.

Focus 1: Developing or Enhancing Part B State Outcome Indicators and Methods To Collect and analyze Part B outcome indicator data

Background of Focus: The development of outcome indicators, against which progress can be measured, is the cornerstone of any accountability system. State performance reports, self-assessments, and other extant data show that most States, as well as their LEAs, have not developed outcome indicators for children with disabilities served under Part B of IDEA or methods to collect and analyze Part B outcome indicator data, especially for preschool children. Therefore, the States lack the capacity to collect sufficient data to determine the impact of special education services.

Statement of Focus: This focus supports development or enhancement of Part B State outcome indicators and methods to collect and analyze Part B State outcome indicator data. These indicators must provide information about one or more of the following:

(a) The impact of Part B preschool services (age 3–5) on children with disabilities at the State and LEA level.

(b) The impact of Part B services on school-aged children with disabilities at the State and LEA level.

(c) Post-secondary education and employment outcomes (including the impact of Part B services on these outcomes) at the State and LEA level using indicators that have been shown to lead to positive post-secondary school outcomes.

(d) Whether children served under Part B of the IDEA are meeting State educational achievement standards, including, as appropriate, whether preschool-aged children with disabilities are meeting appropriate academic achievement and developmental standards at the State and LEA level.

(e) Trend data on the extent to which children who have received services under Part B of the IDEA are meeting State educational achievement standards at the State and LEA level.

Focus 2: Developing or Enhancing Part C State Outcome Indicators and Methods To Collect and Analyze Part C Outcome Indicator Data.

Background of Focus: The development of outcome indicators, against which progress can be measured, is the cornerstone of any accountability system. State performance reports, self-assessments, and other extant data show that most State Lead Agencies (as defined under Part C of the IDEA) and LEAs have not developed outcome indicators for infants and toddlers with disabilities and their families served under Part C or methods to collect and analyze Part C outcome indicator data. Therefore, the States lack the capacity to collect sufficient data to determine the impact of early intervention services.

Statement of Focus: This focus supports development or enhancement of Part C State outcome indicators and methods to collect and analyze Part C State outcome indicator data. These indicators must provide information about one or more of the following:

(a) The impact of Part C services on infants and toddlers with disabilities and their families at the State and local level.

(b) If the State has standards for early intervention outcomes, whether infants and toddlers with disabilities are meeting those standards.

(c) Trend data on the extent to which infants and toddlers with disabilities are meeting State standards.

Focus 3: Developing, Enhancing, or Redesigning State Assessment Systems, Including alternate Assessments and alternate Achievement Standards, Using Universal Design Principles.

Background of Focus: The NCLB requires accountability for the academic achievement of all students. Under the law, every student and every group of students is expected to be able to meet State standards. For that very limited group of students with the most significant cognitive disabilities, whose intellectual functioning is well below that of their peers, the Department's regulations allow States to develop alternate achievement standards that are aligned with the State's academic content standards and reflect professional judgment of the highest learning standards possible for those students. The regulation permits the proficient and advanced scores of students assessed based on alternate achievement standards to be included in AYP calculations in the same manner as scores based on grade level achievement, subject to a one percent cap. See *http://www.ed.gov/legislation/FedRegister/finrule/2003–4/120903a.pdf* for more information.

Assessments used for system accountability purposes should be designed to include the widest possible range of students. Universal design can be applied to all phases of test development, including creation of test designs and formats, development of tasks and items, standardization, and development of scoring and reporting procedures. Universally designed assessments can reduce confusion concerning the appropriate uses of accommodations with tests, and can also improve the consistency with which tests are administered and scored.

Statement of Focus: This focus supports development, enhancement, or redesign of State systems, including alternate assessments and alternate achievement standards, using universal design principles.

Focus 4: Developing or Enhancing State Systems to Disseminate and Implement Research-Based Promising Educational or Early Intervention Practices

Background of Focus: OSEP has found that many States either do not have a State technical assistance and dissemination structure to identify, disseminate, and implement research-based promising educational or early intervention practices, or the existing structure lacks sufficient resources to be effective. OSEP believes that a State technical assistance and dissemination structure is a critical component to every State's effort to support better outcomes for infants, toddlers, and children with disabilities.

Statement of Focus: This focus supports the development or enhancement of Statewide technical assistance systems that are aligned with the State's process for planning improved outcomes for infants, toddlers, and children with disabilities and that address such areas as—

(a) Developing models to be used in Statewide technical assistance efforts.

(b) Providing information about research-based intervention and instructional practices.

(c) Supporting the use of research-based approaches in instruction and the delivery of service in local schools and agencies.

(d) Serving as a conduit for the dissemination of research-based information among SEAs, State Lead Agencies, and LEAs, and national technical assistance centers.

(e) Improving the efficiency of disseminating information by existing State technical assistance centers.

In addition, the projects funded under this priority must—

(a) Budget for a two-day Project Directors' meeting in Washington, DC.

(b) If a project maintains a Web site, include relevant information and documents in an accessible form.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1485.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,700,000. The Secretary intends to award at least $2,000,000 for joint applications from SEAs and Part C Lead Agencies (LA) that address that portion of Focus 1 related to children with disabilities served under section 619 of the IDEA and Focus 2.

Estimated Average Size of Awards: $412,000 for awards addressing either Part B activities or Part C activities; $825,000 for awards addressing both Part B activities and Part C activities.

Estimated Number of Awards: 13. The Secretary will award a maximum of (a) one award in a State to address Part B activities and (b) one award in a State to address Part C activities, or (c) one award in a State to address Parts B and C activities together.

Note: The Department is not bound by any estimates in this notice.

Project Period: October 1, 2004–September 30, 2005.

III. Eligibility Information

1. *Eligible Applicants:* SEAs, LEAs, IHEs, other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

Eligibility information for specific types of applicants is as follows: (a) If an applicant is not an SEA and applying under Focus 1, 3, or 4 (with regard to Part B services only), the applicant must include in its application a signed letter of endorsement from the SEA. (b) If an applicant is not a Part C LA and is applying under Focus 2 or 4 (with regard to Part C services only), then the applicant must include in its application a signed letter of endorsement from the director of the Part C LA. (c) If an application is not being jointly submitted by an SEA and Part C LA, and the application proposes to address both Part B and Part C activities, the applicant must include in its application signed letters of endorsement from the directors of the SEA and Part C LA, as applicable.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.326X.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contract Services Team listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice.

2. *Content and Form of Application Submission:* (a) If the SEA endorses the State LA or the State LA endorses the SEA as the applicant, the proposed project must describe: (1) How the State LA and SEA collaborated to develop the application; and (2) how the award will address the needs of children served under Parts B and C as appropriate (*e.g.*, developing language development outcome measures for children participating in Part C early intervention and Part B early childhood programs).

(b) Additional requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application.

If your proposed project addresses only Part B activities or only Part C activities, you must limit Part III to the equivalent of no more than 20 pages. If your proposed project addresses both Part B and Part C activities, you must limit Part III to the equivalent of no more than 40 pages. To determine the number of pages or the equivalent, you must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: June 14, 2004.

Deadline for Transmittal of Applications: July 23, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: September 21, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Special Education—Technical Assistance and Dissemination of Services and Results for Children with Disabilities—General Supervision Enhancement Grant competition—CFDA number 84.326X is one of the competitions included in the pilot project. If you are an applicant under the Special Education—Technical Assistance and Dissemination of Services and Results for Children with Disabilities—General Supervision

Enhancement Grant competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Special Education—Technical Assistance and Dissemination of Services and Results for Children with Disabilities—General Supervision Enhancement Grant competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail or hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—Technical Assistance and Dissemination of Services and Results for Children with Disabilities—General Supervision Enhancement Grant competition at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this program are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Technical Assistance to Improve Services and Results for Children with Disabilities program (*e.g.*, the extent to which projects use high quality methods and materials, provide useful products and services, and contribute to improving results for children with disabilities). Data on these measures will be collected from the projects funded under this notice.

Grantees will also be required to report information on their project's performance in annual reports to the Department (EDGAR CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Larry Wexler, U.S. Department of Education, 400 Maryland Avenue, SW., room 4019, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 205–5390.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) 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 by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 205–8207.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document

Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: June 8, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–13330 Filed 6–10–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–563–030 and EL04–102–000]

Devon Power LLC, et al.; Order on Compliance Filing and Establishing Hearing Procedures

Issued June 2, 2004.

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, and Joseph T. Kelliher

I. Introduction

1. On March 1, 2004, ISO New England Inc. (ISO–NE) submitted a filing in compliance with the Commission's directive in *Devon Power LLC, et al.* that a locational installed capacity (LICAP) market or deliverability requirements be implemented in New England by June 1, 2004.[1] Installed Capacity (ICAP) obligations are intended to ensure that there is sufficient capacity to supply system peak load under all contingencies taking into account events such as generator outages. In this order, the Commission establishes hearing procedures regarding ISO–NE's filing, and delays the implementation of a LICAP market until the conclusion of those proceedings. The Commission will direct the presiding judge to issue an initial decision by June 1, 2005. The Commission will defer implementation of the LICAP proposal, as modified in this order, until January 1, 2006. The Commission believes that deferring implementation until then will not only allow for a comprehensive examination of the issues at hearing but will also allow for completion of needed infrastructure upgrades in New England's constrained areas. Consistent with the recent policy on Reliability Compensation Issues, the Commission's goal in establishing these hearing procedures is to arrive at a final LICAP market design that will appropriately compensate generators needed for reliability and attract and retain necessary infrastructure to assure long-term reliability. Along with deferring the implementation date, the Commission directs ISO–NE to file reports updating progress made in the siting, permitting and construction of transmission and generation upgrades within the New England control area, with particular emphasis on progress within Designated Congested Areas (DCAs). ISO–NE is directed to file these reports every 90 days, beginning 90 days after the date of this order.

2. In this order, the Commission agrees with two broad concepts in ISO–NE's proposal. First, the Commission finds it appropriate to establish ICAP regions, but is concerned that the specific regions proposed by ISO–NE do not adequately reflect where infrastructure investment is needed, especially with regard to the constrained area of Southwest Connecticut (SWCT). Based on the analytical approach to Reliability Compensation Issues established in the May 6, 2004 PJM Order[2], the Commission believes that a separate ICAP region for SWCT may be appropriate, and is considering revising ISO–NE's proposal to incorporate a separate SWCT region. Accordingly, this order directs ISO–NE to submit a further filing addressing whether the Commission should revise ISO–NE's proposal to create a separate import-constrained ICAP region for SWCT. Additionally, ISO–NE has indicated that an ICAP region cannot be a subset of an energy load zone. The Commission acknowledges this potential problem, and finds that the institution of a separate energy load zone for SWCT in advance of the implementation of LICAP may be appropriate, as it would send more appropriate price signals and more appropriately distribute reliability costs to those who benefit from them. Thus, the Commission also institutes an investigation and paper hearing in Docket No. EL04–102–000 regarding whether a separate energy load zone should be created for SWCT, and whether it should be implemented in advance of the implementation of LICAP.

3. Second, the Commission agrees with the overarching concept of a demand curve, but finds that more information is necessary to appropriately set the parameters of the demand curve for each ICAP region and is establishing a hearing for that purpose. For example, ISO–NE has proposed a methodology that may understate the level of capacity that may be transferred between ICAP regions. The Commission finds that, as a result, ISO–NE has not justified its proposed method for calculating the Capacity Transfer Limits (CTLs). The hearing established by the Commission, in addition to determining the demand curve parameters, shall also determine the proper method for calculating CTLs, the appropriate method for determining the amount of Capacity Transfer Rights (CTRs) to be allocated, and the proper allocation of CTRs.

4. Until LICAP is implemented, the Commission will extend the Peaking Unit Safe Harbor (PUSH) mechanism, and will consider reliability-must-run (RMR) contracts to ensure that market participants are appropriately compensated for reliability services in the short-term. This order benefits customers by ensuring that there is sufficient generation available in New England to meet current and long-term needs.

II. Background and Procedural History

A. Procedural History

5. This proceeding began on February 26, 2003, when Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC and NRG Power Marketing Inc. (collectively NRG) filed, pursuant to section 205 of the Federal Power Act (FPA),[3] four cost-of-service RMR agreements covering 1,728 MW of generating capacity located within Connecticut and the SWCT DCAs. These agreements were negotiated between NRG and ISO–NE in accordance with New England Power Pool (NEPOOL) Market Rule 17.3 to provide compensation for generating units (and associated reliability projects) necessary for reliability in SWCT and Connecticut. NRG contended in its filing that the recently-approved New England Standard Market Design (NE–SMD) market would not provide

[1] Devon Power LLC, *et al.*, 103 FERC ¶ 61,082 (2003) (April 25 Order).

[2] PJM Interconnection, L.L.C., 107 FERC ¶ 61,112 (2004).

[3] 16 U.S.C. 824d (2000).

adequate compensation to the units covered by the contracts.

6. On March 12, 2003, NRG filed an emergency motion seeking expedited issuance of an order accepting the RMR agreements for filing. In that motion, it contended that without assurance of cost-recovery, needed maintenance projects on the generating units could not be completed before the summer peak season. On March 25, 2003, the Commission issued an order accepting only a portion of the RMR agreements, which allowed NRG to collect funds for needed summer maintenance through a tracking mechanism administered by ISO–NE.[4]

7. The April 25 Order addressed the entirety of the RMR agreements. In that order, the Commission rejected the RMR agreements, and allowed collection of only going-forward maintenance costs through the tracking mechanism approved in the March 25 Order. In so doing, the Commission expressed concerns about the effect RMR contracts have on the competitive market, and stated that ISO–NE, ''rather than focusing on and using stand-alone RMR agreements, should incorporate the effect of those agreements into a market-type mechanism.'' [5] Pursuant to section 206 of the FPA,[6] the Commission directed revisions to NEPOOL Market Rule 1 to lessen the need for RMR agreements. These revisions allowed low-capacity factor generating units operating in DCAs to increase their bids to recover their fixed and variable costs, and allowed the energy bids of peaking units to determine the locational marginal price (LMP) by creating the PUSH bidding mechanism. The Commission also eliminated the CT Proxy mechanism for mitigation. Additionally, the Commission directed ISO–NE ''to file no later than March 1, 2004 for implementation no later than June 1, 2004, a mechanism that implements location or deliverability requirements in the ICAP or resource adequacy market * * * so that DCAs may be appropriately compensated for reliability.'' [7] In its order on rehearing, the Commission affirmed PUSH bidding, and clarified its section 206 finding.[8] During the time-period in which these orders were issued, the Commission also rejected similar RMR contracts filed by PPL Wallingford Energy LLC, reiterating the concerns expressed in the April 25 Order and the revisions directed by that order.[9]

8. In early 2004, NRG returned to the Commission to again seek RMR agreements for the Devon, Montville and Middletown generating units. NRG also asked the Commission to extend the tracking mechanism for collecting going forward maintenance costs for an additional year. In an order issued March 22, 2004, the Commission accepted the RMR agreements, set the costs included in the agreements for hearing, and conditioned them to terminate on the day a LICAP market or deliverability requirement is implemented in accordance with the April 25 Order.[10] The Commission reasoned that accepting the agreements for a limited term was appropriate given the poor performance under PUSH of uniquely situated and aging Devon, Montville and Middletown generating units.[11] In an order issued on April 1, 2004, the Commission also accepted an extension of the tracking mechanism for maintenance costs, and conditioned the mechanism to terminate the day a LICAP market or deliverability requirement is implemented.[12] Again, the Commission reasoned that continuing the tracker is a reasonable interim measure until market changes could be put into place.[13] In both orders, the Commission expressed confidence that once the market changes directed in the April 25 Order were implemented, out-of-market arrangements like RMR agreements and cost trackers would no longer be necessary.[14]

B. ISO–NE's Compliance Filing

9. In compliance with the April 25 Order, ISO–NE filed a LICAP proposal on March 1, 2004. New England currently has a non-locational ICAP mechanism in place. In meeting its ICAP requirement currently, a load-serving entity (LSE) may procure resources located anywhere within the NEPOOL control area.[15] However, because of transmission constraints, not all energy produced from qualified ICAP resources can be physically deliverable to all loads in New England.[16] ISO–NE's LICAP proposal would take account of transmission constraints by imposing separate ICAP requirements for each of four regions: Maine (classified as an export-constrained region), Connecticut and Northeastern Massachusetts/Boston (NEMA/Boston) (classified as import-constrained regions), and the remainder of New England (Rest of Pool). The amount of capacity that LSEs in one region could procure from another region would be limited by the CTLs established by the ISO between the two regions. ISO–NE states that the CTLs would be set at levels based on planning criteria that may be below the actual amount of real-time electric flow that the transmission interface is capable of accommodating.

10. Currently, an LSE is required to procure a specified amount of ICAP each month based on its projected peak demand. All LSEs within New England can procure the resources from any units that are eligible to sell ICAP. ISO–NE proposes through the use of a demand curve to move from this set amount of monthly ICAP to an amount that can vary monthly within certain parameters. Additionally, ISO–NE proposes to impose certain limitations, based on the location of the resources, that can be used to satisfy an LSEs obligation to procure ICAP. To implement these restrictions, ISO–NE proposes to use four zones for ICAP. The price of ICAP for each of the four regions would be determined monthly through the interplay of ICAP supply bids and an administratively-determined demand curve in a monthly ISO-administered capacity auction. In essence, the ICAP requirement in a region and the regional ICAP price would be established at the point where supply (as reflected in suppliers' bids) and demand (as reflected in the administratively-determined demand curve) clear. The demand curve is designed to allow for more predictable ICAP revenues and more gradual price movements. It also ensures that the region will compensate ICAP resources above and beyond 100 percent of the current capacity requirement (referred to as the Objective Capability) in New

[4] Devon Power LLC, *et.al.,* 102 FERC ¶ 61,314 (2003) (March 25 Order).

[5] *Id.* at P 29.

[6] 16 U.S.C. 824e (2000).

[7] April 25 Order at P 37.

[8] Devon Power Company *et al.*, 104 FERC ¶ 61,123 (2003) (July 24 Order).

[9] *See* PPL Wallingford Energy LLC, 103 FERC ¶ 61,185 (2003); PPL Wallingford Energy LLC *et al.*, 105 FERC ¶ 61,324 (2003).

[10] Devon Power LLC *et al.*, 106 FERC ¶ 61,264 (2004) (March 22 Order).

[11] *Id.* at P 18.

[12] Devon Power LLC *et al.*, 107 FERC ¶ 61,002 (2004) (April 1 Order).

[13] *Id.* at P 10.

[14] *See* March 22 Order at P 28; April 1 Order at P 10.

[15] Under certain circumstances that are not relevant to this discussion, an LSE may also procure ICAP from resources that are not located within New England.

[16] In particular, there are more generation resources within Maine than are necessary to meet local requirements within Maine or that can be exported from Maine. Additionally, ISO–NE has identified two areas Southwest Connecticut and Northeastern Massachusetts as being load pockets. Because of transmission constraints, there are limitations on the amount of power that can be imported into these regions. As a result, at times resources located within the load pockets must be used to meet demand in the load pockets.

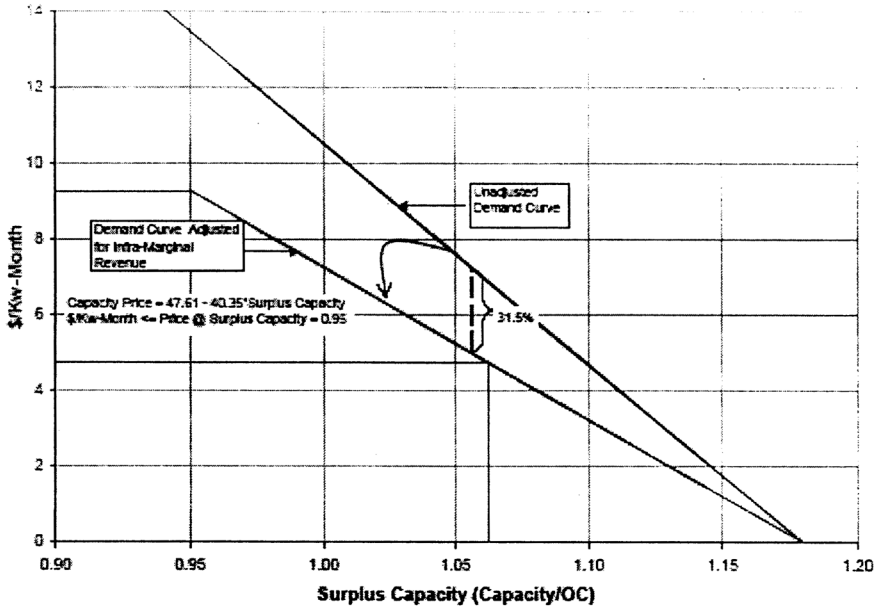
England, which is 112 percent of peak load.

11. When a demand curve is used to determine LSEs' ICAP obligations, the amount and price of that ICAP will be determined based on the height and slope that is used for the particular demand curve. The design of the demand curve—its height and slope—requires selection of two points. The selection of these points will affect the price and quantity of ICAP that LSEs must procure. The first point sets the ICAP price at the point where average surplus capacity is equal to the cost of new entry. ISO–NE calculated the average surplus as 106.7 percent of the capacity requirement. ISO–NE states that this figure is intended to reflect the average surplus since 1989, when New England became a summer peaking system. ISO–NE believes it is reasonable to assume that, on average, there will be surplus capacity in the electricity market over time. ISO–NE uses $6.66 per kilowatt month, the current ICAP deficiency charge in the current capacity market, as the cost of new entry. The ISO proposes to adjust the demand curve downward to account for infra-marginal revenue from the energy market and ancillary service market. This moves (lowers) the first point lower, from $6.66 per kilowatt month to $4.56 per kilowatt month. ISO–NE derived this amount based on the annual average infra-marginal revenue for a gas turbine over the period of May 1999 through December 2003 which is estimated as $2.10 per kilowatt month.

12. The second point is the point where the price of capacity is equal to zero, which is where the demand curve itself crosses the x axis. ISO–NE set this point at 118 percent of the capacity requirement. ISO–NE selected this value for several reasons. First, it contends that planning studies showed that additional capacity has little impact on system reliability after achieving 18 percent surplus. Second, ISO–NE believes that the demand curve should include all surplus capacity conditions that are likely to occur and that there is little likelihood that the surplus capacity will exceed that level. Finally, ISO–NE asserts that the 118 percent value also makes New England's demand curve consistent with the NYISO's statewide ICAP demand curve.[17] The demand curve is thus constructed by drawing the linear function that intersects the two points. ISO–NE states that the linear demand curve provides a good first approximation of several different functional forms and has as well a moderate slope that may deter the exercise of market power by making it more difficult to withhold output in order to increase price.

13. Finally, the proposed curve becomes horizontal to the left of 95 percent of the capacity requirement. Thus, the ICAP price would be the same for all capacity levels between 0 percent and 95 percent of the capacity requirement. ISO–NE believes that this last feature is unlikely to affect prices.

Figure 1
Proposed NEPOOL LICAP Demand Curve



*Source: ISO-NE, Development of the Demand Curve Component of the Locational ICAP Market Design

14. ISO–NE proposes to phase-in the demand curve over five years for import-constrained regions, in part to avoid significant price shocks there.[18] During the phase-in period, prices derived by application of the demand

[17] New England's capacity requirement is set at 12 percent above peak, while New York's is 18 percent above peak. New York's demand curve sets the price of capacity to zero at a surplus capacity value of 12 percent above Objective Capability, while New England's sets the value at 18 percent above. In each case the requirement is approximately 1.12 multiplied by 1.18, or about 1.32.

[18] ISO–NE states that, over the first two years, the phase-in reduces the impact on Connecticut and NEMA/Boston by approximately $250 million and $215 million, respectively.

curve in these constrained sub-regions would be capped at $1.00 per kilowatt month in the first year, and would increase by $1.00 per year to $5.00 in the fifth year. After the fifth year, prices in the four regions would be determined without the use of price caps. The five-year period coincides with the projected completion of key transmission projects in Connecticut and NEMA/Boston which, the ISO believes, provides sufficient time for the development of additional capacity.

15. During the five year transition period, generating units in NEMA/Boston and Connecticut that had capacity factors of 15 percent or less in 2003 and that are needed for reliability would be paid ''transition payments'' of $5.34 per kilowatt month.[19] A resource would actually receive the transition payment minus the spot auction clearing price for the constrained region. Thus, the transition payment would function as a cap on the revenues above variable costs that a unit would be able to earn. ISO–NE argues that the use of transition payments would allow for the elimination of the PUSH mechanism entirely, and would allow for the phase-out of RMR contracts. A unit that qualifies for the transition payment that is not operating under an RMR contract would receive the transition payment until the end of the phase-in period or until ISO–NE determines the unit is no longer needed for reliability. The costs of the transition payments would be allocated to network load within each ICAP region, the same manner in which the costs of RMR contracts are allocated currently. As a result, ISO–NE states that ''one of the unfortunate features of the transition payments is that they cannot be hedged because they are an additional above-market payment needed to maintain reliability.'' [20] Thus, a customer in an import-constrained region (NEMA/Boston and Connecticut) would still incur the costs of transition payments even if that customer has contracted bilaterally for ICAP.

16. Under ISO–NE's proposal, a generator selling ICAP would be paid the market clearing price in the region in which the resource is located; a participant serving load would buy ICAP at the market clearing price in the region where the load is located. When the transfer capability between regions limits the ability to import capacity into one region in the ICAP market, the ICAP prices in the two regions would differ. The difference in regional prices represents a type of ICAP congestion charge, similar to the congestion charge that arises when transmission capacity is congested in the spot energy market. ISO–NE proposes to create Capacity Transfer Rights to allow market participants to hedge these ICAP congestion costs. Capacity Transfer Rights in the ICAP market are similar to financial transmission rights (FTRs) in the spot energy market. The holder of a Capacity Transfer Right between two regions would receive congestion revenue—*i.e.,* the difference in ICAP prices—between the two regions, just as the holder of an FTR receives congestion revenue from the spot energy market. ISO–NE proposes to allocate these ICAP congestion revenues to entities holding Capacity Transfer Rights in the export and import constrained regions. Capacity Transfer Rights would be allocated to loads in import-constrained regions (*i.e.,* NEMA/Boston and Connecticut) and to generators in export-constrained regions (*i.e.,* Maine). In addition, Capacity Transfer Rights allocations would be made to original holders of entitlements to municipal utility resources constructed as pool planned units with life-of-the-unit contracts. Pursuant to section 8.9.6 of Market Rule 1, this ''special allocation'' of Capacity Transfer Rights would be made to certain municipal utility resources constructed as pool planned units in import-constrained regions. Finally, any transmission upgrades not funded through pool transmission rates that result in additional transfer capability that is associated with additional Capacity Transfer Rights would be allocated to the entities that pay for the upgrades.

17. As part of the LICAP proposal, ISO–NE revised Market Rule 1 to include corresponding mitigation provisions. Based on the limited competition situation in the import-constrained ICAP regions, the mitigation measures would apply to all resources in such regions that are authorized to sell capacity. ISO–NE proposes to evaluate and deny requests by participants in import-constrained ICAP regions to cease selling ICAP within New England (delisting).

Chiefly, the resource requesting to cease or reduce its ICAP sales would need to demonstrate that this was an economic decision for that unit. To do so the resource must demonstrate that the expected revenue or the expected cost savings associated with the external sale or lack of a sale will exceed the expected ICAP revenues, applicable transition payments, and other market revenues that the resource would otherwise receive.

18. ISO–NE also proposes conduct and market impact thresholds for the LICAP market in import-constrained ICAP regions.[21] ISO–NE's proposal would employ a conduct and impact test and a reference level-based mitigation scheme. The ICAP reference level could be established in one of three ways: (1) The ISO would be authorized to determine the reference level based on a resource's estimated going-forward costs net of expected market revenues; (2) a resource may submit a proposed reference level with supporting documentation for review by the ISO; or (3) where no reference level is submitted or there is inadequate information to set a level, a default ICAP reference level of $1.00 per kilowatt month, which is intended to roughly account for a resource's costs of providing ICAP rather than being delisted. ISO–NE would utilize a conduct threshold of $1.00 per kilowatt month in import-constrained regions to identify economic withholding and a market impact threshold of $1.00 per kilowatt month.[22] Prior to mitigating a resource's offer, the ISO would attempt to contact the resource owner to provide an opportunity to explain the observed behavior. In the event mitigation is necessary, a default offer is established as the greater of $1.00 per kilowatt month, the ICAP reference level, or the estimated ICAP clearing price in the Rest of Pool region. Modifications have also been made to the energy market mitigation thresholds applicable to units receiving transition payments. In import-constrained regions, such units would be subject to a reduced energy offer price threshold of $12.50/MWh, and tighter start-up and no-load thresholds of 25 percent. These units will also face a tighter operating reserve credit threshold of 50 percent.

19. Finally, ISO–NE states that the submitted proposal is ''not intended to be the final word on resource adequacy in New England.'' In conjunction with the LICAP process, the ISO initiated a Regional Dialogue, which includes a more general initiative to address

[19] The $5.34 figure is based on the average cost of service approved by the Commission for PUSH units located in Connecticut and NEMA/Boston.

[20] Transmittal Letter of ISO–NE at 31.

[21] Under these measures, mitigation could occur if a unit bid a predetermined amount above a reference price based on historical bids by the unit (conduct test) and if these bids were accepted it would result in a predetermined increase in the market price (impact test). To be mitigated, a unit's bids would have to be sufficiently high and have a sufficient impact on the market price to fail to satisfy both the conduct and impact test.

[22] The ISO may impose the ICAP Default Offer in an import-constrained region if the offer exceeds the reference level by the applicable threshold and the conduct would affect the market-clearing price by the applicable threshold.

regional resource adequacy and to work toward a long-term solution. This forum includes market participants and state regulators. The ISO recognizes that the current LICAP Proposal may be modified or replaced by a different long-term regional resource adequacy mechanism. Thus, ISO–NE commits to continuing the Regional Dialogue for at least 18 months from the date of implementation to continue to work toward a long-term regional resource adequacy mechanism. ISO–NE will evaluate the performance of LICAP after one year of operation, and eighteen months after implementation will be prepared to file a plan regarding long-term regional resource adequacy in New England that could affirm, modify, augment, or replace the instant proposal.

20. ISO–NE requests that the Commission provide guidance on the issue of what entity should bear the responsibility for longer-term capacity procurement and long-term reliability. ISO–NE states that the Regional Dialogue has not yet produced a consensus as to which entity should be responsible for ensuring long-term resource adequacy. ISO–NE's view is that the state regulatory officials, and the distribution companies within each state regulated by those officials, are best positioned to fulfill this role. ISO–NE believes that Commission guidance on this issue would significantly narrow the issues that must be addressed by New England's stakeholders in the Regional Dialogue.

III. Notice of Filing, Protests, Comments and Interventions

21. Notice of Applicants' filing was published in the **Federal Register**,[23] with comments, protests or interventions due on or before March 22, 2004. The entities filing timely motions to intervene, or who are parties to this proceeding by virtue of their earlier intervention in this docket and submission of a protest or comments regarding the instant filing, are listed in Appendix A to this order. Several parties filed protests, comments, or motions to reject the filing. These parties are listed in Appendix B to this order.

22. On April 2, 2004, ISO–NE filed a motion for leave to answer. On April 6, 2004, National Grid USA (National Grid) filed a response to certain comments and protests made by other parties, and The Indicated Suppliers (Indicated Suppliers)[24] filed a motion for leave to answer and answer to certain of the comments and protests previously submitted. On April 12, 2004, Consolidated Edison Energy, Inc. (ConEd) filed an answer to ISO–NE's answer. On April 16, 2004, FPL Energy, LLC (FPL) filed a motion for leave to answer and answer to ISO–NE's answer. On April 19, 2004, Calpine Eastern filed an answer to National Grid's response, and PSEG Energy Resources & Trade LLC filed a motion for leave to answer and answer to Indicated Suppliers answer. On April 26, 2004, the Long Island Power Authority (LIPA) filed a motion for leave to respond and response to ISO–NE's answer.

23. Additionally, on April 26, 2004, the New England Suppliers Coalition (Suppliers Coalition)[25] filed a motion to lodge in the record a press release issued by ISO–NE on April 16, 2004 regarding the results of its Gap Request for Proposals (Gap RFP) to procure reliability products and services in SWCT for a four-year period beginning in June 2004. On April 29, 2004, the Connecticut Department of Public Utility Control (CT DPUC) and the Connecticut Office of Consumer Counsel (CT OCC) filed a joint answer in opposition to the motion to lodge. On May 11, 2004, Fitchburg Gas and Electric Light Company and Unitil Energy Systems, Inc. filed a response to the motion to lodge.

24. On May 20, 2004, several entities, including National Grid, NSTAR Electric and Gas Corporation, and various state governmental entities, jointly filed supplemental comments and a motion to lodge.[26] The motion seeks to lodge in the record in this proceeding an Ancillary Services Market Enhancements White Paper prepared by ISO–NE.

IV. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[27] 18 CFR 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, several of the entities listed as parties in Appendix A are proper parties to this proceeding by virtue of their previous interventions in the instant docket.[28] Motions to intervene out-of-time were filed by several entities.[29] Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,[30] given the interest of these entities in this proceeding and the absence of any undue prejudice or delay, the Commission finds good cause to grant their untimely, unopposed motions to intervene out-of-time. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[31] prohibits an answer to a protest and answer unless otherwise ordered by the decisional authority. We will accept the answers filed in the instant proceeding because they provided information that helped us in our decision-making process. Additionally, in the interest of developing a full record for consideration during the subsequent procedures directed in this order, the Commission will grant the motions to lodge filed by the Suppliers Coalition and National Grid, *et al.*

1. Applicable Statutory Standard of Review

26. As noted above, ISO–NE submitted the instant filing as a compliance filing pursuant to Rule 1907 of the Commission's Rules of Practice and Procedure,[32] in response to the Commission's directive in the April 25 Order to ''establish a mechanism implementing location or deliverability requirements in the Installed Capacity * * * or resource adequacy market, in a manner that reduces reliance on Reliability Must Run * * * agreements.'' [33] Several entities have raised issues in their comments and protests regarding the propriety of submitting the instant filing as a compliance filing, and whether section

[23] 69 FR 11,611 (2004).

[24] The Indicated Suppliers include: American National Power, various Entergy parties, Millennium Power Partners, various Mirant parties, and USGen New England.

[25] The New England Suppliers Coalition includes: American National Power, Inc, Consolidated Edison Energy Inc., Duke Energy North America, LLC, Energy Nuclear Generation Company, FPL Energy, LLC, Mirant Americas Energy Marketing, L.P., Mirant New England, Inc, Mirant Kendall, LLC, Mirant Canal, LLC, Milford Power Company, LLC, NRG Energy, Inc., PPL EnergyPlus, LLC, PPL Wallingford, LLC, PSEG Energy Resources & Trade LLC, and USGen New England, Inc.

[26] The entities joining in the supplemental comments and motion to lodge are: National Grid, NSTAR Electric and Gas Corporation, Maine Office of the Public Advocate, New Hampshire Office of Consumer Advocate, Rhode Island Office of the Attorney General, Rhode Island Division of Public Utilities and Carriers, Associated Industries of Massachusetts, Strategic Energy L.L.C., and Vermont Electric Power Company.

[27] 18 CFR 385.214 (2003).

[28] *See* New England Power Pool/ISO New England Inc., *et al.,* 87 FERC ¶ 61,244 (1999).

[29] These entities include Calpine Eastern Corporation and Calpine Energy Services, L.P., the NRG Companies, and the Energy Consortium.

[30] 18 CFR 385.214(d).

[31] 18 CFR 385.213(a)(2) (2003).

[32] 18 CFR 385.1907 (2003).

[33] Transmittal Letter of ISO–NE at 1.

205 [34] or section 206 [35] of the FPA should apply.

27. Several parties question whether ISO–NE properly filed the instant proposal as a ''compliance filing.'' The CT DPUC and CT OCC, for example, moved to reject the instant filing as an improper compliance filing, arguing that the comprehensive nature of the market changes proposed in the filing, and the rate increase ISO–NE acknowledges may result, should not be approved by the Commission through a compliance filing because to do so would ''depriv[e] potential objectors of the protections normally accorded for tariff increases.'' [36] They also contend that ISO–NE's filing is an improper compliance filing under 18 CFR 154.203(b) (2003) [37] because it proposes to increase rates, which they argue the April 25 Order did not authorize. United Illuminating (UI) similarly states that the transitional payments included in the instant proposal amount to a new rate, which it argues cannot be proposed and approved through a compliance filing.

28. Additionally, many of the parties to this proceeding generally raise the issue of whether ISO–NE should have submitted the instant filing under section 205 or section 206 of the FPA. Of the entities raising this issue, most contend that section 206 should apply. CT DPUC and CT OCC, for example, contend that the only possible basis for the instant filing is section 206, noting that ISO–NE does not have exclusive rights to make a section 205 filing and that the Commission's original direction to make a compliance filing was issued pursuant to section 206. Several other parties, including the Attorneys General of Massachusetts and Rhode Island, the Massachusetts Division of Energy Resources and Rhode Island Commission, and the New Hampshire Office of Consumer Advocate similarly contend that the standards of section 206 should apply to the instant proceeding.[38]

29. *Commission Response.* The Commission will apply the standards of section 206 of the FPA to the instant proceeding. In the April 25 Order the Commission directed revisions to NEPOOL Market Rule 1 ''pursuant to section 206 of the Federal Power Act.'' [39] Specifically, the Commission directed ISO–NE to file ''a mechanism that implements location or deliverability requirements in the ICAP or resource adequacy market * * * so that capacity within DCAs may be appropriately compensated for reliability.'' [40] In the July 24 Order on rehearing, the Commission clarified that it was taking action under section 206 of the FPA, formally stating that it ''found that Market Rule 1 * * * created an unjust and unreasonable result, requiring a revision in the rule to solve these problems.'' [41] In light of these findings, the Commission finds it appropriate to continue to apply the standards of section 206 in its consideration of the instant compliance filing.

30. Applying the standard of section 206 of the FPA, the issues here are whether the current market rules for ICAP in New England are ''unjust, unreasonable, unduly discriminatory or preferential,'' and whether new market rules approved or ordered by the Commission are just and reasonable.[42] As noted above, the Commission has already satisfied the first requirement in this proceeding, finding in the April 25 Order and July 24 Order that Market Rule 1 as it then existed ''created an unjust and unreasonable result.'' As discussed in more detail below, ISO–NE's proposal must be modified to achieve a just and reasonable long-term solution. Therefore, in the interim the Commission will retain the PUSH mechanism and allow for the filing of RMR contracts where justified until the LICAP market is implemented. The Commission finds that this provides a just and reasonable method of solving the Reliability Compensation Issues present in New England.

31. Additionally, we are not persuaded by the contention that the instant filing is an improper compliance filing. First, given the use of the section 206 procedures in this case, the Commission has not deprived any party of an opportunity to comment or protest, contrary to the assertions of CT DPUC and CT OCC. Notice of the ISO–NE's filing was published in the **Federal Register**, and a large number of parties submitted written comments or protests at the invitation of that notice. The Commission has carefully considered all of the comments and protests, and as a result has provided substantial due process to all the parties before it, in accordance with section 206 of the FPA. Furthermore, we do not accept the assertions of CT DPUC and CT OCC, among others, that the instant filing is an improper compliance filing because of its comprehensive nature and possibility for increased rates. The Commission rule cited by CT DPUC requiring that compliance filings ''include only those changes required to comply with the order,'' and prohibiting such filings from including ''other rate or tariff change filings,'' is inapplicable to the present proceeding.[43] Additionally, we note that here, ISO–NE was directed to file ''a mechanism that implements location or deliverability requirements in the ICAP or resource adequacy market.'' [44] The tariff and rate changes included in the filing, while extensive, are directly related to the directive, and are not separate rate or tariff changes. Therefore, rejection of the filing is not warranted.

B. Analysis of ISO–NE's Proposal and Commission Response

32. The Commission agrees with two broad concepts: ICAP regions and the use of a demand curve. The Commission rejects the transition mechanism, directs ISO–NE to submit a further filing addressing whether the Commission should revise its proposal to create an additional ICAP region for SWCT, establishes an investigation and paper hearing regarding the establishment of a separate SWCT energy load zone in advance of LICAP, and establishes a hearing before an Administrative Law Judge regarding the parameters of the demand curve and related issues. As a result of these changes we will delay full implementation of the LICAP market until the conclusion of these proceedings. We anticipate that this will permit implementation of LICAP in New England by January 1, 2006. We

[34] 16 U.S.C. 824d.

[35] 16 U.S.C. 824e.

[36] *See* Joint Motion to Reject, Protest, and Request for Hearing and Suspension of Rates of CT DPUC and CT OCC at 6–7.

[37] 18 CFR 154.203(b) provides that compliance filings made by gas pipelines ''must include only those changes required to comply with the order [and] * * * may not be combined with other rate or tariff change filings,'' and further states that ''[a] compliance filing that includes other changes or that does not comply with the applicable order in every respect may be rejected.'' This regulation applies only to filings made pursuant to section 4 of the Natural Gas Act and thus does not apply to filings made by public utilities such as ISO–NE.

[38] *See, e.g.,* Motion to Intervene and Protest of the Attorney General of Massachusetts, Attorney General of Rhode Island, and the Rhode Island Division of Public Utilities and Carriers at 7; Protest by Attorney General of Massachusetts, Attorney General of Rhode Island, Massachusetts Division of Energy Resources, New Hampshire Office of Consumer Advocate, Rhode Island Division of Public Utilities and Carriers, Associated Industries of Massachusetts, NSTAR Electric and Gas Corporation, National Grid USA, Vermont Electric Power (in part) and Strategic Energy LLC (in part) (hereinafter Mass. AG *et al.*) at 7–8.

[39] April 25 Order at P 33.

[40] *Id.* at P 37.

[41] July 24 Order at P 33.

[42] *See* 16 U.S.C. 824e(a).

[43] 18 CFR 154.203(b) only applies to filings and proceedings held pursuant to section 4 of the Natural Gas Act. *See* 18 CFR 154.1(a) (2003); *see also* Cambridge Electric Light Company, 95 FERC ¶ 61,162, 61,523 n. 9 (2001).

[44] April 25 Order at P 37.

discuss our reasoning for this decision in the analysis that follows.

33. In the PJM Order, the Commission outlined an analytical approach it intends to follow in addressing Reliability Compensation Issues such as those at issue in this proceeding. This process begins with posing the question: does this organized market exhibit material short-term or long-term Reliability Compensation Issues? [45] Short-term Reliability Compensation Issues relate principally to the appropriate compensation for units that are needed for reliability and are subject to mitigation with the result that the units are receiving non-compensatory revenue impacting their ability to provide service. Long-term Reliability Compensation Issues relate principally to local capacity shortages identified in the organized market's reliability-based planning process resulting from the reasonably expected retirement of units or the need for new infrastructure that is not anticipated to be installed.

34. If the inquiry shows that the organized market exhibits material Reliability Compensation Issues, the next step is to evaluate whether market design improvements can be implemented that will work to resolve the issues. Conversely, if the inquiry does not find that the organized market exhibits material Reliability Compensation Issues and the issue is of sufficiently narrow scope, then significant focus on general design issues is not required and targeted approaches (such as unit specific contracts or compensation schemes) may be appropriate. Such demonstration must include a showing that the revenue produced by the proposed solution is adequate to actually solve the problem at hand and that the proposed solution includes safeguards to prevent the unwarranted exercise of market power beyond the recovery of such necessary revenue.

35. In the case of ISO–NE, the Commission determines that it exhibits both short and long-term Reliability Compensation Issues. These issues have been clearly demonstrated in the filings for RMR contracts in NEMA/Boston and SWCT. These contracts were filed by ISO–NE because these units were not able to earn sufficient revenues through the markets to justify their continued operation. In NEMA/Boston these reliability concerns have been limited to the need for RMR contracts for a limited number of specific units that are needed to satisfy reliability because of the location of these units. The RMR contracts were filed because specific units were needed, not because there were inadequate resources within NEMA/Boston in general. As such, reliability compensation appears to be more of a short-term issue in NEMA/Boston.[46]

36. In contrast, the reliability problems in SWCT have involved the need to retain all or nearly all units within this region to maintain reliable service.[47] Many of these units are old and inefficient and are unable to receive sufficient funds through the operation of the markets to justify their continued operation. Thus, the concerns regarding SWCT are long-term in nature.

37. Under the policy developed in the PJM Order, the next step is to examine whether market design improvements can be implemented within New England to resolve these issues.[48] As discussed further below, we believe that while the record is unclear on whether market design changes could resolve the issues within NEMA/Boston, market design changes could be implemented to resolve the Reliability Compensation Issues within SWCT.[49] One market design change that was suggested in the PJM Order was the use of locational markets for installed capacity or operating reserves for the constrained area. The Commission believes that designing and implementing a well-functioning and equitable LICAP market represents a significant step in resolving Reliability Compensation Issues. In fact, we have identified locational installed capacity as a market design feature that can serve as a solution.[50] The New England market as a whole appears to have adequate capacity. At the same time, nearly all existing units within SWCT are needed for reliability. Additionally, ISO–NE has also recently conducted a Request for Proposals to obtain additional resources in SWCT. Thus, the use of a local capacity market would better reflect the value of capacity in SWCT than the existing system-wide capacity market. Thus, the use of a locational capacity market could be a solution to the Reliability Compensation Issues in SWCT.

38. ISO–NE has filed a proposal that contains a locational capacity market. The Commission believes that ISO–NE's LICAP proposal has elements that would help resolve the Reliability Compensation Issues in New England. In particular, the concept of a demand curve for installed capacity has merit. Additionally, the use of separate prices for capacity in different areas in New England also moves toward a LICAP market. However, as discussed further below, we find that there are factual questions regarding certain elements of this proposal that need to be further explored at hearing.

39. The Commission finds that there are other elements of ISO–NE's proposal that do not satisfy the criteria outlined in the PJM Order. Specifically, the Commission is concerned that certain elements of ISO–NE's proposal rely on non-market solutions to attempt to resolve these Reliability Compensation Issues and that the regions chosen for the LICAP may not match the specific areas where capacity is constrained within New England. Thus, the regions may not sufficiently value capacity within the constrained areas.

40. First, under the Commission's policy, the market design changes should provide sufficient revenues to satisfy the Reliability Compensation Issues. The Commission cannot reasonably determine that ISO–NE's proposed transition payments together with its proposed five-year phase-in of LICAP will yield sufficient revenues for all generating resources during the phase-in period. Under the proposal, ISO–NE would cap the price that would be available to generators in the constrained areas during the phase-in period. In the first year, the price caps would be $1.00 per kilowatt month. This would not be a sufficient amount to resolve the Reliability Compensation Issues within the constrained areas.

41. However, since the price caps would result in lower prices than those generated by the demand curve, ISO–NE also proposes to pay a transition payment to low load-factor units within the constrained areas. The transition payments are set at $5.34 per kilowatt month for the first five years of the market.[51] The $5.34 figure is based on the average cost of PUSH units in Connecticut and NEMA/Boston. There was significant debate among intervening parties over whether or not this aspect of the proposal provides sufficient revenues. Since the payment is based on an average of the PUSH limits, it may not work to provide

[45] PJM Order at P 16.

[46] *See* Exelon New Boston, LLC, 106 FERC ¶ 61,191 (2004).

[47] *See* March 22 Order; *see also* ISO New England LLC, 105 FERC ¶ 61,236 (2003).

[48] *See* PJM Order at P 17.

[49] PJM Order at P 17. It is not clear if the issues in NEMA are sufficiently narrow in scope so that a market design solution targeted to NEMA is necessary to resolve the Reliability Compensation Issues. If the problem is related to a need for a limited number of specific resources for reliability, unit specific contracts may be more appropriate.

[50] *Id.* at P 19.

[51] ISO–NE states: ''The transition payment will be reduced each month by the locational capacity-clearing price in the appropriate import constrained sub-region so that the transition payment will function as a capped price.'' Transmittal Letter of ISO–NE at 29.

sufficient revenues for all generating units. In particular, the units within SWCT had a much higher cost than those located within NEMA/Boston. Since ISO–NE would still allow RMR contracts for individual units, its proposal may only appeal to those units whose costs were at or below the average PUSH limits. For other more expensive units, it would appear that they would still have the option of obtaining RMR contracts.

42. More importantly, the transition payments create an unhedgeable cost to LSEs in import-constrained regions. In other words, the transition payments would be a non-market cost to LSEs within the import constrained areas. The Commission stated in the PJM Order that ideally, the market should encourage LSEs to engage in long-term bilateral contracting and locational requirements for ICAP could promote such contracting.[52] However, ISO–NE's transition payment proposal will not adequately promote bilateral contracting and in fact may discourage it. ISO–NE's proposal requires those parties who have contracted bilaterally for ICAP to pay the same transition payments as those LSEs that have not contracted bilaterally for ICAP. Thus, the transition payments do not provide adequate incentives for LSEs to contract for supplies locationally to reduce their total costs. The allocation method will also penalize LSEs that have already entered into bilateral arrangements. The Commission does not believe that a non-market solution such as the transition payments is consistent with the policy developed for Reliability Compensation Issues in the PJM Order. Therefore, the Commission does not believe that ISO–NE's proposal provides a market solution that is consistent with the criteria discussed in the PJM order.

43. The Commission is also concerned that the proposed configuration of import-constrained regions may not be appropriate. ISO–NE proposes a single ICAP region for the entire State of Connecticut. This is consistent with its current market design. However, there is a clear and extensive record that demonstrates a distinction, in terms of reliability, between SWCT and the other parts of Connecticut. This record includes reports and filings that detail the difficulties SWCT faces with regard to reliability. For example, ISO–NE concluded that ''the existing southwestern Connecticut electric power system does not meet North American Electric Reliability Council (NERC), Northeast Power Coordinating Council (NPCC) and NEPOOL reliability performance standards.'' [53] Furthermore, when ISO–NE developed DCAs with special measures for mitigating market power, it classified SWCT as a DCA distinct from the remainder of Connecticut. ISO–NE provides no justification for failing to acknowledge this distinction in its LICAP proposal. The Commission is concerned that ISO–NE's proposal may not adequately recognize the value of resources within SWCT. It also may result in customers in other parts of Connecticut subsidizing customers within SWCT. Therefore, the Commission is not convinced that a single import-constrained area in Connecticut would produce incentives to locate infrastructure in SWCT, the location where it is most needed. Additionally, it may not provide adequate compensation for resources to remain in SWCT, thus failing to satisfy Reliability Compensation requirements of the Commission's policy.

44. Thus, the Commission finds that while a market design solution would provide a reasonable solution to the Reliability Compensation Issues in SWCT, ISO–NE's proposal must be revised to meet that objective.

45. Consequently, the Commission will adopt a market design solution for New England but will defer implementation of the LICAP proposal until the conclusion of the hearing proceedings established in this order. The delay in implementation will allow time for a hearing to resolve the contested issues regarding the LICAP mechanism. In addition, it will also provide a firm timeline for implementation and thus an incentive to participants in the constrained areas to develop resources or transmission alternatives to help mitigate the rate impact of a LICAP mechanism. In the interim, to compensate resources within the constrained areas, the Commission will continue the operation of the PUSH mechanism to reduce the impact of the mitigation measures on units that run infrequently. Additionally, the Commission will continue the use of RMR contracts for units that are needed for reliability but cannot earn sufficient revenues from the markets to continue operation.

46. Finally, the Commission believes that there may be merit in the early implementation of a separate energy load zone for SWCT.[54] The use of the entire State of Connecticut may diminish the price signals in the constrained portion of the state. Since the cost of RMR contracts will also be paid by all load within the zone, the use of a larger zone may result in some customers in Connecticut subsidizing others. Therefore, as discussed further below, the Commission will institute an investigation and paper hearing in Docket No. EL04–102–000 regarding whether a separate energy load zone should be created for SWCT, and whether it should be implemented in advance of the implementation of LICAP. ISO–NE is directed to address whether a separate energy load zone should be established for SWCT and implemented before LICAP.

47. The Commission addresses specific comments, protests, and issues related to the proposed LICAP mechanism in the paragraphs which follow.

1. ICAP Regions

48. As noted above, ISO–NE's proposal includes four regions for purposes of setting ICAP prices: Maine, Connecticut, NEMA/Boston, and the remainder of New England. Connecticut is defined as an import constrained ICAP region equal to the Connecticut load zone. However, some parties argue that SWCT should be its own import-constrained ICAP region. LIPA argues that ISO–NE has not justified why Connecticut and SWCT were combined as one import-constrained region. Moreover, LIPA argues that studies used during consideration of this proposal clearly justify creating a separate region for SWCT. LIPA asserts that maintaining Connecticut as a single constrained region distorts the market signals that LICAP is intended to send. LIPA argues that additional ICAP resources need to be located within SWCT to truly satisfy reliability concerns. PPL Parties argue that, in establishing an import-constrained region for Connecticut as a whole, ISO–NE's proposal would equate the locational value of a unit in severely constrained SWCT with the locational value of a unit in the relatively unconstrained areas in the rest of Connecticut, thus undervaluing units in the most needed locations and providing no incentive to direct new generation entry to the most critical sites.

49. *Commission Response.* The two geographic areas in New England that have reliability problems are NEMA/Boston and SWCT, which currently are identified as DCAs. While ISO–NE's

[52] PJM Order at P 20.

[53] *See,* ISO–NE, Volume I of *Southwestern Connecticut Electric Reliability Study,* presented by the ISO–NE Southwestern Connecticut Working Group, December 2002.

[54] ISO–NE, in its answer, states that in order to create an ICAP region covering SWCT, ISO–NE states that Connecticut must also be divided into separate energy load zones, with one load zone for energy covering SWCT.

proposal separates NEMA/Boston into its own region, there is significant evidence that SWCT is the most heavily constrained area within New England. Recently, the state of Connecticut has stressed the need to focus on potential reliability problems in SWCT. In a July 3, 2002 report, the CT DPUC stated that ''inadequate local generation and transmission congestion in SWCT make the region vulnerable to reliability problems in the event that demand is higher than expected or generation units or transmission lines serving the area are unavailable.'' [55] In December 2003, the Connecticut Siting Council (CSC) submitted a ten-year forecast of loads and resources within the State which reported that ''some sub-regions such as SWCT are threatened with supply deficiencies and voltage instability problems due to insufficient transmission and inadequate resources within the region.'' [56] That report also notes that ''[i]t is increasingly important for resources to be strategically located on the grid to ensure electric supply can technically and economically serve pockets of high demand.'' [57] Additionally, in its comments in this proceeding, NRG points to the Gap RFP, through which ISO–NE procured reliability services which it could call on during possible emergency situations. In this submittal ISO–NE stated that ''as in years past, the ISO expects that the combination of electric load and operating reserve requirements in SWCT will exceed the resources available for the sub-region in the summer of 2004.'' [58] NRG also notes a recent ISO–NE-commissioned study which concluded that while New England has sufficient capacity available to it in aggregate, the capacity is not optimally located in the areas where it is needed for reliability. Specifically, SWCT is identified in that study as an area where the amounts of capacity are verging on deficient. The study concluded that capacity shortages in constrained areas of New England are most severe in SWCT, and are much more severe than NEMA/Boston.

50. Based on the assessments conducted by the state of Connecticut and ISO–NE, as well as the comments and protests considered by the Commission in the instant proceeding, the Commission is concerned that the ICAP regions proposed by ISO–NE do not adequately reflect where infrastructure additions are needed most. The infrastructure problem in SWCT has been accurately defined, but the proposal submitted by ISO–NE does not appear to the Commission to create the incentives needed to remedy this problem. Grouping SWCT with the rest of the State unfairly burdens Connecticut customers that are not affected by limitations in transmission capacity in SWCT. With this proposal, for example, capacity would be priced the same outside of SWCT as it is in SWCT. This price signal sends the inaccurate message to potential investors that capacity is needed just as much in outside of SWCT as it is needed in SWCT. Additionally, the Commission fails to understand why NEMA/Boston, as a DCA in New England, is classified as a separate LICAP region while SWCT is not.

51. Based on the foregoing, the Commission believes that a separate SWCT ICAP region may be appropriate, to ensure that the LICAP market in New England achieves the goals we outlined in the PJM Order. As a result, ISO–NE is directed to submit a further filing in Docket No. ER03–563–030 addressing whether the Commission should revise its proposal to create a separate import-constrained ICAP region for SWCT. The Commission will require ISO–NE to submit this filing within 30 days from the date of this order, and will permit responses to ISO–NE's submittal to be filed within 21 days from the date ISO–NE makes its filing. Furthermore, the Commission notes that ISO–NE states in its answer that creating a separate ICAP region for SWCT would also involve creating a separate load zone in SWCT for pricing energy. As noted above, the Commission believes that creating this separate load zone could have significant benefits, even in advance of the implementation of LICAP. As a result, pursuant to section 206 of the FPA, the Commission will institute an investigation and paper hearing in Docket No. EL04–102–000 regarding whether a separate energy load zone should be created for SWCT, and whether it should be implemented in advance of the implementation of LICAP. The Commission will require ISO–NE to address the issue of whether a separate energy load zone should be created for SWCT, and whether it should be implemented in advance of the implementation of LICAP, in a filing to be made within 30 days from the date of this order in Docket No. EL04–102–000. The Commission will issue notice of ISO–NE's filing, and permit interested parties to intervene and file responses within 21 days of the date ISO–NE makes its filing.

52. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the Commission's investigation in the **Federal Register**, and no later than five months subsequent to expiration of the 60-day period. We will establish the statutorily-directed refund effective date, in this context for the determination of regions in Connecticut, 60 days after publication in the **Federal Register** of this order initiating the Commission's investigation in Docket No. EL04–102–000. In addition, section 206 requires that, if no final decision has been rendered by that date, the Commission must provide its estimate as to when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the nature and complexity of the matters to be resolved, the Commission estimates that it will be able to reach a final decision by October 31, 2005.

2. Demand Curve and Capacity Transfer

53. As described above, ISO–NE's proposed demand curve is structured on the basis of two points. While there are numerous protests addressing the parameters of the demand curve, there appears to be very little objection to the concept of a demand curve. In fact, many parties advocate a downwardly sloping demand curve. The protests focus on the precise points that ISO–NE proposed to determine the height and slope of the demand curve. In general, representatives of LSEs and State government entities recommend changing the parameters in a way that would lower ICAP prices.[59] By contrast, representatives of suppliers either support the ISO–NE's parameters or recommend parameters that would raise ICAP prices.[60] For example, ConEd favors raising the point at which the

[55] *See* DPUC Investigation into Possible Shortages of Electricity in Southwest Connecticut During Summer Periods of Peak Demand, July 3, 2002.

[56] *See* CSC Review of the Connecticut Electric Utilities' Ten-Year Forecasts of Loads and Resources, December 23, 2003.

[57] *Id.*

[58] *See* Motion to Intervene and Comments of ISO–NE, Docket No. ER04–335–000.

[59] For example, the New England Conference of Public Utility Commissioners (NECPUC) argues that the point on the demand curve where the price covers the net cost of a new peaker (net of inframarginal energy revenues) should be where capacity is just equal to New England's Objective Capability, which is less than ISO–NE's proposal. NECPUC also advocates setting the point where the ICAP price becomes zero (*i.e.*, where the demand curve crosses the horizontal axis) at 110 percent of Objective Capability, rather than at 118 percent of Objective Capability as proposed by ISO-NE.

[60] Motion to Intervene, Protest, Objection to Proposed Effective Date, and Request for Hearing of NECPUC at 20–21.

ICAP price becomes zero to 127 percent of Objective Capability.[61]

54. Some parties, including Indicated Suppliers and ConEd, urge the Commission to implement a Compromise Proposal that was approved in the New England stakeholder process by the Markets Committee and received a majority (58 percent) vote from the Participants Committee.[62] The major difference between the Compromise Proposal and the proposal ultimately filed by ISO–NE is that the former included price floors for the Maine and Rest of Pool regions as well as higher price caps and transition payments for generators in constrained areas, both of which would result in higher ICAP payments in the relevant areas. The Compromise Proposal is supported by HQ Energy Services, ConEd, and the Electric Power Supply Association (EPSA).

55. A group consisting of state governmental entities and transmission owners in NEMA/Boston (Mass. AG et. al.) filed another alternative proposal, also using a demand curve. Under this option, the locational feature of the ISO's proposal would be removed, and ICAP resources would be bought and sold through a single, region-wide market instead of separate locational markets.[63]

56. National Grid asserts that LICAP will not alleviate the fundamental constraints that cause the formation of load pockets and argues that the best way to ensure transmission adequacy would be to mandate a deliverability requirement across the transmission grid. In its answer, ISO–NE did not take a position on the merits of a deliverability requirement, noting that there is nothing about the LICAP proposal that would preclude the adoption of a deliverability requirement if the stakeholders and the Commission conclude that it would be beneficial.

57. *Commission Response.* We agree with ISO–NE's overarching proposal to use a demand curve, and in particular a downward sloping demand curve, as part of the eventual LICAP mechanism in New England. The Commission finds that implementing a demand curve for ICAP will allow ISO–NE's market design to more closely resemble that of the neighboring ISO (NYISO) and to contribute to the elimination of seams between the two. NYISO currently uses a demand curve to set ICAP prices within its territory. NYISO also has locational requirement for procuring ICAP for LSEs located within New York City and Long Island. The adoption of LICAP by ISO–NE would make its market design more consistent with that in effect in NYISO.

58. While we agree with ISO–NE's concept of a sloped demand curve, we find that ISO–NE has not justified the specific parameters it proposes to determine the slope and height of the demand curve. Commenters raise important questions about these parameters that cannot be resolved based on the record in this proceeding. These questions include: If the height of the curve is to be determined, at least in part, by the cost of new entry, what is the cost of new entry, and does that cost vary among the regions? What is a reasonable estimate of the net inframarginal revenues that could be expected from the energy markets, and does that revenue vary among regions? Should the ICAP price reflect the cost of new entry (net of inframarginal energy revenues) when capacity equals (i) Objective Capability, (ii) the historical average level of capacity relative to Objective Capability, or (iii) some other level? At what capacity level should the ICAP price fall to $0? Should the height and slope of the curve be based on the cost of new entry or on other factors, such as an estimate of the reliability value to loads of alternative levels of capacity, and if the latter, what are reasonable estimates of such reliability values? To what extent do the parameters of the demand curve used by the NYISO affect the ability of New England to attract ICAP capacity, and thus, how should the New York parameters affect the parameters for New England?[64] The Commission finds that the use of price floors, as proposed in the Compromise Proposal, are non-market mechanisms that may not send accurate price signals and may artificially inflate ICAP prices in regions with more-than-adequate capacity levels.

59. Based upon the foregoing, and the Commission's own preliminary analysis, we find that the parameters underlying the proposed demand curve have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, while we agree with the concept of a demand curve for the ICAP market, we will set the parameters which will determine the slope and height of that curve for hearing procedures for the purpose of determining the just and reasonable ICAP demand curve for each ICAP region. These hearing procedures will be limited to one year to ensure that the specific parameters of the curve are in place in advance of the January 1, 2006 implementation date of the LICAP market, so that market participants can adequately prepare. The Commission will direct the presiding judge to ensure that an initial decision or settlement is issued by June 1, 2005. The presiding ALJ should structure the hearing schedule accordingly.

60. Certain parties have argued that the Commission should adopt a deliverability requirement for ICAP supplies in New England rather than adopt a LICAP.[65] The Commission directed ISO–NE to develop ''a mechanism that implements location or deliverability requirements in the ICAP or resource adequacy market'' in the April 25 Order.[66] ISO–NE elected to pursue a locational ICAP mechanism in the near-term for, among other things, reasons of costs.[67] A reliable and extensive transmission system without substantial load pockets is important for a deliverability requirement. The current transmission system in New

[61] Motion to Intervene and Protest of ConEd Energy at 2–3.

[62] A proposal requires a two-thirds majority to receive approval from the Participants Committee.

[63] The price at which generators would recover the cost of a peaking unit (net of energy market revenues) would be set at 100% of Objective Capability, rather than at 106.7 percent as proposed by ISO–NE. Second, the MW level at which the ICAP price would become $0 (*i.e.*, where the demand curve crosses the horizontal axis) would be reduced to 112 percent of Objective Capability. This proposal would also impose additional requirements on generators. Finally, the proposal would also adopt locational operating reserve markets and fully integrate new generators receiving ICAP payments into the regional grid.

[64] We note, for example, that the highest price for capacity in New England under ISO–NE's proposal (after the transition period has expired) would be about $9.28/kW-month, which is the price when the market clears at less than 95 percent of Objective Capability. By contrast, prices higher than $9.28 cleared the capacity market in the monthly auctions held by the NYISO for the summer 2004 capability period for Long Island and New York City. Specifically, the price for capacity on Long Island for June 2004 was $9.50, while the prices for capacity in New York City ranged between $11.16 and $11.42 for the months of June through October. (See, http://www.nyiso.com/market/icap_auctions/summer_2004/june_2004_auction.pdf.) The hearing should explore whether regions such as SWCT, which is near New York City and Long Island, would be able to attract adequate capacity under ISO–NE's proposed parameters if prices in New York City and Long Island exceed the highest possible price in New England.

[65] A deliverability requirement would require the construction of sufficient transmission to ensure that resources are deliverable to load throughout the region. Only units that satisfy the deliverability requirements would be able to sell ICAP in New England.

[66] ''We will direct ISO–NE to file no later than March 1, 2004 for implementation no later than June 1, 2004, a mechanism that as discussed in the September 20 Order.'' April 25 Order at P 37.

[67] In its transmittal letter, ISO–NE concluded that, in the short term, a deliverability requirement is not practical or cost-effective due to the substantial investments, construction, and timeline involved. Transmittal Letter of ISO–NE at 3.

England does not allow for deliverability across the entire region, and the Commission has been given no indication as to when the New England system would be physically capable of supporting a deliverability requirement. The Commission believes that the development of a transmission system that effectively eliminated import- and export-constrained regions in New England is an admirable objective. However, we recognize that the development of such infrastructure will take time and concerted effort. ISO–NE has indicated that acceptance and implementation of the LICAP proposal would not preclude the introduction of a deliverability requirement at some point in the future. The Commission would welcome a proposal to implement a deliverability requirement in New England, if and when ISO–NE and New England stakeholders collectively choose to pursue that. Until such time, the Commission believes that the LICAP proposal, with the modifications discussed in this order represents an appropriate response to the Reliability Compensation Issues we currently observe in New England.

i. Level of Capacity Available for Transfer Between Regions

61. As noted earlier, ISO–NE proposes to establish CTLs between ICAP regions at levels below the actual amount of real-time electric flow that the transmission interfaces are capable of accommodating. NECPUC, Mass. AG *et al.* and others object to ISO–NE's proposal to underestimate the amount of capacity that can be delivered into the import-constrained regions.

62. In its answer, ISO–NE argues that increasing its proposed CTLs would be detrimental to the market. ISO–NE asserts that setting transfer limits while recognizing excess capacity may depress prices and undervalue the resources within the import-constrained region, which decreases the likelihood of either new generation entry or transmission expansion in the constrained region.

63. *Commission Response.* The commenters' criticisms of ISO–NE's proposed method for determining CTLs raise issues that the Commission will set for hearing to determine the costs and benefits of understating the amount of transmission transfer capability that is actually available to procure ICAP resources across regions. The presiding judge is directed to consider the appropriate method for calculating CTLs in the hearing that we establish in this order.

ii. Capacity Transfer Rights

64. As noted earlier, ISO–NE proposes to allocate a portion of the Capacity Transfer Rights across the NEMA/Boston Import Interface (the transmission interface between the NEMA/Boston and Rest of Pool) to municipal utilities in NEMA/Boston that have ownership entitlements in pool planned units in Rest of Pool. TransCanada Power Marketing Ltd. (TransCanada) and Indicated Suppliers disagree with the proposal. TransCanada argues that this special award of Capacity Transfer Rights has no direct relationship to the actual load served by the municipal utilities in NEMA/Boston and improperly presumes that the municipal utilities should be given priority rights over the limited transfer capacity into the region. Indicated Suppliers argue that a ''special allocation'' of Capacity Transfer Rights should be extended to other participants with long-term contracts for capacity located outside of constrained areas. Conversely, Massachusetts Municipal Wholesale Electric Company and Reading Municipal Light Department (MMWEC and Reading) urge the Commission to ensure that the ''special'' Capacity Transfer Right allocation be maintained as essential to any determination that the LICAP proposal is just and reasonable. MMWEC and Reading believe that any imposition of LICAP in New England should include a proper recognition of prior investments in pool planned units and should minimize the impact of a new regulatory paradigm upon those long-term investments.

65. Duke Energy North American, LLC (Duke) seeks to clarify that generators that have increased transfer capability on constrained ICAP interfaces prior to the proposal's effective date would be allocated Capacity Transfer Rights as described in section 8.9.4 of the proposal. Additionally, MMWEC and Reading have uncovered two problems that they assert must be addressed. First, MMWEC and Reading believe that ISO–NE's proposed text of section 8.9.6 reads as though the allocation is to the pool planned unit itself. Second, in reviewing Table 1 to section 8.9.6, which lists the municipal utilities receiving special Capacity Transfer Rights, MMWEC and Reading believe that it does not include the Wakefield Municipal Gas & Light Department, which is a NEMA-based, municipal utility and thus entitled to a share of whatever Capacity Transfer Rights based on pool planned units allocation is accepted or approved by the Commission.

66. *Commission Response.* Capacity Transfer Rights should be allocated in a way that allows the benefits of Capacity Transfer Rights to be received by those who ultimately pay the costs of the transmission system, including market participants that have funded specific upgrades that increased transfer capacity. That is because Capacity Transfer Rights depend on the amount of transmission capacity in New England, so those paying for the transmission capacity should receive its benefits. We endorsed a similar policy with respect to the allocation of Auction Revenue Rights (ARRs) in New England in an order issued December 20, 2002.[68] ARRs entitle the holder to receive the revenues from the sale at auction of FTRs, which (like Capacity Transfer Rights) depend on the amount of transmission capacity in New England.

67. This is not to say, however, that Capacity Transfer Rights must always be allocated to those who directly pay for the embedded costs of New England's transmission grid. Indeed, in the December 20, 2002 order, we accepted a proposal to allocate ARRs to ''Congestion Paying LSEs,'' [69] even though not all Congestion Paying LSEs pay transmission costs. We did so because we expected that such Congestion Paying LSEs would pass on the benefits of ARRs to the retail loads that they serve, and these retail loads would ultimately also bear the costs of the transmission system. [70] Similarly, we would find it acceptable to allocate

[68] New England Power Pool and ISO New England, Inc., 101 FERC ¶ 61,344 at P 55–64 (2002).

[69] A Congestion Paying LSE is defined as ''a Participant or Non-Participant that is responsible for paying for Congestion Costs as a Transmission Customer paying for Regional Network Service or Long-Term Firm Point-to-Point Transmission Service under the NEPOOL Tariff, unless such Transmission Customer has transferred its obligation to supply load in accordance with NEPOOL System Rules, in which case the Congestion Paying LSE shall be the Participant supplying the transferred load obligation.'' *See id.* at P 55.

[70] In New England, Transmission Customers taking Regional Network Service or Long-Term Firm Point-to-Point Transmission Service pay rates that recover fixed transmission costs. However, not all Congestion Paying LSEs are such Transmission Customers who pay for transmission costs. Some Congestion Paying LSEs have taken over the responsibility for serving load from a Transmission Customer, while the Transmission Customer retains the responsibility to provide Transmission Service to the load and to pay the associated transmission costs. The Commission found it acceptable to allocate ARRs to Congestion Paying LSEs that do not pay transmission costs because the retail loads served by the Congestion Paying LSEs ultimately paid the transmission costs, and because the Commission expected that the benefits of the ARRs allocated to the LSEs would be flowed through to these same retail loads. Thus, the retail loads that ultimately paid transmission costs would also receive the benefits of the ARRs.

Capacity Transfer Rights either to those who directly pay the fixed costs of the New England transmission system or to those who serve the retail loads that ultimately pay these fixed costs. However, as a general matter, we would not find it acceptable to allocate Capacity Transfer Rights to generators in Maine that have not contributed to the cost of the transmission system, although it would be acceptable to allocate Capacity Transfer Rights to generators in Maine (or in other regions of New England) that have contributed to the cost of the transmission system.

68. The Commission is unable to determine whether ISO–NE's proposed allocation of Capacity Transfer Rights is consistent with this principle, and thus we will set for hearing the issue of the allocation of Capacity Transfer Rights. In particular, the hearing should determine whether, and to what extent, particular generators in Maine have paid for transmission upgrades that increase transfer capability with the rest of the pool and thus should be assigned corresponding Capacity Transfer Rights. The hearing should also determine the appropriate allocation of Capacity Transfer Rights for those LSEs, including municipal utilities, who are the original holders of life-of-the-unit contracts for pool planned units. The hearing should also address the extent to which LSEs outside of the import-constrained regions should be allocated Capacity Transfer Rights.

3. Implementation Date and Transition Mechanisms

69. ISO–NE's proposal relies on two transition mechanisms: (1) a transition payment of $5.34 per kilowatt month to be paid to those units in constrained sub-regions which had 2003 capacity factors of 15 percent or less, and (2) a series of price caps in import-constrained regions over a five-year phase-in period.[71] After the fifth year (ending May 2009), the caps would expire, leaving prices in all sub-regions determined by the downward-sloping demand curve. During the phase-in period, the constrained sub-regions would clear at the higher of the cap or the price in the Rest of Pool sub-region. Numerous parties argue against the implementation of these transition mechanisms.

70. *Commission Response.* For the reasons that follow, the Commission will reject the proposed transition mechanisms and the proposed transition payments. Instead, the Commission directs that the LICAP mechanism, when implemented by January 1, 2006, as directed by this order, become effective without the use of the phase-in or transition provisions.

71. Several intervenors argued that the Commission should defer implementation of the LICAP proposal to accommodate the 18 month Regional Dialogue process that ISO–NE proposed. The Commission will defer implementation until January 1, 2006 but does not believe it would be appropriate to direct ISO–NE and stakeholders to develop a modified LICAP proposal in the Regional Dialogue process. The Commission directed ISO–NE and its stakeholders to develop a mechanism in the April 25 Order. However, these discussions did not produce consensus on a mechanism. Further, the Commission does not believe that ISO–NE's proposal, if implemented without modification, would resolve New England's Reliability Compensation Issues. Therefore, the Commission does not believe it is appropriate to delay action on ISO–NE's proposal to allow additional time for stakeholder discussions. Rather, the Commission believes that the approach taken in this order, which is to identify the date when LICAP will be implemented and establish proceedings to address remaining issues, will better address the situation. We believe that deferring the implementation of LICAP until January 1, 2006 will allow participants in import-constrained regions an opportunity to move toward the development of needed infrastructure prior to the realization of full LICAP rates. Infrastructure projects are proceeding in both Connecticut and NEMA/Boston and a deferral of LICAP should provide an incentive for timely completion of the addition of infrastructure in these areas. The Commission finds a delay in the implementation date of LICAP is preferable to the transition mechanisms proposed by ISO–NE, which were in large part simply out-of-market arrangements. To monitor the progress of infrastructure development, the Commission will require ISO–NE to submit a report to the Commission every 90 days, beginning 90 days from the date of this order, updating the progress made in the siting, permitting and construction of transmission and generation upgrades within the New England control area, with particular emphasis on progress within DCAs. While we recognize that ISO–NE is not the entity responsible for siting and permitting decisions, it is in the best position to keep the Commission informed regarding the progress of infrastructure development in New England.

72. Until implementation, the New England market will continue to operate under the existing ICAP rules, as well as the existing PUSH mechanism, and any existing RMR agreements. If additional RMR contracts are needed or require renewal, the Commission expects the parties to those contracts and ISO–NE to negotiate, and file under section 205 of the FPA, one-term contracts, with the single term expiring when the LICAP mechanism is implemented. The Commission will consider the need for these contracts, and the justness and reasonableness of the rates proposed therein, as they are filed. While using current ICAP rules in the period between now and January 1, 2006 is not where the Commission envisioned the NEPOOL capacity market to be, the stakeholder process did not result in a mechanism that is just and reasonable and can be implemented in the near term. Our decision to delay implementation and rely on the existing rules and RMR agreements will produce a just and reasonable result in the short-term, while allowing changes to be made and infrastructure to be built, which will allow the basic LICAP framework we approve in this order to produce a just and reasonable result in the long-term.

4. Miscellaneous Issues

i. Mitigation Measures

73. The mitigation measures proposed by ISO–NE did not elicit many comments or protests. LIPA argues that ISO–NE's proposed tests for de-listing units—which would require that the de-listing resource demonstrate that expected revenues or cost savings associated with the external sale or de-listing would exceed the expected revenues the resource would otherwise receive—will inhibit transactions between markets.[72] LIPA asserts that there are multiple reasons for a resource to de-list beyond short term revenue tests, such as lower revenues that result from a longer-term capacity commitment or the perceived stronger creditworthiness of a commitment with an external party. PSEG requests that the Commission reject this mitigation measure, arguing that it would allow

[71] The cap during the first year (June 2004 through the end of May 2005) would be $1.00, and would increase by $1.00 each year (*i.e.*, a cap of $2.00 in year 2; $3.00 in year 3; $4.00 in year 4; and $5.00 in year 5).

[72] PSEG Energy Resources and Trade LLC (PSEG) argues that ISO–NE's market design should permit partial de-listing of capacity resources. In the NE–SMD Order, the Commission addressed the issue of partial de-listing of resources. *See* New England Power Pool and ISO New England, Inc., 100 FERC ¶ 61,287 at P 110 (2002).

ISO–NE to employ a market power mitigation measure without any finding that the proposed actions would have a significant market impact, as with other mitigation rules.

74. Commission Response: The Commission will accept the mitigation measures proposed by ISO–NE with respect to reference level calculations and conduct and impact thresholds but rejects the de-listing measures. Under ISO–NE's proposal, participants seeking to de-list any resource in an import-constrained ICAP region would be required to demonstrate to ISO–NE that the expected revenue associated with sale of ICAP outside of the NEPOOL control area or the expected cost savings attributable to de-listing will exceed the expected ICAP revenues and other market revenues that the resource would receive if it did not de-list. Where unable to make such a demonstration, ISO–NE proposes to have the authority to deny any delisting request. The Commission finds that ISO–NE should not have the authority to second-guess a generator's business decisions regarding whether to sell into the ICAP market and thus rejects this provision. Moreover, since participation in the ICAP market is voluntary, it is not appropriate to prohibit or limit a generator's decision to cease participating in the ICAP market. The Commission will not accept additional measures that are designed for the energy markets.[73] These measures are primarily designed for units that receive transition payments. The Commission is eliminating transition payments. Consequently this proposed measure will not apply.

ii. Role of the ISO

75. ISO–NE has sought guidance on the issue of what entity should bear the responsibility for longer-term capacity procurement and long-term reliability. The Commission addressed a similar issue in the PJM Order. As a general matter, the Commission believes that the market design of the RTO or ISO should be structured to send appropriate price signals and thus provide an incentive for load to procure capacity to meet their long-term requirements. Through the regional transmission planning process and the determination of the appropriate ICAP requirements for LSEs, ISO–NE's role is to establish the infrastructure levels needed for the system to operate reliably. However, it is LSEs that have the primary responsibility for longer-term capacity procurement and obtaining sufficient supplies to ensure long-term reliability. The role of the RTO or ISO in this process is, at most, to provide a backstop to these efforts. However, the Commission is concerned that if an RTO or ISO negotiates contracts to procure power, it may assume an interest in market prices which could sacrifice its independence and change its incentives. Thus, the Commission would only consider a backstop role for the ISO or RTO after a showing that appropriate changes to the market design had been implemented and had not proven sufficient to solve the problem or that market design changes are infeasible.

iii. Local Scarcity Pricing and a Co-Optimized Market for Energy and Operating Reserves

76.0 We noted in the PJM Order that ''recognizing short-term scarcity of operating reserves may be a valuable component of an overall market design. * * * The inclusion of such a feature could also in part reduce generator reliance upon unit specific agreements in situations where units needed for reliability are not recovering their costs and are eligible for a contract.''[74] High locational prices in ISO–NE's spot markets can signal when and where there is a need for additional capacity. ISO–NE recently added a scarcity pricing feature to spot market rules for its markets whereby spot market prices would be increased, at times up to $1,000/MWh, during periods of scarce supplies, when New England as a whole is experiencing shortages of operating reserves.[75] This pricing feature is valuable because it sends a strong signal when capacity is tight that capacity is needed. The resulting high prices also provide revenue to owners of generation capacity that is operated during a limited number of hours of very high demand, and thus, may reduce the need for RMR contracts for units that otherwise receive insufficient market revenue to support their operations.

77. ISO–NE's scarcity pricing is triggered only by New England-wide reserve shortages. However, because of transmission constraints, scarcity conditions may arise in smaller areas within New England (reflected in an inability to fully meet local reliability requirements) even when capacity throughout New England as a whole is sufficient to meet load and operating reserves. Any scarcity conditions that arise in smaller areas within New England do not trigger the scarcity pricing provisions. This feature may limit the ability of spot market prices to signal the need for additional capacity in local areas. Modifying ISO–NE's scarcity pricing mechanism so that prices would automatically increase in local areas that experience local scarcity conditions might improve the market's price signals and increase the ability of generators needed for local reliability to recover their costs in the market. Such a modification could complement and reinforce a LICAP mechanism. For example, local scarcity pricing could further encourage LSEs in a capacity-tight region to enter into contracts with resources in order to hedge against possible high spot energy prices. However, local scarcity pricing may be easier to implement in the presence of a locational operating reserves spot market that is co-optimized with the spot energy market, which would recognize operating reserve requirements in local areas. ISO–NE does not currently operate a locational operating reserves market, but it has indicated that it is planning to implement co-optimized energy and reserves markets in 2005.

78. We wish to ensure that a broad array of options is considered for addressing New England's locational needs for capacity. Therefore, we will require ISO–NE to consider the advantages and disadvantages of modifying its existing scarcity pricing mechanism so that it would trigger as a result of local scarcity conditions. ISO–NE's process should include stakeholder input and consideration of stakeholder proposals. We will require ISO–NE to file a report on this investigation and the results of the stakeholder process within 180 days of this order. If ISO–NE files to implement co-optimized energy and reserves markets within 180 days of this order, it may elect to include the report on scarcity pricing as part of the filing.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held in Docket No. ER03–563–030 concerning the appropriate methodology for determining capacity transfer limits between ICAP regions, the amount and

[73] ISO–NE proposes to subject units receiving transition payments to a reduced energy offer price threshold and tighter start-up and no-load thresholds. Such units would also face tighter operating reserve credit thresholds.

[74] PJM Order at P 82–83.

[75] *See* ISO New England Inc., 104 FERC ¶ 61,130 (2003).

allocation of capacity transfer rights for purposes of the LICAP market, and the parameters of the demand curve that will apply in each ICAP region, as discussed in the body of this order.

(B) A presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of this order, convene a conference in Docket No. ER03–563–030, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure and is directed to issue an initial decision on or before June 1, 2005.

(C) ISO-NE is directed to submit an additional filing in Docket No. ER03–563–030 within 30 days from the date of this order addressing whether the Commission should revise its proposal to create a separate import-constrained ICAP region for SWCT, as discussed in the body of this order.

(D) The parties to Docket No. ER03–563–030 will be permitted to file responses to the additional filing of ISO-NE directed in Paragraph (C) within 21 days from the date ISO-NE makes such filing.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), the Commission hereby institutes an investigation in Docket No. EL04–102–000 regarding whether a separate energy load zone should be created for SWCT, and whether it should be implemented in advance of the implementation of LICAP, as discussed in the body of this order.

(F) ISO-NE is hereby directed to address whether a separate energy load zone should be created for SWCT, and whether it should be implemented in advance of the implementation of LICAP, in a filing to be made in Docket No. EL04–102–000 within 30 days from the date of this order, as discussed in the body of this order.

(G) Any interested person desiring to be heard in the proceedings in Docket No. EL04–102–000 should file a notice of intervention or motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) within 21 days of the date ISO-NE makes the filing directed in Paragraph (F) above.

(H) Responses to the submission of ISO-NE filed pursuant to Paragraph (F) above may be submitted within 21 days of the date ISO-NE makes its filing.

(I) The refund effective date in Docket No. EL04–102–000 will be 60 days from the date of publication of this order in the **Federal Register**.

(J) ISO-NE's requested implementation date of June 1, 2004 is rejected, and delayed until the conclusion of the proceedings established herein or by January 1, 2006, as discussed in the body of this order.

(K) ISO-NE is directed to file a report every 90 days, beginning 90 days from the date of this order, updating progress made in the siting, permitting and construction of transmission and generation upgrades within the New England control area, with particular emphasis on progress within Designated Congested Areas.

(L) ISO-NE is directed to file a report on its investigation of adding a local scarcity triggering mechanism to its existing scarcity pricing mechanism with 180 days of the date of this order, as discussed in the body of this order.

(M) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

By the Commission. Commissioner Kelliher concurring with a separate statement attached. Commissioner Kelly not participating.

Linda Mitry,

Acting Secretary.

Issued June 2, 2004.

Appendix A

American Forest & Paper Association
American National Power, Inc.
Associated Industries of Massachusetts
Calpine Eastern Corporation and Calpine Energy Services, LP
Central Maine Power Company
Central Vermont Public Service Corporation
Attorney General for the State of Connecticut
Connecticut Department of Public Utility Control
Connecticut Office of Consumer Counsel
Connecticut Municipal Electric Energy Cooperative
Consolidated Edison Energy, Inc.
Coral Power, L.L.C.
Dominion Resources, Inc., Dominion Energy Marketing, Inc., and Dominion Nuclear Connecticut, Inc.
Duke Energy North America, LLC
Electricity Consumer Resource Council and American Iron and Steel Institute
The Energy Consortium
Entergy Nuclear Generating Company, LLC and Entergy Nuclear Vermont Yankee, LLC
Electric Power Supply Association
Fitchburg Gas and Electric Light Company and Unitil Energy Systems, Inc.
FPL Energy, LLC
HQ Energy Services (U.S.), Inc.
Independent Energy Producers of Maine
Indicated Suppliers
Industrial Energy Consumer Group
Interconnection Rights Holders Management Committee
Keyspan-Ravenswood, LLC
Long Island Power Authority and LIPA
Maine Public Advocate
Maine Public Utilities Commission
Attorney General of Massachusetts, Attorney General of Rhode Island, and the Rhode Island Division of Public Utilities and Carriers
Massachusetts Department of Telecommunications and Energy
Massachusetts Municipal Wholesale Electric Company and Reading Municipal Light Department
Milford Power Company, LLC
Morgan Stanley Capital Group
National Grid USA
NEPOOL Industrial Customer Coalition
New England Conference of Public Utilities Commissioners
New England Consumer-Owned Entities
New England Demand Response Providers
New Hampshire Office of Consumer Advocate
Northeast Utilities Service Company
NRG Devon Power LLC, Middletown Power LLC, Norwalk Harbor LLC and NRG Power Marketing
New York Independent System Operator
NSTAR Electric and Gas Corporation
NXGEN, Inc.
Potomac Economics, Ltd.
PPL Energy Plus, LLC and PPL Wallingford Energy LLC
PSEG Energy Resources and Trade LLC
Strategic Energy LLC
TransCanada Power Marketing Ltd.
United Illuminating Company
Vermont Department of Public Service
Vermont Electric Power Company
Wellesley Municipal Lighting Plant

Appendix B

Protests

Calpine Eastern Corporation and Calpine Energy Services, L.P.
Attorney General of the State of Connecticut
Connecticut Department of Public Utility Control
Connecticut Office of Consumer Counsel
Connecticut Municipal Electric Energy Cooperative
Consolidated Edison Energy, Inc.
Duke Energy North America, LLC
FPL Energy, LLC
HQ Energy Services (U.S.), Inc.
Independent Energy Producers of Maine
Long Island Power Authority and LIPA
Maine Public Utilities Commission
Attorney General of Massachusetts, Attorney General of Rhode Island, and the Rhode Island Division of Public Utilities and Carriers

Associated Industries of Massachusetts
Massachusetts Department of Telecommunications and Energy
Massachusetts Municipal Wholesale Electric Company and Reading Municipal Light Department
Milford Power Company, LLC
NEPOOL Industrial Customer Coalition
New England Conference of Public Utilities Commissioners
New Hampshire Office of Consumer Advocate
NRG Devon Power LLC, Middletown Power LLC, Norwalk Harbor LLC and NRG Power Marketing
NSTAR Electric and Gas Corporation
PPL Energy Plus, LLC and PPL Wallingford Energy LLC
PSEG Energy Resources and Trade LLC
United Illuminating Company
Vermont Department of Public Service
Vermont Electric Power Company
Wellesley Municipal Lighting Plant

Comments

Coral Power, L.L.C.
Dominion Resources, Inc., Dominion Energy Marketing, Inc., and Dominion Nuclear Connecticut, Inc.
Electricity Consumer Resource Council and American Iron and Steel Institute
The Energy Consortium
Electric Power Supply Association
Fitchburg Gas and Electric Light Company and Unitil Energy Systems, Inc.
Independent Energy Producers of Maine
Industrial Energy Consumer Group
Keyspan-Ravenswood, LLC
Maine Public Advocate
National Grid USA
New England Consumer-Owned Entities
New England Demand Response Providers
Northeast Utilities Service Company
Potomac Economics, Ltd.
TransCanada Power Marketing Ltd.

[Docket No. ER–03–563–030; EL04–102–000]

Devon Power LLC, *et al.*

Issued June 2, 2004

Joseph T. Kelliher, Commissioner concurring:

I am writing separately to explain my views on the implementation date of a locational installed capacity (LICAP) market in New England.

I concur with the order that a LICAP market should not be implemented before January 1, 2006. The purpose of establishing a LICAP market is to ensure there is adequate electricity generation in New England, particularly in Southwest Connecticut and Northeastern Massachusetts/Boston. The record shows that there is insufficient generation in these two areas of New England.

For a LICAP market to be effective, the transmission system must be strong enough to permit generation interconnections. Unfortunately, the transmission system in Southwest Connecticut is notoriously weak, and at present cannot accommodate significant generation additions.

It is important to give New England enough time to make necessary transmission upgrades. The order provides for an initial decision from an administrative law judge by June 1, 2005 to define the appropriate methodology for determining capacity transfer limits between ICAP regions, the amount and allocation of capacity transfer rights for purposes of each LICAP market, and the parameters of the demand curve that will apply in each ICAP region. The order also sets an implementation date for LICAP markets of January 1, 2006. I would have deferred selecting a specific implementation date for LICAP markets until after the initial decision. That would have given the Commission the flexibility to select an appropriate date for implementing LICAP based on an understanding of the progress—if any—towards strengthening the transmission grid in Southwest Connecticut and Northeastern Massachusetts/Boston.

Until implementation of a LICAP market, the Commission will extend the Peaking Unit Safe Harbor (PUSH) mechanism, and consider reliability-must-run contracts to ensure generators receive just and reasonable compensation. Experience with the PUSH mechanism has proved disappointing, and reliability-must-run contracts may be the superior means to assure just and reasonable compensation during the interim.

Joseph T. Kelliher,
Commissioner.

[FR Doc. 04–12921 Filed 6–10–04; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7673–1]

Science Advisory Board Staff Office; Notification of Upcoming Meeting of the Science Advisory Board Committee on Valuing the Protection of Ecological Systems and Services; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office published a notice in the **Federal Register** of June 1, 2004, announcing a public meeting for the SAB's Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS) on June 13–14, 2004. The notice contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Dr. Angela Nugent, Designated Federal Officer, via telephone/voice mail at (202) 343–9981, via e-mail at *nugent.angela@epa.gov* or by mail at: U.S. EPA SAB (MC 1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB can be found in the SAB Web site at: *http://www.epa.gov/sab*.

Correction

In the **Federal Register** of June 1, 2004, in FR Doc. 04–12306, on page 30908, correct the **DATES** caption to read:

DATES: June 14–15, 2004. The meeting will commence at 9 a.m. and adjourn at 5 p.m. (eastern time) on each day.

Dated: June 2, 2004.

Vanessa T. Vu,
Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–13286 Filed 6–10–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0100; FRL–7365–3]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSC, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 12, 2004 to May 21, 2004, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2004–0100 and the specific PMN number or TME

number, must be received on or before July 14, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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 Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0100. 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 at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

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. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID 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 identified in Unit I.B.1. 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.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME 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 Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in

docket ID number OPPT–2004–0100. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0100 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2004 0100 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, 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 CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as 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.

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. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 12, 2004 to May 21, 2004, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 37 PREMANUFACTURE NOTICES RECEIVED FROM: 05/12/04 TO 05/21/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0566	05/13/04	08/10/04	CBI	(S) Base resin for uv curable formulations	(G) Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-hydro-.omega.-hydroxy-, polymer with isocyanate, 2-hydroxyethyl methacrylate-blocked
P–04–0567	05/13/04	08/10/04	CBI	(S) Waterborne polyurethane adhesive	(G) Aliphatic polyester polyurethane polymer
P–04–0568	05/13/04	08/10/04	CBI	(G) An open, non dispersive use	(G) Polymeric modified vegetable oil

I. 37 PREMANUFACTURE NOTICES RECEIVED FROM: 05/12/04 TO 05/21/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0569	05/13/04	08/10/04	CBI	(G) An open, non dispersive use	(G) Polymeric modified vegetable oil
P–04–0570	05/13/04	08/10/04	CBI	(G) An open, non dispersive use	(G) Polymeric modified vegetable oil
P–04–0571	05/13/04	08/10/04	CBI	(G) An open, non dispersive use	(G) Polymeric modified vegetable oil
P–04–0572	05/13/04	08/10/04	CBI	(G) An open, non dispersive use	(G) Polymeric modified vegetable oil
P–04–0573	05/14/04	08/11/04	CBI	(G) Open non-dispersive (crosslinker)	(G) Aliphatic polyisocyanate
P–04–0574	05/17/04	08/14/04	CBI	(G) The new substance will be used exclusively to prepare monomer in a closed vessel.	(G) Alkoxy aromatic heterocycle
P–04–0575	05/17/04	08/14/04	CBI	(G) New substance will be used exclusively for production of polymers in a closed vessel	(G) Alkoxyated dihalogenated aromatic heterocycle
P–04–0576	05/17/04	08/14/04	Lubrizol Metalworking Additives	(S) Metalworking fluid component	(S) Soybean oil, maleated, ester with triethanolamine
P–04–0577	05/17/04	08/14/04	CBI	(S) Industrial ultraviolet (uv) coatings and inks	(G) Polyester acrylate ester
P–04–0578	05/17/04	08/14/04	CBI	(G) Coated plastic bottle and film	(G) Polyhydroxyaminoether salts
P–04–0579	05/17/04	08/14/04	CBI	(G) Coated plastic bottle and film	(G) Polyhydroxyaminoether salts
P–04–0580	05/17/04	08/14/04	CBI	(G) Coated plastic bottle and film	(G) Polyhydroxyaminoether salts
P–04–0581	05/17/04	08/14/04	CBI	(G) Coated plastic bottle and film	(G) Polyhydroxyaminoether salts
P–04–0582	05/17/04	08/14/04	CBI	(G) Coated plastic bottle and film	(G) Polyhydroxyaminoether salts
P–04–0583	05/17/04	08/14/04	CBI	(G) Coated plastic bottle and film	(G) Polyhydroxyaminoether salts
P–04–0584	05/18/04	08/15/04	CBI	(G) Adhesion promoter for coatings	(G) Maleic anhydride and acrylics modified polyolefin
P–04–0585	05/18/04	08/15/04	CBI	(G) Destructive use	(G) Substituted butyl ethyl magnesium
P–04–0586	05/18/04	08/15/04	CBI	(G) Polyurethane film	(G) Mdi based polyurethane polymer
P–04–0587	05/18/04	08/15/04	Lonza Inc.	(G) Contained use	(G) Dialkyl dimethyl ammonium methylcarbonate
P–04–0588	05/18/04	08/15/04	CBI	(G) Structrural material (open, non-disperive)	(G) Modified polyacrylate
P–04–0589	05/20/04	08/17/04	CBI	(G) Synthetic industrial lubricant for contained use	(G) Linear fatty acid diester with neopentyl glycol
P–04–0590	05/20/04	08/17/04	CBI	(G) Polymer for coatings	(G) Amine salted polyurethane
P–04–0591	05/20/04	08/17/04	Clariant LSM (America) Inc.	(S) Acetaldehyde scavenger for plastic bottle production	(G) Alkyl substituted amino-benzamide
P–04–0592	05/21/04	08/18/04	CBI	(G) Grease thickener	(G) Polyurea thickener
P–04–0593	05/21/04	08/18/04	Reichhold, Inc.	(S) Crosslinking agent for water borne coatings	(G) Isocyanate modified acrylic polymer
P–04–0594	05/21/04	08/18/04	Johnson Polymer, LLC	(G) Industrial coating	(G) Acrylic copolymer
P–04–0595	05/21/04	08/18/04	CBI	(G) Additive for industrial and consumer products dispersive use	(S) 4,7-methano-1h-indene-5-carboxaldehyde, 3a,4,5,6,7,7a-hexahydro-, reaction products with me et ketone
P–04–0596	05/21/04	08/18/04	CBI	(S) Intermediate used to manufacture a polymer	(G) Alkoxyphenol
P–04–0612	05/21/04	08/18/04	Henkel Adhesives	(S) Adhesives used for lamination assembly such as panels and walls	(G) Isocyanate terminated polyurethane resin
P–04–0613	05/21/04	08/18/04	Henkel Adhesives	(S) Adhesives used for lamination assembly such as panels and walls	(S) Hexanedioic acid, polymer with butyl 2-methyl-2-propenoate, 1,6-hexanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 2-hydroxyethyl 2-methyl-2-propenoate, 1,1′-methylenebis[isocyanatobenzene], methyl 2-methyl 2-propenoate and 2-methyl-2-propenoic acid
P–04–0614	05/21/04	08/18/04	Henkel Adhesives	(S) Adhesives used for lamination assembly such as panels and walls	(G) Isocyanate terminated polyurethane resin
P–04–0615	05/21/04	08/18/04	Henkel Adhesives	(S) Adhesives used for lamination assembly such as panels and walls	(G) Isocyanate terminated polyurethane resin

I. 37 PREMANUFACTURE NOTICES RECEIVED FROM: 05/12/04 TO 05/21/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0616	05/21/04	08/18/04	Henkel Adhesives	(S) Adhesives used for lamination assembly such as panels and walls	(S) Dodecanedioic acid, polymer with butyl 2-methyl-2-propenoate, hexanediol acid, 1,6-hexanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 2-hydroxyethyl 2-methyl-2-propenoate, 1,1′-methylenebis[isocyanatobenzene], 2-methyl-2-propenoate and 2-methyl-2-propenoic acid
P–04–0617	05/21/04	08/18/04	Henkel Adhesives	(S) Adhesives used for lamination assembly such as panels and walls	(G) Isocyanate terminated polyurethane resin

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 05/11/04 TO 05/21/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–04–0005	05/14/04	06/27/04	CBI	(G) Colored coatings and related vehicles	(G) Reaction products of fatty acids and hydroxy acids

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 11 NOTICES OF COMMENCEMENT FROM: 05/12/04 TO 05/21/04

Case No.	Received Date	Commencement Notice End Date	Chemical
P–04–0037	05/17/04	04/23/04	(G) Isocyanate terminated urethane polymer
P–04–0083	05/13/04	04/27/04	(S) Amines, *N*-$C_{16–22}$-alkyltrimethylenedi-
P–04–0085	05/18/04	05/07/04	(G) Acrylic-acrylonitrile copolymer
P–04–0111	05/18/04	05/03/04	(G) Polycarboxylated ether
P–04–0114	05/19/04	05/06/04	(S) 94–98% indeno[4,4-d]-1,3-dioxin, 4, 4a, 5, 6, 7, 8, 9, 9b-octahydro-7,7,8,9,9-pentamethyl
P–04–0199	05/12/04	04/19/04	(S) Siloxanes and silicones, 3-[3-(c12-16-alkyldimethylammonio)-2-hydroxypropoxy]propyl me, di-me, [[[3-[3-($C_{12–16}$-alkyldimethylammonio)-2-hydroxypropoxy]propyl]dimethylsilyl]oxy]-terminated, acetates (salts)
P–04–0200	05/12/04	04/19/04	(S) Siloxanes and silicones, 3-[3-[[3-(coco acylamino)propyl]dimethylammonio]-2-hydroxypropoxy]propyl me, 3-(2,3-dihydroxypropoxy)propyl me, di-me, mixed[[[3-[3-[[3-(coco acylamino)propyl]dimethylammonio]-2-hydroxypropoxy]propyl] dimethylsilyl]oxy]- and [[[3-(2,3-dihydroxypropoxy)propyl]dimethylsilyl]oxy] -terminated, acetates (salts)
P–04–0202	05/17/04	04/16/04	(G) Water based acrylic dispersion
P–04–0271	05/14/04	04/25/04	(G) Alkyl, 2-phenylpropylfunctional siloxane
P–93–0109	05/12/04	04/27/04	(G) Modified (styrene alpha- olefine copolymer)
P–97–1012	05/11/04	05/03/04	(G) Polyurethane adhesive

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: June 4, 2004.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 04–13287 Filed 6–10–04; 8:45 am]

BILLING CODE 6560–50–S

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act (NEPA) Oversight; Joint Public Meeting Sponsored With U.S. Institute for Environmental Conflict Resolution, Morris K. Udall Foundation and the State of Wyoming

AGENCY: Council on Environmental Quality.

ACTION: Notice of public meeting.

SUMMARY: The Council on Environmental Quality (CEQ), the U.S. Institute for Environmental Conflict Resolution (IECR) and Governor Freudenthal of Wyoming are hosting a public meeting on June 22, 2004. The meeting will focus on making the National Environmental Policy Act (NEPA) work better for the public by more effectively involving interested communities and individuals. Representatives from CEQ and IECR will briefly discuss the latest NEPA initiatives from their agencies, including CEQ's NEPA Task Force and IECR's National Environmental Conflict Resolution Advisory Committee. Representatives of various public and private organizations will discuss their experiences with involvement in the NEPA process, followed by opportunities for public discussion.

DATES: The meeting will be held on June 22, 2004, from 8:30 a.m. to 4 p.m. Public discussion is scheduled for 11:30 a.m. to 12:15 p.m. and 2:15 p.m.–3 p.m. A lunch break is scheduled from 12:15 p.m.–1:30 p.m.

ADDRESSES: The meeting will take place at the Holiday Inn, 1701 Sheridan Avenue, Cody, Wyoming.

ADDITIONAL INFORMATION: Interested persons may wish to review information about CEQ's NEPA Task Force at the CEQ Web site at *http://www.whitehouse.gov/ceq/* or the NEPA Task Force Web site at *http://ceq.eh.doe.gov/ntf* and information about IECR and the associated National Environmental Conflict Resolution Advisory Committee at *http://www.ecr.gov.* For further information, contact: Dinah Bear, CEQ, (202) 395–7421; Kirk Emerson, IECR (520) 670–5299, or Mary Flanderka, Governor's Planning Office, at (307) 777–7575.

Dated: June 7, 2004.

Dinah Bear,

General Counsel, Council on Environmental Quality.

[FR Doc. 04–13236 Filed 6–10–04; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 28, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 14, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0439.

Title: Regulations Concerning Indecent Communications by Telephone.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households.

Number of Respondents: 10,200.

Estimated Time per Response: 0.13 hrs (8 mins.) (avg.)

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 1,632 hours.

Total Annual Cost: None.

Privacy Impact Assessment: Yes.

Needs and Uses: Under Section 223 of the Communications Act of 1932, as amended, telephone companies are required, to the extent technically feasible, to prohibit access to indecent communications from the telephone of a subscriber who has not previously requested access. 47 CFR Section 64.201 implements Section 223 and contains several information collection requirements: (1) A requirement that certain common carriers block access to indecent messages unless the subscriber seeks access from the common carrier (telephone company) in writing; (2) A requirement that adult message service providers notify their carriers of the nature of their programming; and (3) A requirement that a provider of adult message services request that their carrier identify it as such in bills to its subscribers. The information requirements are imposed on carriers, adult message service providers, and those who solicit their services to ensure that minors are denied access to material deemed indecent.

This information collection affects ''individuals or household,'' and the Commission has prepared a Privacy Impact Assessment as required by OMB Memorandum M–03–22. The categories of records, purpose(s), routine uses, safeguards, and disposal of the information are governed by the Commission's system of records, FCC/CIB–1, ''Informal Complaints and Inquiries,'' (66 FR 51955).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–13325 Filed 6–10–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 04–208; DA 04–1495]

National Association of State Utility Consumer Advocates (NASUCA) Petition for Declaratory Ruling Regarding Truth-In-Billing and Billing Format; Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on a Petition filed on March 30, 2004, by the National Association of State Utility Consumer Advocates (NASUCA). NASUCA filed a Petition for Declaratory Ruling prohibiting telecommunications carriers from ''imposing monthly line-item charges, surcharges or other fees on customers'' bills unless such charges have been expressly mandated by a regulated agency.'' NASUCA contends that all monthly line items are subject to the ''full and non-misleading billed charges'' principle adopted by the Commission in its Truth-In-Billing Order.

DATES: Comments are due on or before July 14, 2004 and reply comments are due on or before July 29, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken, Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–2512.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice* DA 04–1495, released May 25, 2004. When filing comments, please reference CG Docket No. 04–208. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before July 14, 2004, and reply comments on or before July 29, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/efile/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554. Parties who choose to file comments by paper should also submit their comments on diskette. These diskettes should be submitted to Kelli Farmer, Consumer & Governmental Affairs Bureau, Policy Division, 445 12th Street, SW., Rm 4–C734, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CG Docket No 04–208), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''disk copy-not an original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor Best Copy and Printing Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Federal Communications Commission.

Thomas Wyatt,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 04–13230 Filed 6–10–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2659]

Petitions for Reconsideration of Action in Rulemaking Proceedings

June 3, 2004.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by June 29, 2004. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission (GC Docket No. 02–37). Amendment of the Commissions's Rules Regulations to Adopt Protection of the Due Process Rights and Other Protections of Title III Licensees in Connection With the Exercise by the Commission and its Staff of the Commission's Enforcement Powers and Certain Licensing and Regulatory Functions.

Number Of Petitions Filed: 1.

Subject: In the Matter of the FM Table of Allotments, FM Broadcast Stations (Ft. Collins, Westcliffe and Wheat Ridge,

Colorado) (MB Docket No. 03–57, Rm–10565).

Number Of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–13324 Filed 6–10–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 25, 2004.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Betty Margret Wheeler, Durant, Oklahoma; to retain voting shares of FNB Financial Services, Inc., Durant, Oklahoma, and thereby indirectly retain voting shares of The First National Bank in Durant, Durant Oklahoma, and First Texoma Bank, Sherman, Texas.

Board of Governors of the Federal Reserve System, June 7, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–13291 Filed 6–10–04; 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 July 6, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Western Transaction Corporation, Duluth, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Western National Bank, and Cass Lake Company, both of Duluth, Minnesota, and thereby indirectly acquire voting shares of The First National Bank of Cass Lake, Cass Lake, Minnesota.

In connection with this application, Applicant also has applied to acquire Premier Credit Corporation, and thereby indirectly acquire Cass Lake Company, both of Duluth, Minnesota, and thereby engage in operating an industrial loan company, and in general insurance agency activities in a place with a population not exceeding 5,000, pursuant to sections 225.28(b)(4)(i) and (b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, June 7, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–13292 Filed 6–10–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Monday, June 14, 2004.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 9, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–13399 Filed 6–9–04; 11:38 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: June 16, 2004—9 a.m.–2 p.m., June 17, 2004—10 a.m.–3:30 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 800/Eisenberg Room, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updated and status reports from the Department including topics such as Clinical Data Standards, the Consumer Health Informatics Initiative, and the Privacy Rule. In the afternoon there will be a presentation from the Committee on National Statistics (CNSTAT) on its recently completed assessment of the racial and ethnic data collected by HHS and a discussion of recommendations, reports and letters that the Committee is working on in selected areas including quality, and racial and ethnic data. On the second day the Committee be briefed on the Centers for Disease Control and Prevention's (CDC) Futures Initiative and the Agency for Healthcare Quality and Research's (AHRQ) National Healthcare Disparities Report. In the Afternoon the Committee will be briefed on the Medicare Modernization Reform Act and the Center for Medicare and Medicaid Service's (CMS) Quality Initiatives. There will also be reports from the Subcommittees and discussion of agendas for future Committee meetings.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS website (UL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Majorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: May 28, 2004.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 04–13232 Filed 6–10–04; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meetings.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meetings listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 522b(c)(6). Grant applications for Health Information Technology (HIT) Awards to promote and improve patient safety and the quality of healthcare are to be reviewed and discussed at these meetings. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Demonstrating the Value of Health Information Technology (R01) Awards.

Date: June 30–July 2, 2004 (Open July 1 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: John M. Eisenberg Building, AHRQ Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

SEP Meeting on: Transforming Healthcare Quality Through Information Technology (THQIT)—Implementation Grants (U01).

Date: July 18–21, 2004 (Open July 19 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: John M. Eisenberg Building, AHRQ Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

SEP Meeting on: Transforming Healthcare Quality Through Information Technology (THQIT)—Planning Grants (P20).

Date: August 4–6, 2004 (Open August 5 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: John M. Eisenberg Building, AHRQ Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of these meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: June 7, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–13293 Filed 6–10–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–63]

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 the CDC Reports Clearance Officer on (404) 498–1210.

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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.* Written comments should be received within 60 days of this notice.

Proposed Project

Assessment of Healthcare-associated Adverse Events—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

CDC, National Center for Infectious Diseases, Division of Healthcare Quality Promotion (DHQP) disseminates notices and alerts through a voluntary electronic mail subscriber list (*i.e.,* Rapid Notification System) to inform healthcare personnel about healthcare-associated disease outbreaks and clusters or adverse events that may be

of national importance, and recommendations for preventing infections and antimicrobial resistance.

DHQP is occasionally involved in gathering information to determine if a recognized adverse event (*e.g.,* an infection following the use of a particular product, type of equipment, or with a microorganism that has rarely been reported) has occurred on a national level in healthcare facilities. The information gained would be used to target corrective actions or educational strategies to improve the public's health by preventing future adverse events.

To rapidly determine the scope of adverse events at the time soon after a public health notification or product recall, DHQP seeks to conduct short surveys using OMB approved questions among participants in the Rapid Notification System, National Nosocomial Infection Surveillance (NNIS), and other CDC networks. The survey will also be posted on the CDC website to reach additional healthcare professionals. The number of questions in each survey will range from five to 10. Data will be collected using a Web-based data collection form. There will be no costs to the respondents. The burden estimate is based on three surveys per year. The table below shows the estimated annual burden of hours to complete the survey.

Annualized Burden Table:

Title	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)	Total burden hours
Assessment of healthcare-associated adverse events	2,500	1	10/60	417
Total	2,500			417

Dated: June 7, 2004.

Bill J. Atkinson,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13262 Filed 6–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–64]

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 the CDC Reports Clearance Officer on (404) 498–1210.

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. Send comments to Sandra Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.* Written comments should be received within 60 days of this notice.

Proposed Project

Comprehensive Cancer Control (CCC) Capacity Assessment—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

While much has been learned about the development of the Comprehensive Cancer Control (CCC) plans, little is known about: (1) CCC grantee activities; (2) organizational capacity to plan, implement, or evaluate CCC efforts; and (3) essential elements of implementing CCC plans. CDC, through an evaluation contract will assess these three components of the CCC Program. This assessment focuses on the second component of the evaluation. The purpose of the capacity assessment is to ascertain the capacity of states, territories and tribal organizations to plan, implement and evaluate CCC efforts.

A Web-based survey will be used to collect descriptive information from all 50 states, the District of Columbia, 8 territories, and 15 tribes on six critical areas of capacity (funding, staffing, data, partnerships, leadership and organizational support.) CCC Program Managers or chronic disease Directors will complete the survey, with assistance from other staff or partner organizations as needed. A total of 74 managers or directors will be asked to complete the survey, which is expected to take an average of 2 hours to complete. Other staff or partner organizations assisting respondents in completing the survey will spend 15 minutes, on average, providing information. Respondents who indicate that particular CCC activities are not in place will be contacted by telephone to explore issues, barriers, and future plans. We estimate that these telephone calls will be made to one-third of respondents and will take an average of 30 minutes to complete. The only cost to respondents is their time. This is a one-time data collection effort.

Form	Respondents	Number of respondents	Number of responses/respondents	Average burden per response (in hrs.)	Total burden hours
1	State and Territory managers or directors	66	1	2	132
1	State and Territory staff or partners	132	1	15/60	33
2	Tribal managers or directors	8	1	2	16
2	Tribal staff or partners	16	1	15/60	4

Form	Respondents	Number of respondents	Number of responses/respondents	Average burden per response (in hrs.)	Total burden hours
3	State, tribe and territory follow-up respondents	24	1	30/60	12
Total	.....	.....	.....	.....	197

Dated: June 7, 2004.

Bill Atkinson,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13263 Filed 6–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–65]

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 the CDC Reports Clearance Officer on (404) 498–1210.

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. Send comments to Sandra Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an email to *omb@cdc.gov.* Written comments should be received within 60 days of this notice.

Proposed Project

Intimate Partner Violence (IPV) Media Campaign—Choose Respect—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC). Intimate partner and sexual violence is a significant problem in the United States.

Background

According to the National Violence against Women Survey, an intimate partner physically assaults or rapes approximately 1.5 million women and 850,000 men in the United States each year. Many more individuals are subjected to threats of violence and psychological and emotional abuse. Alarmingly, IPV behaviors are manifested in youth populations. The literature suggests that attitudes and behaviors can be shaped and reinforced more easily and more effectively as they are developing in youth than after they have been firmly established. To begin to address IPV and sexual violence in youth populations, the CDC's NCIPC has developed a media campaign entitled, ''Choose Respect.'' The campaign targets prevailing norms that support victimization and perpetration of violence against women. Because attitudes and behaviors related to IPV begin to manifest early on, CDC will focus its efforts on early adolescents, and on the people who influence them. The goal of CDC's Media Campaign, *Choose Respect,* is to increase the social norm among adolescents that any form of violence between intimate partners, whether physical, verbal or sexual is considered inappropriate and unacceptable.

This project will implement and evaluate a pilot version of the *Choose Respect* Campaign. The pilot campaign will target youth as the primary audience. Parents, teachers, and counselors will be targeted as secondary audiences in three market areas: Washington, DC; Austin, Texas; and Kansas City, Missouri. A baseline and post-campaign survey will be conducted with adolescents, their parents and their teachers or counselors to determine attitudes, beliefs and intended behaviors toward IPV and sexual violence both before and after implementation of the campaign. The baseline information collected prior to the campaign launch will assist CDC in tailoring the communication materials to each of the middle schools and community groups selected from the target markets. The evaluation will then utilize these baseline measures along with the information collected following implementation to assess the campaign's success at decreasing IPV-tolerant attitudes, increasing the identification of appropriate ways to respond in situations that could lead to IPV, and increasing the awareness of resources to help facilitate discussions about appropriate dating behavior.

The pre-post research design of this campaign evaluation will aid CDC in assessing the changes in attitudes, beliefs and behaviors associated with the pilot campaign and will inform revision of the campaign materials for a future launch nationwide. There is no cost to respondents for any of these surveys.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden hours
Teachers Baseline Survey	75	1	1.5	113
Parents Baseline Survey	1000	1	15/60	250
Adolescents Baseline Survey	1000	1	45/60	750
Teachers Post-campaign Survey	75	1	1.5	113
Parents Post-campaign Survey	1000	1	15/60	250
Adolescents Post-campaign Survey	1000	1	45/60	750

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)	Total burden hours
Total				2226

Dated: June 7, 2004.

Bill J. Atkinson,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13264 Filed 6–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Building Healthcare Capacity in the United States and Internationally

Announcement Type: New.

Funding Opportunity Number: PA 04104.

Catalog of Federal Domestic Assistance Number: 93.283.

Dates:

Letter of Intent Deadline: June 29, 2004.

Application Deadline: July 14, 2004.

I. Funding Opportunity Description

Authority: Sections 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. 241(a) and 247b(k)(2)), as amended.

Purpose: The purpose of the program is to assess existing healthcare capacity in the United States and internationally and to build capacity of healthcare settings/professionals to respond to emerging infections and other biological threats. This program addresses the ''Healthy People 2010'' focus area(s) of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Infectious Diseases (NCID): Protect Americans from Infectious Diseases.

Activities: Awardee activities for this program are as follows:

- Develop and implement a plan to rapidly assess healthcare preparedness in a network of healthcare settings.
- Address prevention and control of emerging infections and other biological threats.
- Gather and publish information that may assist local, State and Federal partners to build preparedness and response of healthcare delivery system to emerging threats.
- Develop, implement and evaluate train-the-trainer activities, including educational materials, to train and inform healthcare professionals in the United States and other countries about prevention of emerging infections and other biological threats in healthcare settings.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Collaborate with the recipient to assist in the development and implementation of a plan to rapidly assess healthcare preparedness in a network of healthcare settings.
- Provide content and format expertise in the development of training/educational materials.
- Provide expertise in identifying, selecting, and preparing professionals to deliver train-the-trainer activities.
- Provide information necessary to facilitate rapid assessments of preparedness of healthcare facilities.
- Collaborate with the recipient in all stages of the program, and provide programmatic, scientific and technical assistance.
- Collaborate with the recipient in the dissemination of findings and information stemming from the project.
- Collaborate with the recipient with improving program performance through consultation with recipient.
- Collaborate with the recipient to facilitate communication of data and results among stakeholders.

II. Award Information

Type of Award: Cooperative agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $250,000.

Approximate Number of Awards: One.

Approximate Average Award: $250,000. (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $250,000.

Anticipated Award Date: July 2004.

Budget Period Length: 12 months.

Project Period Length: Two years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal government.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
- Political subdivisions of States (in consultation with States).

A *bona fide* agent is an agency/organization identified by the state as eligible to submit an application under the State eligibility in lieu of a State application. If you are applying as a *bona fide* agent of a State or local government, you must provide a letter from the State or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

This program is not designed or intended to support research, therefore no research will be supported under this cooperative agreement. Any applications proposing research will be considered non-responsive.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity, use application form PHS 5161. Application forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.* If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: Two.
- Font size: 12-point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed project.
- Name, address, e-mail address, and telephone number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Program Announcement (PA).

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 20. (If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.)
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Background and need.
- Capacity.
- Operational Plan.
- Evaluation Plan
- Measures of effectiveness.
- Budget.

The budget justification will be counted in the stated page limit.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitaes.
- Resumes.
- Organizational Charts.
- Letters of Support.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, *see* the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

For more information, *see* the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: June 29, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: July 14, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed Federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding restrictions

Awards will not allow reimbursement of pre-award costs.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement.

If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Machel Forney, Division of Healthcare Quality Promotion, National Center for Infectious Diseases, Centers for Disease Control and Prevention, Building 57, Executive Park Drive South, Room 5015, Atlanta, GA 30329. Phone: (404) 498–1174, e-mail: *MForney@cdc.gov.*

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-PA# 04104, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

A. Background/Need (40 points)

Does the applicant demonstrate a strong understanding of the need to build capacity to respond to threats of events in healthcare settings? Does the applicant illustrate the need for this project? Does the applicant present a clear goal for this project?

B. Capacity (20 points)

Does the applicant demonstrate that it has the expertise, facilities, and other resources necessary to accomplish the program requirements?

C. Operational Plan (20 points)

Does the applicant present clear, time-phased objectives that are consistent with the stated program goal and a detailed operational plan outlining specific activities that are likely to achieve the objective? Does the plan clearly outline the responsibilities of each of the key personnel?

D. Evaluation Plan (10 points)

Does the applicant present a plan for monitoring progress toward the stated goals and objectives?

E. Measures of Effectiveness (10 points)

Does the applicant provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement? Are the measures objective/quantitative and do they adequately measure the intended outcome?

F. Budget (not scored)

Does the applicant present a detailed budget with a line-item justification and any other information to demonstrate that the request for assistance is consistent with the purpose and objectives of this grant program?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCID. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above.

In addition, the following factors may affect the funding decision:

Though eligible participants are encouraged to submit an application, a funding preference will be given to potential applicants that:

- Represent a national organization or consortium with international members and/or partners.
- Have access to infection control professionals in a percentage of U.S. hospitals large enough to be national in scope, with representation of large and small hospitals in urban and rural areas.
- Have expertise in infection control and training.
- Have Information Technology (IT) resources for rapid assessment of preparedness and response of healthcare delivery system to emerging infections and other biological threats.

V.3. Anticipated Announcement and Award Dates

Anticipated award is July 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR part 74 and part 92.

For more information on the Code of Federal Regulations, *see* the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–7 Executive Order 12372.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–15 Proof of Non-Profit Status.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC Web site) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the

end of the project period. These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2700.

For program technical assistance, contact: Denise Cardo, M.D., Project Officer, Division of Healthcare Quality Promotion, National Center for Infectious Diseases, Centers for Disease Control and Prevention, Building 57, Executive Park Drive South, Room 5015, Atlanta, GA 30329. Phone: (404) 498–1240, e-mail: *dbc0@cdc.gov.*

For financial, grants management, or budget assistance, contact: Jeff Napier, Grants Management Officer, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: (770) 488–2861, e-mail: *jkn7@cdc.gov.*

Dated: June 7, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13266 Filed 6–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Information Education and Communication for Basic HIV Care Packages in the Republic of Uganda; Notice of Availability of Funds

Announcement Type: New.
Funding Opportunity Number: 04226.
Catalog of Federal Domestic Assistance Number: 93.941.
Key Dates:
Application Deadline: July 14, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301 and 307 of the Public Health Service Act, 42 U.S.C. 241 and 242l, and Section 104 of the Foreign Assistance Act of 1961, 22 U.S.C. 215lb.

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for Information Education and Communication (IEC) for Basic HIV Care Packages in the Republic of Uganda. This program addresses the ''Healthy People 2010'' focus area of HIV.

The overall aim of this program is to promote two basic care packages for persons living with HIV/AIDS (PLWHAs). It is currently proposed that the basic preventive care package includes cotrimoxazole prophylaxis, active tuberculosis (TB) screening and treatment or Isoniazid (INH) prophylaxis, a safe water vessel with chlorine solution, an insecticide-treated bed-net (ITN), and prevention with positives counseling (PWPC). In addition to the above, the palliative care package would include pain management and psychosocial support. The process of agreeing to standardized packages with care provider organizations and the Ministry of Health (MOH) is well advanced. Additional work needs to be done on developing sustainable delivery systems for some components of the packages. Once standardization and delivery systems are agreed upon, these interventions could be rapidly expanded throughout the country through the many organizations providing care for HIV infected persons as well as through more general social marketing. The packages could also be promoted through HIV counseling and testing programs. The IEC program should promote the acceptance and use of the packages and undertake social marketing of specific package components as deemed necessary. The provision of antiretroviral (ARV) therapy is not part of this program.

The United States Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia and the Americas. The President's Emergency Plan for AIDS Relief (PEPFAR) encompasses HIV/AIDS activities in more than 75 countries and focuses on 14 countries, including Uganda, to develop comprehensive and integrated prevention, care and treatment programs. CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of: (1) HIV primary prevention; (2) HIV care, support and treatment; and (3) capacity and infrastructure development including surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential impact is greatest and where the United States government agencies are already active. Uganda is one of those countries.

CDC's mission in Uganda is to work with Ugandan and international partners to develop, evaluate, and support effective implementation of interventions to prevent HIV and related illnesses and improve care and support of persons with HIV/AIDS.

Basic care for people with HIV in Uganda is provided by a wide variety of governmental, non-governmental, community-based and faith-based organizations across the country as well as by people with HIV and their families. At present, there is little consistency on the content or quality of care provided. All people with HIV, whether receiving ARVs or not, would benefit from receiving a quality basic care package. Field research has shown that key low-cost elements of the basic preventive care package such as cotrimoxazole prophylaxis and provision of safe water prolong survival and increase the quality of life of persons with HIV. Palliative care, including pain management and psychosocial support for people with HIV nearing the end of their lives, has been pioneered in Africa by Ugandan organizations such as The AIDS Support Organization (TASO), Hospice Uganda and Mildmay. However, even when standardization of the basic HIV care packages has been agreed upon, there will still be a major effort required to ensure that all stakeholders are aware of the importance and rationale for the packages.

The purpose of this program is to ensure that all key stakeholders in basic care for people with HIV including care providing organizations, counselors, people with HIV and their families, and those offering HIV testing services and treatment know all the components of the basic care packages, their utility, and can access and use those elements as necessary. The program should develop a variety of targeted IEC strategies to meet its objectives. In addition, social marketing of elements of the basic care packages should be conducted, with the aim of providing access for people with HIV at the same time as avoiding stigmatization of the product. It is expected that a five-year program be developed. The program will adapt its strategies based on feedback from users and market research to improve uptake and access, ensuring that gaps in knowledge and access are progressively addressed. This program does not include any responsibility for direct financial support of care provision.

The measurable outcomes of the program will be in alignment with the GAP goals to reduce HIV transmission and improve care of persons living with HIV. They also will contribute to the PEPFAR goals, which are: (1) Within five years treat more than two million

HIV-infected persons with effective combination ARV therapy; (2) care for seven million HIV-infected and affected persons including those orphaned by HIV/AIDS; and (3) prevent 10 million new infections.

Activities

1. Awardee Activities

Awardee activities for this program are as follows:

a. Identify project staffing needs; hire and train staff.

b. Identify vehicles, furnishings, fittings, equipment, computers and other fixed assets procurement needs of the program and acquire from normal sources.

c. Establish suitable administrative and financial management structures including a project office.

d. Work with the MOH and other stakeholders to standardize the basic care packages and support the MOH to incorporate standard definitions of packages in its policy.

e. Plan, develop and implement in coordination with the MOH stakeholders an information, education and communication program to promote acceptance and adoption of the basic care packages and their elements.

f. Support, through social marketing and other activities, the development of sustainable systems for production, procurement, delivery and access for each of the elements of the basic care packages.

g. Support the collection and analysis of data to enable assessment of the coverage by the basic care packages and to highlight gaps in, knowledge, access, uptake or appropriate use.

h. Ensure that data on information, education and communication activities and social marketing activities and relevant PEPFAR indicators is collected in an accurate and timely manner.

i. Ensure that the above activities are undertaken in a manner consistent with the national HIV/AIDS strategy.

2. CDC Activities

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

a. Provide technical assistance, as needed, in the development of information, education and communication materials and social marketing messages.

b. Collaborate with the awardee, as needed, in the development of an information technology system for knowledge, attitudes and practice of key stakeholder groups and in the analysis of data derived from those records.

c. Assist, as needed, in monitoring and evaluation of the program and in development of further appropriate initiatives.

d. Provide input, as needed, into the criteria for selection of staff and non-staff implementing the program.

e. Provide input into the overall program strategy.

f. Collaborate, as needed, with the awardee in the selection of key personnel to be involved in the activities to be performed under this agreement including approval of the overall manager of the program.

Technical assistance and training may be provided directly by CDC staff or through organizations that have successfully competed for funding under a separate CDC contract.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $3,500,000 (This amount is for the entire five-year project period.).

Approximate Number of Awards: 1.

Approximate Average Award: $700,000 (This amount is for the first 12-month budget period, and includes only direct costs).

Floor of Award Range: none.

Ceiling of Award Range: $700,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: 5 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the awardee (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III. 1. Eligible Applicants

Applications may be submitted by public nonprofit organizations, private nonprofit organizations, universities, colleges, research institutions, hospitals, and faith-based organizations that meet the following criteria:

1. Have at least three years of documented HIV/AIDS related programming experience in Uganda.

2. Have demonstrated expertise in the areas of public health communications and social marketing.

3. Have extensive knowledge of supply/marketing systems design and implementation.

4. Have experience in marketing components of the basic care package including the safe water vessel and chlorine.

5. Organizations must be based in Uganda.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Note: Title 2 of the United States Code 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

Content and Form of Submission

Application: You must submit a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

• Must be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and should consist of, as a minimum, a plan, objectives, activities, methods, an evaluation framework, a budget and budget justification highlighting any supplies mentioned in the Program Requirements and any proposed capital expenditure.

The budget justification will not be counted in the page limit stated above. Guidance for completing your budget can be found on the United States government website at the following address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Additional information is optional and may be included in the application appendices. The appendices will not be counted toward the narrative page limit. Additional information could include but is not limited to: Organizational charts, curriculum vitas, letters of support, *etc.*

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Time

Application Deadline Date: July 14, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Funds may be used for:

1. Information, education and communication within Uganda promoting the basic care packages as a whole or in part, including social marketing activities.

2. Evaluation and management of the activities.

Restrictions, which must be taken into account while writing your budget, are as follows:

• *Antiretroviral Drugs*—The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from the HHS/CDC officials.

• *Needle Exchange*—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

• Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed, however; prior written approval by CDC officials must be requested in writing.

• All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

• The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organization regardless of their location.

• The applicant may contract with other organizations under this program, however, the applicant must perform a substantial portion of the activities, including program management and operations, and delivery of prevention and care services for which funds are requested.

• An annual audit of these funds by a U.S. based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC is required. The audit should specify the use of funds and the appropriateness and reasonableness of expenditures.

• A fiscal Recipient Capability Assessment may be required with the potential awardee, pre or post award, in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

• Prostitution and Related Activities. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment

program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any foreign recipient must have a policy explicitly opposing, in its activities outside the United States, prostitution and sex trafficking, except that this requirement shall not apply to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency, if such entity is a recipient of U.S. government funds in connection with this document.

The following definitions apply for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).
- A foreign recipient includes an entity that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico. *Restoration of the Mexico City Policy,* 66 FR 17303, 17303 (March 28, 2001).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, acknowledge that each certification to compliance with this section, ''Prostitution and Related Activities,'' are a prerequisite to receipt of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. In addition, all recipients must ensure, through contract, certification, audit, and/or any other necessary means, all the applicable requirements in this section, ''Prostitution and Related Activities,'' are met by any other entities receiving U.S. government funds from the recipient in connection with this document, including without limitation, the recipients' sub-grantees, sub-contractors, parents, subsidiaries, and affiliates. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All primary grantees receiving U.S. Government funds in connection with this document must certify compliance prior to actual receipt of such funds in a written statement referencing this document (*e.g.*, ''[Recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, ''Prostitution and Related Activities.''

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-PA 04226, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation. Your application will be evaluated against the following criteria:

1. Ability to carry out the proposal (25 points). Does the applicant demonstrate the capability to achieve the purpose of this proposal?

2. Understanding the issues, principles and systems requirements involved in promoting knowledge of and access to the basic care packages for PHAs in the context of Uganda. (25 points). Does the applicant demonstrate an understanding of the technical, social, managerial and other practical issues involved in delivering an effective information, education and communication program promoting the basic care package for PHAs throughout Uganda?

3. Work Plan (20 points). Does the applicant describe activities which are realistic, achievable, time-framed and appropriate to complete this program?

4. Personnel (20 points). Are the personnel, including qualifications, training, availability, and experience adequate to carry out the proposed activities?

5. Administrative and Accounting Plan (10 points). Is there a plan to prepare reports, monitoring and audit expenditures under this agreement, manage the resources of the program and produce, collect and analyze performance data?

6. Budget (not scored). Is the budget for conducting the activity itemized, well-justified, and consistent with stated activities and planned program activities?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCHSTP/GAP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in section ''V.1. Criteria'' above.

V.3. Anticipated Announcement and Award Dates

Award Date: September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the awardee and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the awardee fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–10 Smoke-Free Workplace Requirements.

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

Information Security Plan

The contractor shall prepare and maintain an information security plan which promotes information protection and systems security appropriate to the environment in which it will be executed. This plan should address confidentiality and privacy, integrity and backup of data and systems, access, continuity of operations, and all other relevant considerations. The contractor is responsible for ensuring that the project complies with relevant federal and other jurisdictional regulations. Before developing the security plan, the contractor should review the considerations included in Office of Management and Budget Circular A–130, Appendix III. (*http://www.whitehouse.gov/omb/circulars/a130/a130appendixiii.html*), and FISMA (*http://csrc.nist.gov/policies/FISMA-final.pdf*), as well as other federal regulations, guidance, and information security standards.

The initial draft and all subsequent versions of the information security plan must be prepared and submitted by the contractor to the CDC contracting officer and to the CDC project officer, in Microsoft Word compatible format. The contractor shall be responsible for ensuring that the security plan is acceptable to the CDC project officer, as well as any subsequent federal reviewers (*e.g.*, Center and/or CDC information security officers, HHS officials, OMB officials, *etc.*). Comments shall be conveyed to the contractor by the project officer and/or the contracting officer.

The project officer and the contracting officer will review the draft security plan and any subsequent versions and submit recommendations/comments to the contractor within 14 working days after receipt. The contractor shall incorporate the project officer's recommendations and submit paper and electronic copies of the security plan to the contracting officer and to the project officer within five working days after receipt of the project officer's comments.

In addition to developing and maintaining a security plan as described above, the contractor shall be responsible for continuously assessing and assuring information security for the project, and for updating the security plan as needed throughout the duration of the contract.

Information Security Training

The contractor shall be responsible for ensuring that all contractor employees receive employment screening and information security training appropriate to their responsibilities, prior to the start of their work on the contract. This would be provided at the contractor's expense and would be the contractor's responsibility to plan and arrange.

CDC is not required to grant the contractor access to CDC information technology resources (*e.g.*, computers, network, email, *etc.*). If CDC were to agree to grant the contractor, or any of its employees, access to CDC information technology resources at any point in time, it would be the contractor's responsibility to ensure that all of its employees to be granted such access complete any additional required information security courses that CDC specifies prior to gaining or utilizing such access. It would also be the contractor's responsibility to ensure that such employees have met any other CDC and federal requirements, such as, for example, completion of background checks, before gaining or utilizing access to CDC information technology resources.

Non-Disclosure

The contractor and any subcontractors or employees are forbidden from sharing any technical or logistical information they may gain in conjunction with matters related to this contract which could jeopardize the physical or information security of CDC or its employees, projects, or information systems.

Certification and Accreditation

The federal government and CDC now require (with rare interim exceptions) that a certification and accreditation (C and A) process be completed before any new information technology systems can go online.

VI.3. Reporting Requirements

Provide CDC with an original plus two hardcopies of:

1. Semiannual progress reports, no more than 30 days after the end of the reporting period.

2. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

f. Measures of Effectiveness.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For program technical assistance, contact: Jonathan Mermin, MD, MPH, Global Aids Program [GAP], Uganda Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], PO Box 49, Entebbe, Uganda. Telephone: +256–41320776, E-mail: *jhm@cdc.gov.*

For business management and budget assistance, contact: Shirley Wynn, Contract Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–1515, E-mail address: *zbx6@cdc.gov.*

Dated: June 4, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13193 Filed 6–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings 2004

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice is a request for review of and comment on the *Draft Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings 2004,* available on the CDC Web site at *www.cdc.gov/ncidod/hip/isoguide.htm.* This document is for use by infection control staff, healthcare epidemiologists, healthcare administrators, and other persons responsible for developing, implementing, and evaluating infection control programs for healthcare settings across the continuum of care. The guideline updates and expands the 1996 *Guideline for Isolation Precautions in Hospitals.*

DATES: Comments on the *Draft Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings 2004* must be received in writing on or before August 13, 2004.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the *Draft Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings 2004* should be submitted to the Resource Center, Attention: ISOGuide, Division of Healthcare Quality Promotion, CDC, Mailstop E–68, 1600 Clifton Rd., NE., Atlanta, Georgia 30333; fax 404 498–1244; e-mail: *isorequests@cdc.gov;* or Internet: *www.cdc.gov/ncidod/hip/isoguide.htm.*

ADDRESSES: Comments on the *Draft Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings 2004* should be submitted to the Resource Center, Attention: ISOGuide, Division of Healthcare Quality Promotion, CDC, Mailstop E–68, 1600 Clifton Road, NE., Atlanta, Georgia 30333; fax 404 498–1244; e-mail: *isocomments@cdc.gov;* or Internet: *www.cdc.gov/ncidod/hip/isoguide.htm.*

SUPPLEMENTARY INFORMATION: The *Draft Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings 2004* addresses new concerns about transmission of infection to patients and healthcare workers in hospitals and in long-term care, outpatient, home care, and other healthcare settings in the United States. The primary objective of the 5-part guideline is to improve the safety of the nation's healthcare delivery system. Part I reviews the scientific data regarding the transmission of infectious agents in healthcare settings and discusses emerging pathogens of special concern, including multidrug-resistant organisms and agents of bioterrorism. Part II discusses the fundamental infection control elements needed to prevent transmission of these agents. Part III reviews the two tiers of transmission precautions (*i.e.,* Standard Precautions and Expanded Precautions) developed by the Healthcare Infection Control Practices Advisory Committee (HICPAC). New issues addressed in the guideline include Respiratory Hygiene/Cough Etiquette, which is intended to prevent transmission of respiratory pathogens at the first point of contact within a healthcare setting; Protective Environment, which is designed to protect allogeneic hematopoietic stem cell transplant patients; and strategies for control of multidrug-resistant organisms. Part IV contains the consensus recommendations of HICPAC for preventing the transmission of infectious agents in healthcare settings. Part V provides suggested performance measures to assist healthcare facility staff in monitoring success in implementation of key recommendations in the guideline.

HICPAC was established in 1991 to provide advice and guidance to the Secretary and the Assistant Secretary for Health, DHHS; the Director, CDC; and the Director, National Center for Infectious Diseases, regarding the practice of infection control and strategies for surveillance, prevention, and control of healthcare-associated infections in U.S. healthcare facilities. The committee advises CDC on guidelines and other policy statements regarding prevention of healthcare-associated infections and related adverse events.

Dated: June 3, 2004.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 04–13265 Filed 6–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0017]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Adverse Event Pilot Program for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 14, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Adverse Event Pilot Program for Medical Devices—(OMB Control Number 0910–0471—Extension)

FDA is requesting approval from OMB for clearance to continue to conduct a pilot project to evaluate aspects of a national reporting system mandated by the Food and Drug Modernization Act (FDAMA) of 1997. Under section 519(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(b)), FDA is authorized to require manufacturers to report medical device related deaths, serious injuries, and malfunctions; user facilities (hospitals, nursing homes, ambulatory surgical facilities and outpatient diagnostic and treatment facilities) to report device-related deaths directly to FDA and to manufacturers, and to report serious injuries to the

manufacturer. Section 213 of FDAMA amended section 519(b) of the act. This amendment legislated the replacement of a universal user facility reporting by a system that is limited to a ''* * * subset of user facilities that constitutes a representative profile of user reports'' for device related deaths and serious injuries. This amendment is reflected in section 519(b)(5)(A) of the act.

FDA is the regulatory agency responsible for the safety and effectiveness of medical products including medical devices and radiological products. Important questions about medical devices, such as those concerning user experience, durability, and rare effects may not be answered until after the device has been marketed. To protect the public health, FDA must be able to rapidly collect information pertaining to adverse events associated with medical devices after they have been marketed. This system is called the Medical Product Surveillance Network (MedSun). The current universal reporting system remains in place during the pilot stages of the new program, and until FDA implements the new national system by regulation. This legislation provides FDA with the opportunity to design and implement a national surveillance network, composed of well-trained clinical facilities, to provide high quality data on medical devices in clinical use.

Before writing a regulation to implement the large-scale national MedSun reporting system, FDA has been conducting a pilot project to ensure all aspects of the new system address the needs of both the reporting facilities and FDA. This pilot project began with a small sample (approximately 25) and was planned to increase to a larger sample of approximately 250 facilities over a period of approximately 3 years. Data collection began in February 2002 and has been increasing since that time. FDA has achieved its recruitment goals each year, reaching 180 sites at the end of fiscal year (FY) 2003. FDA will reach a total of 240 for FY 2004 and will reach the final goal of 250 by FY 2005. The program has proven to be very popular with sites as FDA has gained a national reputation, with hospitals waiting in line to join.

However, FDA's current resources will not permit FDA to expand beyond 250 sites at this time.

The pilot originally had the following three parts to the data collection: (1) Collecting demographic profile information about the participation facilities, (2) implementing an electronic version of the portions of the MedWatch form (FDA Form No. 3500A, OMB control number 0910–0291) used to report adverse events occurring with medical devices, and (3) adding additional voluntary questions to the data collection. To date, these three features remain unchanged. However, there has been an addition to the data collection that was approved by OMB in the spring of 2004. Therefore, the fourth part of the collection system is the Medical Device Engineering Network (M–DEN)—a place on the MedSun software for the reporters to share information with each other.

In the **Federal Register** of January 27, 2004 (69 FR 3922), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Data Type	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
MedSun[2]	250	8	2,000	.75	1,500
M–DEN[3]	83	10	830	.50	415
Total					1,915

[1] There are no capital costs or operating and maintenance costs associated with this collection.
[2] MedSun means Medical Product Surveillance Network.
[3] M–DEN means Medical Device Engineering Network.

Currently, FDA has 180 sites participating in MedSun pilot program, but expects to have 250 sites over the next 2 years. The frequency of response reflects what FDA has actually been receiving as the average number of submissions in the MedSun Program. While six is the actual average for submissions, FDA hopes to increase this number to eight once their educational materials reach potential respondents. The time estimated to respond is based on feedback FDA has received from current MedSun reporters.

At this time, FDA estimates that one-third of the total number of respondents will access M–DEN aspect of the MedSun software, or approximately 83 persons per year. Each respondent is expected to post 5 problems and respond to 5 problems posted by other MedSun participants for a total of 10 responses per year. It is expected that each visit to the bulletin will not take longer than 30 minutes.

Dated: June 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–13211 Filed 6–10–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0034]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices; Current Good Manufacturing Practice Quality System Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget

(OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 14, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Current Good Manufacturing Practice (CGMP) Quality System (QS) Regulations—21 CFR Part 820 (OMB Control Number 0910–0073)—Extension

Under section 520(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(f)), the Secretary of the Department of Health and Human Services (the Secretary) has the authority to prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, pre-production design validation (including a process to assess the performance of a device but not including an evaluation of the safety and effectiveness of a device), packing, storage, and installation of a device conform to CGMP, as described in such regulations, to assure that the device will be safe and effective and otherwise in compliance with the act.

The CGMP/QS regulation implementing the authority provided by this statutory provision is found at part 820 (21 CFR part 820) and sets forth basic CGMP requirements governing the design, manufacture, packing, labeling, storage, installation, and servicing of all finished medical devices intended for human use. The authority for this regulation is covered under the act (21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, and 383). The CGMP/QS regulation includes requirements for purchasing and service controls, clarifies recordkeeping requirements for device failure and complaint investigations, clarifies requirements for verifying/validating production processes and process or product changes, and clarifies requirements for product acceptance activities quality data evaluations and corrections of nonconforming product/quality problems. Requirements are compatible with specifications in international quality standards, ISO (International Organization for Standardization) 9001 entitled ''Quality Systems Model for Quality Assurance in Design/Development, Production, Installation, and Servicing.'' CGMP/QS information collections will assist FDA inspections of manufacturer compliance with quality system requirements encompassing design, production, installation, and servicing processes.

Section 820.20(a) through (e) requires management with executive responsibility to establish, maintain, and/or review these topics: The quality policy, the organizational structure, the quality plan, and the quality system procedures of the organization. Section 820.22 requires the conduct and documentation of quality system audits and reaudits. Section 820.25(b) requires the establishment of procedures to identify training needs and documentation of such training.

Section 820.30(a)(1) and (b) through (j) requires, in the following respective order, the establishment, maintenance, and/or documentation of these topics: (1) Procedures to control design of class III and class II devices, and certain class I devices as listed therein; (2) plans for design and development activities and updates; (3) procedures identifying, documenting, and approving design input requirements; (4) procedures defining design output, including acceptance criteria, and documentation of approved records; (5) procedures for formal review of design results and documentation of results in the design history file (DHF); (6) procedures for verifying device design and documentation of results and approvals in the DHF; (7) procedures for validating device design, including documentation of results in the DHF; (8) procedures for translating device design into production specifications; (9) procedures for documenting, verifying validating approved design changes before implementation of changes; and (10) the records and references constituting the DHF for each type of device.

Section 820.40 requires manufacturers to establish and maintain procedures controlling approval and distribution of required documents and document changes.

Section 820.40(a) and (b) requires the establishment and maintenance of procedures for the review, approval, issuance and documentation of required records (documents) and changes to those records.

Section 820.50(a)(1), (a)(2), (a)(3), and (b) requires the establishment and maintenance of procedures and requirements to ensure service and product quality, records of acceptable suppliers, and purchasing data describing specified requirements for products and services.

Sections 820.60 and 820.65 require, respectively, the establishment and maintenance of procedures for identifying all products from receipt to distribution and for using control numbers to track surgical implants and life-sustaining or supporting devices and their components.

Section 820.70(a)(1) through (a)(5), (b) through (e), (g)(1) through (g)(3), and (h) and (i) requires the establishment, maintenance, and/or documentation of these topics: (1) Process control procedures; (2) procedures for verifying or validating changes to specification, method, process, or procedure; (3) procedures to control environmental conditions and inspection result records; (4) requirements for personnel hygiene; (5) procedures for preventing contamination of equipment and products; (6) equipment adjustment, cleaning and maintenance schedules; (7) equipment inspection records; (8) equipment tolerance postings; procedures for utilizing manufacturing materials expected to have an adverse effect on product quality; and (9) validation protocols and validation records for computer software and software changes.

Sections 820.72(a) and (b)(1) and (b)(2) and 820.75(a) through (c) require, respectively, the establishment, maintenance, and/or documentation of these topics: (1) Equipment calibration and inspection procedures; (2) national, international or in-house calibration standards; (3) records that identify calibrated equipment and next calibration dates; (4) validation procedures and validation results for processes not verifiable by inspections and tests; (5) procedures for keeping validated processes within specified limits; (6) records for monitoring and controlling validated processes; and (7) records of the results of revalidation where necessitated by process changes or deviations.

Sections 820.80(a) through (e) and 820.86, respectively, require the establishment, maintenance, and/or documentation of these topics: (1) Procedures for incoming acceptance by inspection, test or other verification; (2) procedures for ensuring that in-process

products meet specified requirements and the control of product until inspection and tests are completed; (3) procedures for, and records that show, incoming acceptance or rejection is conducted by inspections, tests or other verifications; (4) procedures for, and records that show, finished devices meet acceptance criteria and are not distributed until device master record (DMR) activities are completed; (5) records in the device history record (DHR) showing acceptance dates, results and equipment used; and (6) the acceptance/rejection identification of products from receipt to installation and servicing.

Sections 820.90(a), (b)(1), (b)(2), and 820.100 require, respectively, the establishment, maintenance and/or documentation of these topics: (1) Procedures for identifying, recording, evaluating and disposing of nonconforming product; (2) procedures for reviewing and recording concessions made for, and disposition of, nonconforming product; (3) procedures for reworking products, evaluating possible adverse rework effect and recording results in the DHR; (4) procedures and requirements for corrective and preventive actions, including analysis, investigation, identification and review of data, records, causes and results; and (5) records for all corrective and preventive action activities.

Section 820.100(a)(1) through (a)(7) states that procedures and requirements shall be established and maintained for corrective/preventive actions, including the following: (1) Analysis of data from process, work, quality, servicing records; investigation of nonconformance causes; (2) identification of corrections and their effectiveness; (3) recording of changes made; and, (4) appropriate distribution and managerial review of corrective and preventive action information.

Section 820.120 states that manufacturers shall establish/maintain procedures to control labeling storage/application; and examination/release for storage and use, and document those procedures.

Sections 820.120(b) and (d), 820.130, 820.140, 820.150(a) and (b), 820.160(a) and (b), and 820.170(a) and (b), respectively, require the establishment, maintenance, and/or documentation of these topics: (1) Procedures for controlling and recording the storage, examination, release and use of labeling; (2) the filing of labels/labeling used in the DHR; (3) procedures for controlling product storage areas and receipt/dispatch authorizations; (4) procedures controlling the release of products for distribution; (5) distribution records that identify consignee, product, date and control numbers; and (6) instructions, inspection and test procedures that are made available, and the recording of results for devices requiring installation.

Sections 820.180(b) and (c), 820.181(a) through (e), 820.184(a) through (f), and 820.186 require, respectively, the maintenance of records: (1) That are retained at prescribed site(s), made readily available and accessible to FDA and retained for the device's life expectancy or for 2 years; (2) that are contained or referenced in a DMR consisting of device, process, quality assurance, packaging and labeling, and installation, maintenance, and servicing specifications and procedures; (3) that are contained in DHRs, demonstrate the manufacture of each unit, lot or batch of product in conformance with DMR and regulatory requirements, and include manufacturing and distribution dates and quantities, acceptance documents, labels and labeling, and control numbers; and (4) that are contained in a quality system record (QSR) consisting of references, documents, procedures and activities not specific to particular devices.

Sections 820.198(a) through (c) and 820.200(a) and (d), respectively, require the establishment, maintenance and/or documentation of these topics: (1) Complaint files and procedures for receiving, reviewing and evaluating complaints; (2) complaint investigation records identifying the device, complainant and relationship of the device to the incident; (3) complaint records that are reasonably accessible to the manufacturing site or at prescribed sites; (4) procedures for performing and verifying that device servicing requirements are met and that service reports involving complaints are processed as complaints; and (5) service reports that record the device, service activity, and test and inspection data.

Section 820.250 requires the establishment and maintenance of procedures to identify valid statistical techniques necessary to verify process and product acceptability; and sampling plans, when used, that are written and based on a valid statistical rationale, and procedures for ensuring adequate sampling methods.

The CGMP/QS regulation amends and revises the CGMP requirements for medical devices set out at part 820. It adds design and purchasing controls; modifies previous critical device requirements; revises previous validation and other requirements; and harmonizes device CGMP requirements with quality system specifications in the international standard, ISO 9001:1994 entitled ''Quality Systems—Model for Quality Assurance in Design, Development Production, Installation and Servicing.'' The regulation applies neither to manufacturers of components or parts of finished devices, nor to manufacturers of human blood and blood components subject to 21 CFR part 606. With respect to devices classified in class I, design control requirements apply only to class I devices listed in § 820.30(a)(2).

The regulation imposes burdens upon finished device manufacturer firms, which are subject to all recordkeeping requirements, and also upon finished device contract manufacturer, specification developer, repacker and relabeler, and contract sterilizer firms, which are subject only to requirements applicable to their activities. Due to modifications to the guidance given for remanufacturers of hospital single-use devices, reusers of hospital single-use devices will now be considered to have the same requirements as manufacturers in regard to this regulation. The establishment, maintenance and/or documentation of procedures, records and data required by this regulation will assist FDA in determining whether firms are in compliance with CGMP requirements, which are intended to ensure that devices meet their design, production, labeling, installation, and servicing specifications and, thus are safe, effective and suitable for their intended purpose. In particular, compliance with CGMP design control requirements should decrease the number of design-related device failures that have resulted in deaths and serious injuries.

If FDA did not impose these recordkeeping requirements, it anticipates that design-related device failures would continue to occur in the same numbers as before and continue to result in a significant number of device recalls and preventable deaths and serious injuries. Moreover, manufacturers would be unable to take advantage of substantial savings attributable to reduced recall costs, improved manufacturing efficiency, and improved access to international markets through compliance with CGMP requirements that are harmonized with international quality system standards.

The CGMP/QS regulation applies to some 8,254 respondents. These recordkeepers consist of 8,188 original respondents and an estimated 66 hospitals which remanufacture or reuse single use medical devices. They include manufacturers, subject to all requirements and contract

manufacturers, specification developers, repackers/relabelers and contract sterilizers, subject only to requirements applicable to their activities. Hospital remanufacturers of single use medical devices (SUDs) are now defined to be manufacturers under guidelines issued by FDA's Center for Devices and Radiological Health's (CDRH) Office of Surveillance and Biometrics. Respondents to this collection have no reporting activities, but must make required records available for review or copying during FDA inspection. The regulation contains additional recordkeeping requirements in such areas as design control, purchasing, installation, and information relating to the remanufacture of single use medical devices. The estimates for burden are derived from those incremental tasks that were determined when the new CGMP/QS regulation became final as well as those carry-over requirements. The carry-over requirements are based on decisions made by the agency on July 16, 1992, under OMB control number 0910–0073. This still provides valid baseline data.

FDA estimates respondents will have a total annual recordkeeping burden of approximately 2,833,020 hours. This figure also consists of approximately 143,052 hours spent on a startup basis by 650 new firms. FDA estimates information collection burdens imposed as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

CFR Section	Number of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Hours	Hours per Recordkeeper	Total Hours	Total Operating and Maintenance Cost
820.20(a)	8,254	1	8,254	6.58	54,311	---------
820.20(b)	8,254	1	8,254	4.43	36,565	---------
820.20(c)	8,254	1	8,254	6.17	50,927	---------
820.20(d)	8,254	1	8,254	9.89	81,632	---------
820.20(e)	8,254	1	8,254	9.89	81,632	---------
820.22	8,254	1	8,254	32.72	270,071	---------
820.25(b)	8,254	1	8,254	12.68	104,661	---------
820.30(a)(1)	8,254	1	8,254	1.75	14,445	---------
820.30(b)	8,254	1	8,254	5.95	49,111	---------
820.30(c)	8,254	1	8,254	1.75	14,445	---------
820.30(d)	8,254	1	8,254	1.75	14,445	---------
820.30(e)	8,254	1	8,254	23.39	193,061	---------
820.30(f)	8,254	1	8,254	37.42	308,865	---------
820.30(g)	8,254	1	8,254	37.42	308,865	---------
820.30(h)	8,254	1	8,254	3.34	27,568	---------
820.30(i)	8,254	1	8,254	17.26	142,464	---------
820.30(j)	8,254	1	8,254	2.64	21,791	---------
820.4	8,254	1	8,254	8.91	73,543	---------
820.40(a)-(b)	8,254	1	8,254	2.04	16,838	---------
820.50(a)(1)-(a)(3)	8,254	1	8,254	21.9	180,763	$1,181,925
820.50(b)	8,254	1	8,254	6.02	49,689	---------
820.60	8,254	1	8,254	0.32	2,641	---------
820.65	8,254	1	8,254	0.67	5,530	---------
820.70(a)(1)-(a)(5)	8,254	1	8,254	1.85	15,270	---------
820.70(b)-(c)	8,254	1	8,254	1.85	15,270	---------
820.70(d)	8,254	1	8,254	2.87	23,689	---------
820.70(e)	8,254	1	8,254	1.85	15,270	---------

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

CFR Section	Number of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Hours	Hours per Recordkeeper	Total Hours	Total Operating and Maintenance Cost
820.70(g)(1)-(g)(3)	8,254	1	8,254	1.43	11,803	---------
820.70(h)	8,254	1	8,254	1.85	15,270	---------
820.72(a)	8,254	1	8,254	4.92	40,610	---------
820.70(i)	8,254	1	8,254	7.5	61,905	---------
820.72(b)(1) to (b)(2)	8,254	1	8,254	1.43	11,803	---------
820.75(a)	8,254	1	8,254	2.69	22,203	---------
820.75(b)	8,254	1	8,254	1.02	8,419	---------
820.75(c)	8,254	1	8,254	1.11	9,162	---------
820.80(a)-(e)	8,254	1	8,254	4.8	39,619	---------
820.86	8,254	1	8,254	0.79	6,521	---------
820.90(a)	8,254	1	8,254	4.95	40,857	---------
820.90(b)(1)-(b)(2)	8,254	1	8,254	4.95	40,857	---------
820.100(a)(1)-(a)(7)	8,254	1	8,254	12.48	103,010	---------
820.100(b)	8,254	1	8,254	1.28	10,565	---------
820.120	8,254	1	8,254	0.45	3,714	---------
820.120(b)	8,254	1	8,254	0.45	3,714	---------
820.120(d)	8,254	1	8,254	0.45	3,714	---------
820.130	8,254	1	8,254	0.45	3,714	---------
820.140	8,254	1	8,254	6.34	52,330	---------
820.150(a)-(b)	8,254	1	8,254	5.67	46,800	---------
820.160(a)-(b)	8,254	1	8,254	0.67	5,530	---------
820.170(a)-(b)	8,254	1	8,254	1.5	12,381	---------
820.180(b)-(c)	8,254	1	8,254	1.5	12,381	---------
820.181((a)-(e)	8,254	1	8,254	1.21	9,987	---------
820.184(a)-(f)	8,254	1	8,254	1.41	11,638	---------
820.186	8,254	1	8,254	0.4	3,302	---------
820.198(a)-(c)	8,254	1	8,254	4.94	40,775	---------
820.200(a) and (d)	8,254	1	8,254	2.61	21,543	---------
820.250	8,254	1	8,254	0.67	5,530	---------
Totals					2,283,020	$1,181,925

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Burden (labor) hour and cost estimates were originally developed under FDA contract by Eastern Research Group, Inc. (ERG), in 1996 when the CGMP/QS regulation became final. These figures are still accurate.

Additional factors considered in deriving estimates included:

• Establishment type: Query has been made of CDRH's registration/listing databank and has counted 8,188 domestic firms subject to CGMPs. In addition, hospitals which reuse or remanufacture devices are now considered manufacturers under new FDA guidance. During the last report, it was estimated that out of the 6,000 hospitals in the United States, one third of them (or 2,000 hospitals) will reuse or remanufacture single use medical devices. After investigations of many hospitals and the changes in enforcements of FDA's requirements for hospitals, the number of reuse or remanufactures of single-use medical devices have decreased from the estimated 2,000 to an estimated 66 hospitals. Thus, the number of manufacturers will increase from 7,229 to 8,188, but the total number of firms subject to CGMPs will decrease from 9,229 to 8,254.

• Potentially affected establishments: Except for manufacturers, not every type of firm is subject to every CGMP/QS requirement. For example, all are subject to FDA's quality policy regulations (§ 820.20(a)), document control regulations (§ 820.40), and other requirements, whereas only manufacturers and specification developers are subject to FDA's design controls regulations (§ 820.30). The type of firm subject to each requirement was identified by ERG.

FDA estimated the burden hours (and costs) for the previous CGMP regulation in 1992. That estimate was submitted to OMB on May 4, 1992. It was approved by OMB on July 16, 1992, and expired on June 30, 1995. The methodology used is different than that used by ERG in estimating incremental tasks when the new CGMP/QS became final. Nevertheless, the agency believes its 1992 estimate adequately represents labor hours (and costs) needed to comply with previous CGMP requirements carried over into the new CGMP/QS regulation. The 1992 estimate used 9,289 respondents (rather than 8,254 respondents), which compensates for differences in methodology.

FDA estimates that some 650 ''new'' establishments (marketing devices for the first time) will expend some 143,052 ''development'' hours on a one-time startup basis to develop records and procedures for the CGMP/QS regulation.

FDA estimates that annual labor hours are apportioned as follows: 40 percent goes to requirements dealing with manufacturing specifications, process controls and the DHR; 20 percent goes to requirements dealing with components and acceptance activities; 25 percent goes to requirements dealing with equipment, records (the DMR and QSR), complaint investigations, labeling/packaging and reprocessing/investigating product nonconformance; and 15 percent goes to quality audit, traceability, handling, distribution, statistical, and other requirements.

Dated: June 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–13212 Filed 6–10–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0425]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 16, 2004 (69 FR 2602), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0339. The approval expires on May 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: June 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–13213 Filed 6–10–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0542]

Agency Information Collection Activities; Announcement of OMB Approval; Premarket Notification Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Premarket Notification Submissions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 9, 2004 (69 FR 11022), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0120. The approval expires on May 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: June 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–13214 Filed 6–10–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0245]

Agency Information Collection Activities: Proposed Collection; Comment Request; Current Good Manufacturing Practice Regulations for Medicated Feeds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) 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 recordkeeping requirements for manufacturers of medicated animal feeds.

DATES: Submit written or electronic comments on the collection of information by August 13, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

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 requests 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, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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.

Current Good Manufacturing Practice Regulations for Medicated Feeds—21 CFR Part 225 (OMB Control Number 0910–0152)—Extension

Under section 501 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351), FDA has the statutory authority to issue current good manufacturing practice (cGMP) regulations for drugs, including medicated feeds. Medicated feeds are administered to animals for the prevention, cure, mitigation, or treatment of disease, or growth promotion and feed efficiency. Statutory requirements for cGMPs have been codified under part 225 (21 CFR part 225). Medicated feeds that are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the act. Under part 225, a manufacturer is required to establish, maintain, and retain records for a medicated feed, including records to document procedures required during the manufacturing process to assure that proper quality control is maintained. Such records would, for example, contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (i.e. batch and stability testing), labels, and product distribution.

This information is needed so that FDA can monitor drug usage and possible misformulation of medicated feeds to investigate violative drug residues in products from treated animals and to investigate product defects when a drug is recalled. In addition, FDA will use the cGMP criteria in part 225 to determine whether or not the systems and procedures used by manufacturers of medicated feeds are adequate to assure that their feeds meet the requirements of the act as to safety and also that they meet their claimed identity, strength, quality, and purity, as required by section 501(a)(2)(B) of the act.

A license is required when the manufacturer of a medicated feed involves the use of a drug or drugs that FDA has determined requires more control because of the need for a withdrawal period before slaughter or because of carcinogenic concerns. Conversely, a license is not required and the recordkeeping requirements are less demanding for those medicated feeds for which FDA has determined that the drugs used in their manufacture need less control. Respondents to this collection of information are commercial feed mills and mixer-feeders.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSED COMMERCIAL FEED MILLS)[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Recordkeeper	Total Hours
225.42(b)(5) through (b)(8)	1,150	260	299,000	1	299,000
225.58(c) and (d)	1,150	45	51,750	.5	28,875
225.80(b)(2)	1,150	1,600	1,840,000	.12	220,800
225.102(b)(1)	1,150	7,800	8,970,000	.08	717,600
225.110(b)(1) and (b)(2)	1,150	7,800	8,970,000	.015	134,550
225.115(b)(1) and (b)(2)	1,150	5	5,750	.12	690

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSED COMMERCIAL FEED MILLS)[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Recordkeeper	Total Hours
Total					1,397,825

[1] There are no capital or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSED MIXER-FEEDERS)[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.42(b)(5) through (b)(8)	100	260	26,000	.15	3,900
225.58(c) and (d)	100	36	3,600	.5	1,800
225.80(b)(2)	100	48	4,800	.12	576
225.102(b)(1) through (b)(5)	100	260	26,000	.4	10,400
TOTAL					16,676

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED UNLICENSED COMMERCIAL FEED MILLS)[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.142	8,000	4	32,000	1	32,000
225.158	8,000	1	8,000	4	32,000
225.180	8,000	96	768,000	.12	92,160
225.202	8,000	260	2,080,000	.65	1,352,000
TOTAL					1,508,160

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED UNLICENSED MIXER-FEEDERS)[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.142	45,000	4	180,000	1	180,000
225.158	45,000	1	45,000	4	180,000
225.180	45,000	32	1,440,000	.12	172,000
225.202	45,000	260	11,700,000	.33	3,861,000
TOTAL					4,393,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the times required for record preparation and maintenance is based on agency communications with industry. Other information needed to finally calculate the total burden hours (i.e., number of recordkeepers, number of medicated feeds being manufactured, etc.) is derived from agency records and experience.

Dated: June 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–13215 Filed 6–10–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0483]

Agency Information Collection Activities; Announcement of OMB Approval; Food Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Labeling Regulations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 18, 2004 (69 FR 7643), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0381. The approval expires on May 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: June 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–13216 Filed 6–10–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Summaries of Medical and Clinical Pharmacology Reviews of Pediatric Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of summaries of medical and clinical pharmacology reviews of pediatric studies submitted in supplements for Cipro (ciprofloxacin), Corlopam (fenoldopam), Glucovance (glyburide and metformin), Arava (leflunomide), Viracept (nelfinavir), Concerta (methylphenidate), Zemplar (paricalcitol), Zomig (zolmitriptan), and Ortho Tri-Cyclen (norgestimate and ethinyl estradiol). The summaries are being made available consistent with the Best Pharmaceuticals for Children Act (BPCA). For all pediatric supplements submitted under the BPCA, the BPCA requires FDA to make available to the public a summary of the medical and clinical pharmacology reviews of the pediatric studies conducted for the supplement.

ADDRESSES: Submit written requests for single copies of the summaries to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Please specify by product name which summary or summaries you are requesting. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries.

FOR FURTHER INFORMATION CONTACT: Grace Carmouze, Center for Drug Evaluation and Research (HFD–960), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–7337, *carmouzeg@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of summaries of medical and clinical pharmacology reviews of pediatric studies conducted for Cipro (ciprofloxacin), Corlopam (fenoldopam), Glucovance (glyburide and metformin), Arava (leflunomide), Viracept (nelfinavir), Concerta (methylphenidate), Zemplar (paricalcitol), Zomig (zolmitriptan), and Ortho Tri-Cyclen (norgestimate and ethinyl estradiol). The summaries are being made available consistent with section 9 of the BPCA (Public Law 107–109). Enacted on January 4, 2002, the BPCA reauthorizes, with certain important changes, the pediatric exclusivity program described in section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a). Section 505A permits certain applications to obtain 6 months of marketing exclusivity if, in accordance with the requirements of the statute, the sponsor submits requested information relating to the use of the drug in the pediatric population.

One of the provisions the BPCA added to the pediatric exclusivity program pertains to the dissemination of pediatric information. Specifically, for all pediatric supplements submitted under the BPCA, the BPCA requires FDA to make available to the public a summary of the medical and clinical pharmacology reviews of pediatric studies conducted for the supplement (21 U.S.C. 355a(m)(1)). The summaries are to be made available not later than 180 days after the report on the pediatric study is submitted to FDA (21 U.S.C. 355a(m)(1)). Consistent with this provision of the BPCA, FDA has posted on the Internet (*http://www.fda.gov/cder/pediatric/index.htm*) summaries of medical and clinical pharmacology reviews of pediatric studies submitted in supplements for Cipro (ciprofloxacin), Corlopam (fenoldopam), Glucovance (glyburide and metformin), Arava (leflunomide), Viracept (nelfinavir), Concerta (methylphenidate), Zemplar (paricalcitol), Zomig (zolmitriptan), and Ortho Tri-Cyclen (norgestimate and ethinyl estradiol). Copies are also available by mail (see **ADDRESSES**).

II. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/pediatric/index.htm*.

Dated: June 3, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–13217 Filed 6–10–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Environmental Planning Program

AGENCY: Department of the Homeland Security.

ACTION: Notice of proposed directive; request for comments.

SUMMARY: The purpose of this notice is to provide an opportunity for public comment on the Department of Homeland Security draft directive containing policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA), as amended, Executive Order 11514, as amended, Executive Order 12114, and Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). Pursuant to CEQ regulations, the DHS is soliciting comments on its proposed internal management directive from members of the interested public.

DATES: Comments and related material must be received by July 14, 2004.

ADDRESSES: Please submit your comments by only one of the following means: (1) By mail to: Environmental Planning, Office of Safety and Environment, Management Directorate, Department of Homeland Security, Washington, DC 20528

(2) By hand delivery to: Environmental Planning, Office of Safety and Environment, Management Directorate, Department of Homeland Security, Anacostia Naval Annex, Building 410, 245 Murray Lane, SW., Washington, DC 20528.

(3) By Fax to: (202) 772–9749.

In choosing among these means, please give due regard to the difficulties and delays associated with delivery of mail through the U.S. Postal Service.

FOR FURTHER INFORMATION CONTACT: Mr. David Reese, Office of Safety and Environment, Department of Homeland Security, 202.692.4224. e-mail: *ADMIN-S&E@hq.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of Homeland Security encourages interested persons to submit written data, views, or comments. Persons submitting comments should please include their name, address, and other appropriate contact information. You may submit your comments and material by one of the means listed under **ADDRESSES.** If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they were received, please enclose a stamped, self-addressed postcard or envelope. The DHS will consider all comments received during the comment period.

Background

This directive establishes policy and procedures to ensure the integration of environmental considerations into the unique mission of the Department of Homeland Security (DHS). It outlines roles and responsibilities for compliance with NEPA, as well as other laws and requirements for stewardship of the environment. This directive establishes a framework for the balanced and systematic consideration of environmental stewardship in the planning and execution of DHS activities.

DHS is composed of five major directorates and three services: Border and Transportation Security, Emergency Preparedness and Response, Science and Technology, Information Analysis and Infrastructure Protection, Management, and Bureau of Citizenship and Immigration Services, U.S. Coast Guard, and Secret Service. This organization resulted from a total of 22 Federal agencies that were brought together in March of 2003 and organized to form the new Department. DHS has the mission to lead the unified national effort to secure America. It has the responsibility to prevent and deter terrorist attacks and protect against and respond to threats and hazards to the Nation. As a part of this mission, DHS ensures safe and secure borders, facilitates lawful immigrants and visitors, and promotes the free flow of commerce among nations.

The policies and procedures in the Management Directive place particular emphasis on the requirements of the project proponent to ensure that environmental stewardship requirements are appropriately integrated into the performance of DHS missions. Substantive or procedural requirements in this directive apply to the program planning and project development in all DHS directorates and organization elements. In particular, there is special consideration of the requirements for intergovernmental coordination, public involvement, dispute resolution, handling of sensitive information, and emergency procedures in DHS decisionmaking.

This proposed management directive includes processes for preparing Environmental Assessments, Findings of No Significant Impact, and Environmental Impact Statements. The DHS proposes to use this directive in conjunction with NEPA, the CEQ regulations at 40 CFR parts 1500–1508, and other pertinent environmental regulations, Executive Orders, statutes, and laws developed for the consideration of environmental impacts of Federal actions.

This directive was established by reviewing the actions and existing regulations of all the elements that were integrated into the new department. Under the direction of the Office of Safety and Environment in the Management directorate, a panel of experts in environmental policy and law were drawn from the elements to prepare the new directive. This panel of experts worked for over 12 months to develop this draft directive.

In preparing this directive, the panel of experts reviewed existing law and requirements, former agency policies, existing guidance on the implementation of NEPA from the Council on Environmental Quality, and the latest studies on the implementation of NEPA. In addition, they examined policies and procedures from other Federal agencies to identify policies that could be appropriate for the missions of the new Department.

An area of emphasis included the development of appropriate categorical exclusions. Since DHS was brought together and organized around a core mission, many of the organizational elements are engaged in similar activities. Nearly all DHS component elements engage at various times in activities related to law enforcement, emergency response and recovery, screening and detection for dangerous or illegal materials or individuals, research and development of new systems or processes related to homeland security, and training exercises, among other things. These activities are performed in various environmental settings, for example both the Transportation Security Administration (TSA) and the Customs and Border Protection (CBP) screen packages for dangerous or illegal materials, but TSA works at airports while CBP works at borders. Many of the new elements of the Department came from agencies that had established categorical exclusions covering all or parts of their activities. These legacy categorical exclusions were evaluated for their broader applicability to similar missions and activities throughout the new Department. Likewise, the panel of experts examined existing categorical exclusions from other Federal departments to determine whether any might be adopted for DHS actions of a similar nature, scope, and intensity as those performed by other Federal agencies. The resulting list of proposed categorical exclusions in Attachment A of the Management Directive includes a large number that are applicable to all component elements of the DHS.

In addition, the panel reviewed the history of environmental assessments and environmental impact statements and the administrative history of the legacy categorical exclusions in developing proposed categorical exclusions in Attachment A of the Management Directive. The resultant list of proposed categorical exclusions contains several that are specific to certain organizational elements of DHS. It is also important to note that the directive maintains those categorical exclusions previously established by both the Coast Guard and the Federal Emergency Management Agency.

A copy of this **Federal Register** publication, as well as a summary of the administrative record for the list of categorical exclusions is available on the Internet at *http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0468.xml*.

The Department of Homeland Security solicits public review of this document and will review and consider those comments before this directive is final.

Tom Ridge,

Secretary.

Management Directive 5100.1, Environmental Planning Program

1. Purpose

A. This directive establishes policy and procedures to ensure the integration of environmental considerations into Department of Homeland Security (DHS) mission planning and project decision making. Environmental stewardship, homeland security, and economic prosperity are compatible and complementary. This directive establishes a framework for the balanced and systematic consideration of these factors in the planning and execution of DHS activities.

B. In particular, this directive establishes procedures that the DHS will use to comply with The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4335) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508). NEPA is the basic charter and foundation for stewardship of environmental resources in the United States. It establishes policy, sets goals, and provides a tool for carrying out federal environmental policy. NEPA requires federal agencies to use all practical means within their authority to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

C. This directive provides the means for the DHS to follow the letter and spirit of NEPA and comply fully with the CEQ regulations. This directive adopts and supplements the CEQ regulations, and is to be used in conjunction with the CEQ regulations. However, this directive encompasses requirements in addition to NEPA and establishes the DHS Environmental Planning Program.

2. Scope

A. Substantive or procedural requirements in this directive apply to all DHS elements and are to be used in all program planning and project development. This Directive applies to any DHS action with the potential to affect the quality of the environment of the United States, its territories, or its possessions. It also addresses those DHS actions having effects outside the United States, its territories, or its possessions under Executive Order 12114, Environmental Effects Abroad. More specifically, this Directive applies to:

1. All areas of the DHS mission and operations planning
2. Promulgation of regulations
3. Acquisitions and procurements
4. Asset management
5. Research and development
6. Grants programs

B. This Directive supplements the regulations for implementing NEPA published by CEQ at 40 CFR Parts 1500 through 1508. In the case of any apparent discrepancies between these procedures and the mandatory provisions of the CEQ regulations, the CEQ regulations will govern.

3. Authorities

This Directive is governed by numerous Public Laws, Regulations, and Executive Orders, such as, but not limited to:

A. The National Environmental Policy Act (42 U.S.C. § 4321 et. seq.)

B. Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. § 4321–4335)

C. Marine Mammal Protection Act (16 U.S.C. § 1361 et. seq.)

D. The National Historic Preservation Act (16 U.S.C. § 470 et. seq.)

E. The Clean Air Act (16 U.S.C. § 470 et. seq.)

F. Federal Water Pollution Control Act (33 U.S.C. § 1251 et. seq.)

G. The Coastal Zone Management Act (16 U.S.C. § 1451 et. seq.)

H. Endangered Species Act (16 U.S.C. § 1531 et. seq.)

I. National Marine Sanctuaries Act (16 U.S.C. § 1431 et. seq.)

J. CEQ Regulations November 29, 1978 (43 FR 55978) as 40 CFR Parts 1500–1508

K. Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, 35 FR 4247, as amended by E.O. 11991, May 24, 1977, 42 FR 26967

L. Executive Order 11988, Floodplain Management, 42 FR 26971

M. Executive Order 11990, Protection of Wetlands, 42 FR 26961

N. Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957

O. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629

4. Definitions

A. All definitions of words and phrases in 40 CFR Part 1508 apply to this Directive.

B. Additional definitions of words and phrases as used in this Directive are contained in Appendix A.

5. Responsibilities

Responsibility for oversight of the DHS NEPA activities, unless otherwise delegated, is as follows:

A. The Secretary of DHS (Secretary) recognizes the long term value of incorporating environmental stewardship into the planning and development of all the DHS missions and activities and exercises the ultimate responsibility in the Department to fulfill environmental planning requirements. To this end, the Secretary has delegated specific authority for environmental planning to the DHS Department Environmental Executive, the Chief of Administrative Services, the Director of Office of Safety and Environment, and to other DHS officials as set forth in this Directive. The following objectives are to be used in guiding environmental planning activities in the DHS:

1. Timely and effective support
2. Sustainable capability
3. Consistency with fiscal and other considerations of national policy
4. Full compliance with all appropriate environmental planning laws, Executive Orders, regulations, and other requirements, such as environmental management systems (EMS)

B. The DHS Department Environmental Executive (DEE) is the DHS Undersecretary for Management and has authority to fulfill the Secretary's objectives by ensuring that the Department fully integrates environmental planning requirements into all the DHS missions and activities.

The DEE recognizes that environmental planning is an important and necessary part of good management practice in the Department. To this end, the DEE has delegated specific authority for environmental planning to the Chief of Administrative Services, the Director of the Office of Safety and Environment, and to other DHS officials as set forth in this Directive. In exercising the authority delegated from the Secretary, the DEE will perform the following roles:

1. Ensure that Under Secretaries and Designated DHS Officials incorporate environmental planning and stewardship requirements into their policies and procedures to fulfill the Secretary's objectives and the requirements of NEPA, the CEQ Regulations, this Directive, applicable Executive Orders, and other environmental planning requirements.

2. Support budget requests to meet the requirements of this Directive.

3. Consult, as needed, with Under Secretaries and Designated DHS Officials to ensure that they complete appropriate environmental planning for highly sensitive programs or actions that may require the attention of either the Deputy Secretary or the Secretary.

4. Delegate requests for environmental planning related information received at the Departmental level to the Chief, Administrative Services for action.

C. The Chief of Administrative Services (CAS) has authority to support the DEE in its efforts to promote good management practice by ensuring that the Department fully incorporates environmental planning requirements into all of the DHS missions and activities. To this end, the CAS has delegated specific authority for environmental planning to the Director of Office of Safety and Environment and to other DHS officials as set forth in this Directive. In exercising this authority, the CAS will perform the following:

1. Advise the DEE, as needed, on all environmental planning matters in the Department.

2. Establish, as needed, appropriate Department-wide policy, guidance, or training to enable the effective performance of environmental planning throughout the DHS.

3. Recommend, as requested by the DEE, appropriate action on budget requests for environmental planning resources from Under Secretaries and Designated DHS Officials.

4. Consult with Under Secretaries and Designated DHS Officials to ensure that their policies and procedures incorporate the requirements of this Directive.

5. Direct, as needed, the performance of environmental planning activities within the DHS directorates and elements with particular emphasis on highly sensitive programs or actions that may require the attention of the senior executive levels of the Department.

6. Advise the responsible Under Secretary or Designated DHS Official and, if appropriate, the Secretary, of a proposed action believed not to conform with the DHS policies or, after consulting with the General Counsel, applicable environmental laws and regulations.

7. Coordinate requests for environmental planning related information received at the Departmental level among appropriate DHS elements or assign the request to the appropriate element for resolution.

8. Approve new or revised supplementary procedures proposed by the DHS elements for the implementation of this Directive pursuant to the recommendations of the Director, Office of Safety and Environment.

9. Grant a delegation authority to an Under Secretary or a DHS official to sign environmental documents pursuant to the recommendations of the Director, Office of Safety and Environment. Delegations that exist within the DHS at the time this Directive becomes effective (i.e., Coast Guard, Federal Emergency Management Agency, Customs and Border Protection, Immigration and Customs Enforcement, and Citizenship and Immigration Services) will remain in effect until they are updated or revoked.

10. Revoke, as appropriate, a delegation of authority to a DHS Under Secretary or designated official.

D. The Director, Office of Safety and Environment (DOSE) is designated by the Secretary as the DHS Environmental Planning coordinator and has oversight responsibilities for the management and direction of the Department-wide environmental planning program. The DOSE will support the CAS with advice and assistance in carrying out the responsibilities of that office as set forth in the above paragraph. Such advice and assistance will, at a minimum, consist of the following:

1. Advise the CAS, as needed, on all environmental planning matters in the Department.

2. Develop, as needed, appropriate Department-wide policy, guidance, or training to enable the consistent, timely, and effective performance of environmental planning throughout the Department to fulfill the Secretary's objectives and other requirements of this Directive.

3. Evaluate for CAS, as requested, budget requests for environmental planning resources.

4. Guide programs within the DHS elements to ensure that their policies, procedures, and actions fulfill the Secretary's objectives and the requirements of this Directive.

5. Direct, as needed, the performance of environmental planning activities within the DHS elements, with particular emphasis on headquarters level programs or actions and those that have the interest of the CAS.

6. Coordinate and respond to requests for environmental planning related information received at the Departmental level among appropriate DHS elements or assign the request to the appropriate directorate for resolution.

7. Review environmental documents, public notices, and other related external communications that require a Departmental level approval prior to release by the project proponent. This includes all draft, final, and supplemental Environmental Impact Statements (EIS) originating in the Department prior to filing with EPA, unless otherwise delegated.

8. Evaluate new or revised supplementary procedures for DHS elements for the implementation of this Directive or other environmental planning requirements that are proposed by an Under Secretary or Designated DHS Official under 5.F.8. DHS element supplemental procedures will only be recommended for approval after successfully completing DOSE level review, all necessary CEQ and public review requirements, and incorporating all appropriate comments and revisions.

9. Evaluate requests for delegation of authority from an Under Secretary or a designated DHS Official to sign environmental documents. Such delegation shall only be recommended for approval if the requestor has both approved supplementary procedures and adequate staff resources to fulfill the Secretary's objectives and the requirements of this Directive. The adequacy of staff resources will involve an evaluation of knowledge and experience in fulfilling environmental planning requirements and preparing NEPA analyses and documentation sufficient to meet the Secretary's objectives. Requests for delegation of authority and supplementary procedures may be evaluated concurrently.

10. Recommend revocation of a delegation of authority from an Under Secretary or a designated DHS Official for inappropriate procedures or

inadequate staff resources to ensure full compliance with this Directive or other environmental planning requirements.

11. Assist the DHS elements, as needed, in reviewing and assessing the environmental impacts of proposed DHS actions covered by Executive Order (EO) 12114.

12. Discuss with CEQ any DHS requests for alternative arrangements or procedures to comply with NEPA and the CEQ regulations.

13. Review and comment on EISs and NEPA analyses originating from agencies outside of the DHS relating to:

(a) Actions with national policy implications relating to the DHS missions;

(b) Legislation, regulations, and program proposals having a potential national impact on a DHS mission, and

(c) Actions with the potential to encroach upon the DHS missions.

14. Act as the principal point of contact for the DHS on environmental issues of DHS-wide applicability brought before the CEQ, the Office of Management and Budget, the Advisory Council on Historic Preservation, U.S. Environmental Protection Agency headquarters, and other federal agency headquarters.

15. Perform other functions as are specified in this Directive or as are appropriate under NEPA, the CEQ Regulations, applicable Executive Orders, other environmental requirements, or other instructions or recommendations of CEQ or EPA concerning environmental matters.

E. *The General Counsel and/or Element Chief Counsel will:*

1. Provide legal sufficiency review, when appropriate, for all draft, final, and supplemental Environmental Assessments (EAs), Findings Of No Significant Impact (FONSIs), Environmental Impact Statements (EISs), and Records Of Decision (RODs).

2. Advise proponents, in consultation with the EPC, whether a proposed element action is subject to the procedural requirements of NEPA.

3. Advise proponents on compliance with NEPA, the CEQ Regulations, applicable Executive Orders, and other environmental planning requirements.

4. Assist in establishing or revising Departmental or elements' NEPA procedures, including appropriate categorical exclusions.

F. *All Under Secretaries and Designated DHS Officials will:*

1. Fully integrate the requirements of this Directive into planning for all applicable programs, activities, and operations. Ensure that the planning, development, and execution of all their missions and activities conform to the guidance in this Directive, the requirements of NEPA, the CEQ Regulations, applicable Executive Orders, and other environmental planning requirements.

2. Ensure that DHS proponents take the lead in environmental planning efforts and maintain an understanding of the potential environmental impacts of their programs and projects.

3. Plan, program, and budget for the requirements of this Directive and Prepare and submit budget requests for adequate staff and resources to meet the requirements of this Directive.

4. Support outreach processes for environmental planning.

5. Coordinate with other DHS elements on environmental issues that affect them.

6. Prepare and circulate environmental documents for the consideration of others when an action or policy area in question falls under their jurisdiction as required by 40 CFR Part 1506.9.

7. Request the assistance of DOSE in preparing the environmental analysis for any actions covered by E.O. 12114 unless otherwise delegated.

8. Propose to the CAS, for review and approval, any new or substantive revisions to existing supplementary procedures for the implementation of this Directive and other environmental planning requirements that the element deems necessary. All supplementary procedures will be consistent with this Directive and will be developed in accordance with the CEQ Regulations. Procedures revised solely to effect administrative changes or format issues do not need CAS and CEQ approval.

(a) For those Undersecretaries and Designated DHS Officials with delegated authority to sign environmental documents, preparation of handbooks and other technical guidance for element personnel regarding NEPA implementation do not need CAS and CEQ approval.

(b) The DHS elements, listed in paragraph 5.C.8, that have already developed -specific NEPA implementing procedures prior to becoming part of the DHS may continue to use those procedures. All revisions to supplementary procedures must be consistent with this Directive.

9. Send all environmental documents via their respective organizational hierarchy, to the DOSE for review, prior to release to the public, unless otherwise delegated.

10. For the DHS elements not listed in paragraph 5.C.8, Request from the CAS limited or unlimited delegation of authority to sign environmental documents. The request should include documentation demonstrating that the element has adequate staff resources with sufficient knowledge and experience in preparing NEPA analysis and documentation sufficient to ensure full compliance.

11. Ensure that all external communications on environmental planning requirements related to matters with potential for department wide implications are coordinated with the DOSE and provide DOSE with a courtesy copy of all related formal communications. Unless otherwise delegated, ensure that all external communications on matters concerning the DHS compliance with environmental planning requirements that relate to controversial, high-visibility, classified, or sensitive actions are coordinated with the DOSE.

12. Respond to requests for copies of environmental documents and reports or other information in connection with the implementation of NEPA.

13. Designate an appropriate Environmental Planning Coordinator (EPC) and alternate in their respective element as a single point of contact for coordination with DOSE on relevant environmental planning matters.

G. Environmental Planning Coordinators (EPCs) will:

1. Act as a single point of contact for DOSE on all environmental planning matters.

2. Inform key officials within their respective element of current developments in environmental policy and programs.

3. Coordinate environmental planning strategies for matters within their respective element's purview.

4. Act to further their respective element's compliance with the requirements of NEPA, the CEQ Regulations, this Directive, applicable Executive Orders, and other environmental requirements.

5. Identify discretionary activities within their respective element and ensure that the requirements of this Directive are fully integrated into those activities.

6. Work with their respective element proponents, as needed, to fulfill the requirements of this Directive and other environmental planning requirements. Consultation with proponents will involve the following objectives, at a minimum:

(a) Ensure that appropriate environmental planning, including the analyses and documentation required by NEPA, is completed before the proponent makes a decision that has adverse environmental effects or limits the choices of alternatives to satisfy an

objective, fix a problem, or address a weakness.

(b) Plan, program, and budget to meet the requirements of this Directive.

(c) Support the execution of the requirements of this Directive.

(d) Ensure that their respective DHS proponents are cognizant of the potential environmental impacts of their programs and projects.

(e) Monitor the preparation and review of environmental planning efforts to ensure compliance with all applicable scheduling, scoping, consultation, circulation, and public involvement requirements.

(f) Advocate and develop, as appropriate, agreements with federal, tribal, and state regulatory and/or resource agencies concerning NEPA and other environmental planning requirements.

(g) Coordinate with other DHS elements on environmental issues that affect them.

(h) Coordinate with DOSE in preparing the environmental analysis for any actions covered by E.O. 12114.

7. Propose new categorical exclusions to DOSE.

8. Support outreach processes for environmental planning.

9. In consultation with the DOSE, define appropriate environmental training requirements for personnel within their respective element(s).

H. The Project Proponent is the project or program manager. The proponent has the immediate authority to decide a course of action or has the authority to recommend a course of action, from among options, to the next higher organization level (e.g. district to region) for approval. He or she has the lead role in the environmental planning process and is responsible for meeting the following objectives, in consultation with the EPC:

1. Ensuring that appropriate environmental planning, including the analyses and/or documentation required by NEPA is completed before a decision is made that limits the choices of alternatives to satisfy an objective, fix a problem, address a weakness, or develop a program.

2. Preparing requests and or securing funding for environmental analysis and documentation in the budget process.

3. Ensuring the quality of the analysis and the documentation produced in the environmental planning process.

4. Ensuring that the project has adequate resources to complete all environmental analyses and documentation.

5. Performing the necessary outreach and communication with appropriate Federal, tribal, state, local, and public interests.

6. Ensuring that the project budget has sufficient resources to meet all mitigation commitments.

7. Seeking technical assistance from the DOSE, as needed, through the appropriate lines of authority to ensure compliance with NEPA.

6. Policy

A. Stewardship of the air, land, water, and cultural resources is compatible with and complementary to the planning and execution of the DHS missions. Environmental planning processes provide a systematic means of evaluating and fulfilling this aspect of DHS responsibility. The DHS will integrate environmental planning and management into homeland security operational planning, program development, and management methodologies consistent with homeland security requirements, fiscal policies, and other considerations of national policy.

B. The DHS proponents will have the lead role in the environmental planning process. The DHS proponents will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish, and wildlife, and other natural resources in the context of terrestrial and aquatic ecosystems. The DHS proponents will employ all practical means consistent with other considerations of national policy to minimize or avoid adverse environmental consequences and attain the goals and objectives stated in section 101 of NEPA.

C. The DHS proponents will provide for adequate staff, funding, and time to perform NEPA analysis for DHS proposed actions, including those for programs, plans, policies, projects, regulations, orders, legislation or applications for permits, grants, licenses, etc. Should mitigation be necessary to reduce the environmental effects of a DHS proposed action, the proponent will be responsible for providing the costs of mitigation or ensuring that the applicant provides for mitigation.

D. The DHS proponents will integrate the NEPA process with other DHS planning and project decision making activities and other environmental review requirements sufficiently early to:

1. Ensure that mission planning, program development, and project decision making reflect the Secretary's objectives and the policies in this Directive, such as stewardship of resources effected by the DHS missions.

2. Ensure that no action moves forward for funding or approval without the systematic and interdisciplinary examination of likely environmental consequences resulting from the proposed action and reasonable alternatives according to the policy and procedures in this Directive.

3. Balance environmental concerns with mission requirements, technical requirements, and economic feasibility in decision making processes to ensure long-term sustainability of the DHS operations.

4. Allow for appropriate communication, cooperation, and collaboration between the DHS, other government entities, the public, and non-governmental entities as an integral part of the NEPA process.

E. The DHS Proponents will emphasize the quality analysis of the potential for environmental effects among alternative courses of action to meet mission needs and the development of strategies to minimize those effects. Documentation required under NEPA will be a summary of the effort to evaluate the environmental effects and the development of the minimization strategies. The depth of analysis and volume of documentation will be proportionate to the nature and scope of the action, and to the complexity and level of anticipated effects on important environmental resources. Documentation is necessary to present results of the analysis, but the objective of NEPA and the DHS NEPA policy is quality analysis to support DHS decisions, not the production of documents.

F. The DHS proponent, in consultation with the EPC, will determine the level of NEPA analysis required for the proposed action. The DHS proponents will complete their NEPA analysis and review for each DHS proposed action before making a final decision on whether to proceed with the proposed action. No action or portion of an action, covered by a ROD or FONSI, will be taken that limits reasonable alternatives, involves a conflict of resource use, or has an adverse environmental effect until the final decision as justified in the ROD or FONSI has been made public. No actions or portions of an action covered by a CE that requires a Record of Environmental Consideration (REC) will be taken until the REC is completed.

G. Laws other than NEPA that require the DHS to obtain or confirm the approval of other federal, tribal, state, or local government agencies before taking actions that are subject to NEPA, will be integrated into the NEPA process at the earliest possible stage and to the fullest extent possible. However, compliance with other environmental laws does not

relieve the proponent from preparing environmental impact analyses and processing necessary environmental documents. NEPA compliance is required unless another law, applicable to a specific action or activity, prohibits, conflicts with, or exempts compliance.

7. Procedures

A. Attachment A contains specific procedures for the application of environmental planning requirements to the DHS consistent with the Secretary's objectives and the policies in this Directive.

B. A DHS element with delegation under section 5.C.9 may also develop its own supplemental procedures. DHS element-specific procedures will be immediately effective upon approval of CAS and may be disseminated within the DHS element, even before this Directive is revised to include them. A DHS element with approved supplemental procedures may use them in addition to the procedures in this instruction.

C. The DHS elements with approved supplemental procedures under 5.C.8 may use the categorical exclusions listed in their approved procedures and as indicated in this Directive. DHS elements may not use the categorical exclusions listed in another DHS element's or any other federal agency's specific procedures.

D. The CAS may revoke all or part of an element delegation and any implementing procedures. No element will be given approval of implementing procedures unless they also have received complete delegation authority.

E. The DHS elements may prepare handbooks or other technical guidance for their personnel on how to apply these procedures to their programs.

F. Any questions or concerns regarding this Directive should be addressed to the Director, Office of Safety and Environment.

Attachment A, Timely and Effective Environmental Planning in the Department of Homeland Security

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Appendix A: Definitions

Introduction

This Attachment provides guidance for timely and effective environmental planning and includes supplementary instructions for implementing the NEPA process in the DHS. The numbers in parentheses signify the relevant citation in the CEQ Regulations. The DHS and its elements will use NEPA as a strategic planning tool, not a documentation exercise. The DHS is committed to using all of the tools at its disposal to ensure timely and effective environmental planning and implementation of the NEPA process.

1.0 General Policies and Provisions

Timely and effective environmental planning involves a systematic process to identify and evaluate the potential for significant environmental effects from a proposed DHS action. Proponents of programs and activities within the DHS have a major role in this process. This process and the guidance in this Directive are designed to focus effort on those types of actions with the most potential for significant environmental effects. The process involves three levels of evaluation effort as shown in Figure 1: Categorical exclusion; environmental assessment; and environmental impact statement. These levels of effort reflect increasing potential for significant environmental effects. It is expected that the majority of proposed DHS actions will be able to be evaluated through categorical exclusions or environmental assessments. Fewer DHS actions are likely to require an EIS, but those with the greatest potential to impact natural resources and the human environment will likely require an environmental impact statement.

1.1 Up Front Planning Activities

A. Continually assess environmental planning in the DHS to improve its effectiveness in supporting and enabling departmental missions.

B. Adapt environmental planning goals and requirements to complement the DHS mission requirements.

C. Fully integrate NEPA and other environmental planning goals and requirements into internal element program planning and decision making processes and formal direction.

D. Ensure that environmental planning staffs are located within the DHS organization where they can function as effective members of interdisciplinary planning and project teams.

E. Enable effective environmental planning through appropriate training, education, and interagency support relationships.

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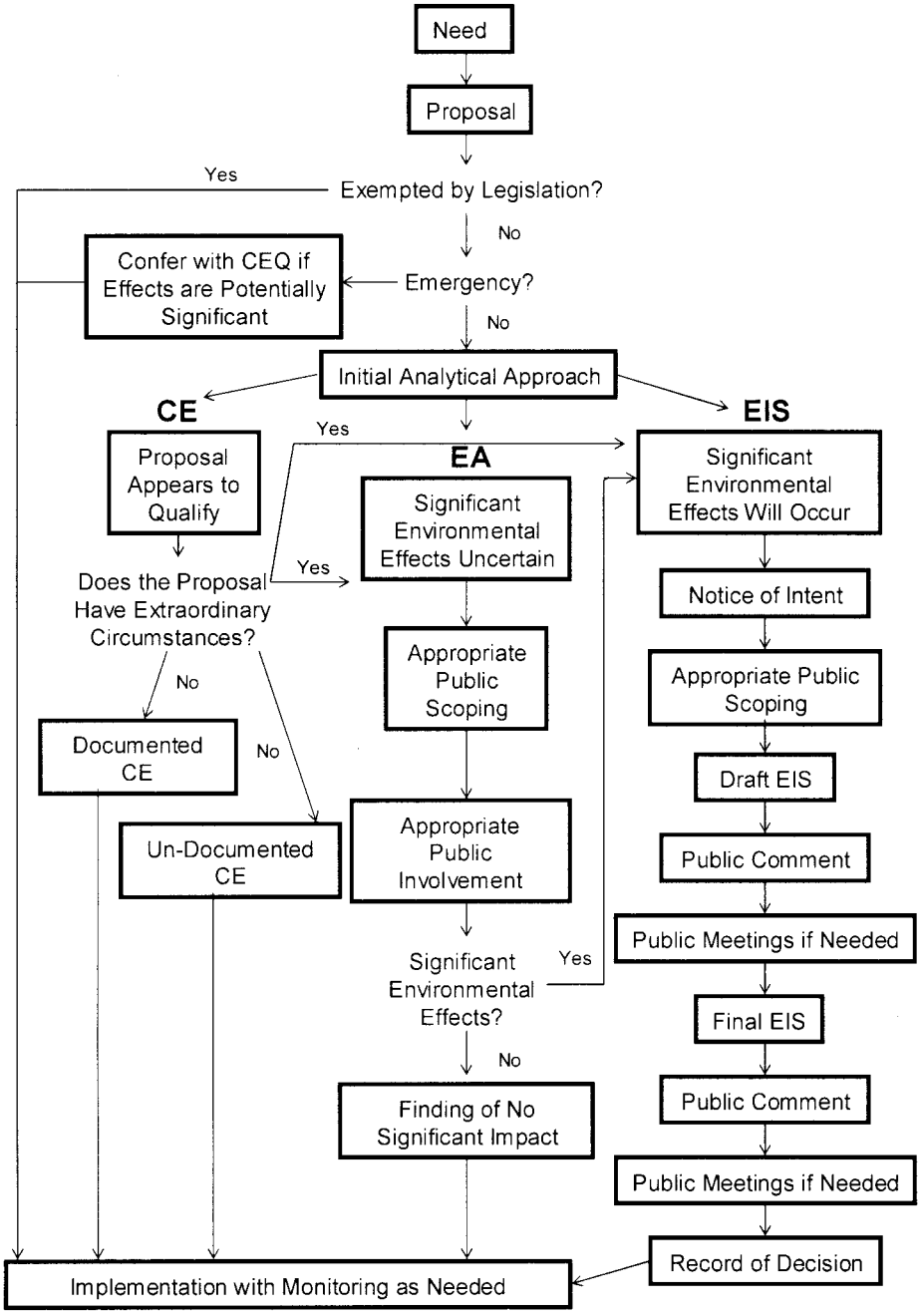
Figure 1: The NEPA Decision Making Process



1.2 Ongoing Administration

A. Ensure that appropriate environmental planning, including the analyses and documentation required by NEPA, is completed before the proponent makes a decision that limits the choice of alternatives to satisfy an objective, fix a problem, or address a weakness.

B. Integrate all other environmental and planning reviews concurrently, rather than sequentially, with the NEPA process.

C. Use the scoping and public involvement processes to limit the analysis of issues to those that are important to the decision making at hand.

D. Share information with and coordinate with other federal, tribal, state, and local agencies early in the planning process and integrate planning responsibilities with other agencies and governments.

E. Take into account the views of the surrounding community and other interested members of the public during its planning and decision making process.

F. Offer cooperating agency status to other federal, tribal, state, and local agencies that have special expertise or jurisdiction by law.

G. Base all environmental impact analyses, development of monitoring requirements, and mitigation requirements on sound science.

H. Make maximum use of programmatic analyses and tiering of environmental planning efforts to provide relevant environmental information at the appropriate element decision levels, eliminate repetitive analyses and discussion, ensure proper consideration of cumulative effects, and focus on issues that are important to the decision being made.

I. Review any relevant planning and decision making documents, whether prepared by the DHS or another agency, to determine if the DHS proposed action or application or any of their alternatives has been considered in a prior NEPA analysis. If so, the DHS will consider adopting the existing analyses, or any pertinent part thereof, in accordance with 40 CFR 1506.3. Adopted environmental impact analyses of others may be revised or supplemented as needed to serve the DHS purposes.

J. Incorporate material by reference to reduce unnecessary paperwork without impeding public review. The referenced material must be reasonably available for public review within the time allowed for comment.

K. Update the list of categorical exclusions to ensure that the DHS environmental planning resources remain focused on those activities with the most potential for significant effects.

1.3 Follow Through—Monitoring and Mitigation (1505.3)

A. Only those practical mitigation measures that can reasonably be accomplished as part of a proposed alternative will be identified. Any mitigation measures selected by the proponent will be clearly outlined in the NEPA decision document and will be included in the budget of the internal DHS project or made a part of the approved application from external entities.

B. Use best management practices, such as environmental monitoring systems, to implement a project and monitor the predicted environmental effects. Using adaptive management techniques, adapt the implementation of a project as new information becomes available.

C. Budget for mitigation. The proponent will ensure funding to implement mitigation commitments or ensure that external applicants provide for mitigation funding in their proposal prior to approval by the DHS.

D. Implement mitigation. Ensure that all mitigation commitments in the ROD or FONSI are implemented.

E. Monitor Results. Monitoring of the expected environmental effects from DHS projects, including appropriate indicators of effectiveness, is an integral part of any mitigation system. The proponent is responsible for ensuring monitoring during mitigation, where necessary, to ensure that the final decision justified in the ROD or FONSI is implemented. For external applicants, the proponent is responsible for ensuring that the applicant provides for monitoring. The proponent is responsible for responding to inquiries from the public or other agencies regarding the status of mitigation measures adopted in the NEPA process.

1.4✖Dispute Resolution

During the NEPA process, a DHS proponent and another federal agency may not agree on significant issues or aspects of the process. When these situations arise, the proponent will provide the other federal agency with written notification, using certified mail or a comparable method, detailing the nature of the disagreement. The proponent will attempt to resolve the dispute within 30 working days of notification, using Alternative Dispute Resolution or a similar mechanism. If dispute negotiations fail, the proponent must notify the other federal agency in writing, with a copy sent to the DHS element HQ, that an agreement is unlikely and the project or operation is jeopardized. From the date of that letter, the DHS element HQ will initiate 30 additional working days of negotiations. If after 30 working days, the DHS element HQ has not resolved the issue, it will be forwarded to the DEE. The DEE may appoint a negotiating team and/or seek Council on Environmental Quality (CEQ) support in informal dispute resolution. Figure 2 provides a diagram of this process. The DHS elements have the option to use the Institute for Environmental Conflict Resolution, a federally-chartered mediation group based in Tucson, Arizona. In rare instances another agency may independently refer a DHS EIS to CEQ for formal dispute resolution. Upon receipt of advice that another federal agency intends to refer a Departmental matter to CEQ, the DHS lead element will immediately notify and consult with the DOSE.

2.0 Intergovernmental Collaboration and Public Involvement

2.1 Purpose

Open communication, consistent with other Federal requirements, is the DHS policy. The purpose of this policy is to build trust between the DHS and the communities it serves. Collaboration with other federal, tribal, state, and local agencies, as well as non-governmental organizations (NGOs) and the general public assists in identifying important issues in the environmental planning process. In many cases, these governments have expertise not available in the DHS or they may have authorities and obligations to protect specific resources.

The appropriate involvement of relevant organizations and citizens early in environmental planning is an effective means to focus environmental planning efforts on issues that are of most interest to the public and importance to the relevant DHS decision. Collaboration, through meaningful and regular dialogue with those outside of the DHS can also serve to avoid conflicts and facilitate resolution when conflicts occur. Other organizations and citizens play an important role in protection of resources and their communities. Awareness and consideration of the needs and requirements of other organizations and the general public, consistent with mission requirements, will enhance the effectiveness of the DHS missions.

2.2 Scoping (1501.7)

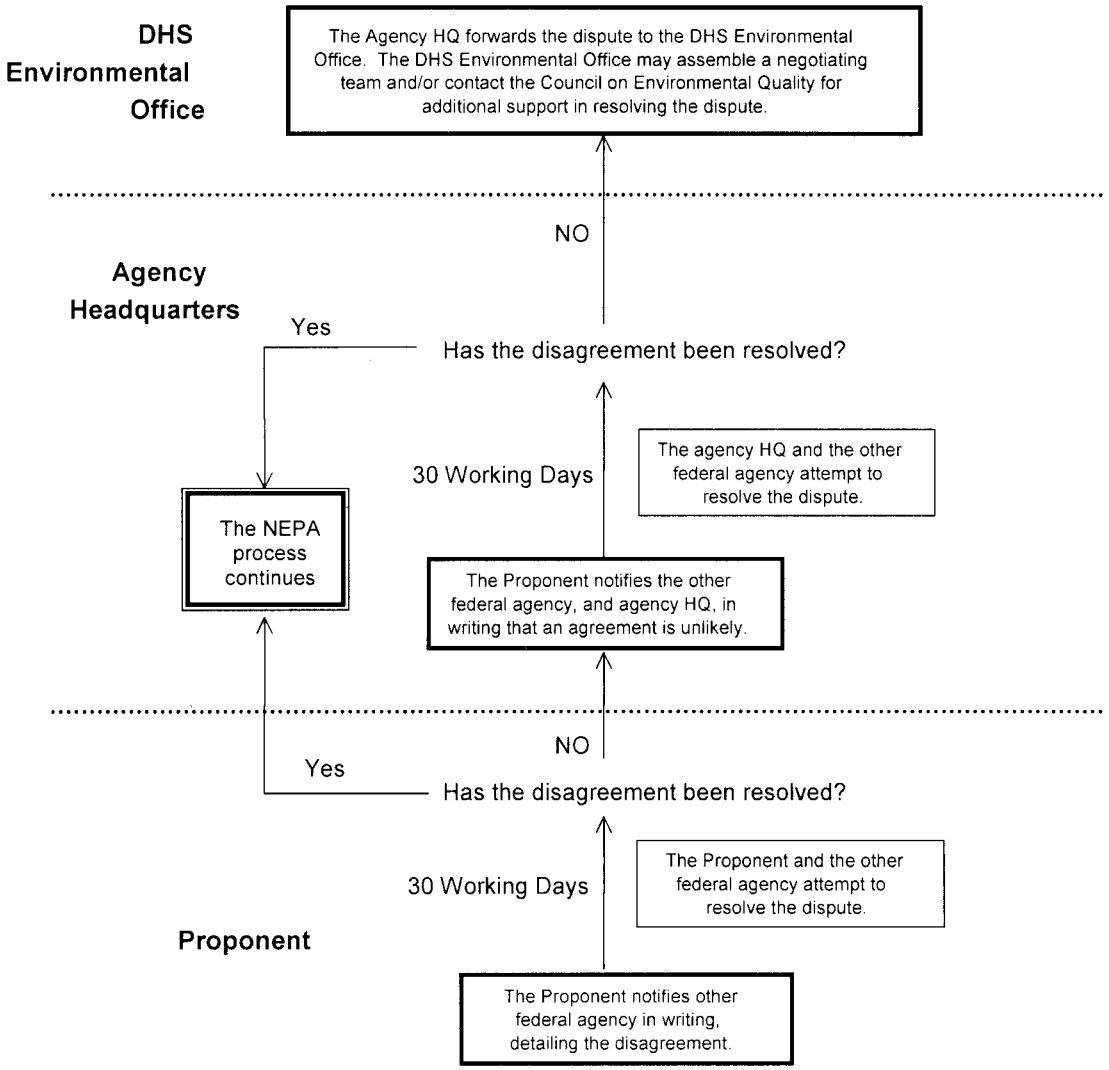
A. Scoping is a process for taking into account the views of the surrounding

community and other interested parties during planning and decision making processes. It helps managers set the boundaries of the environmental evaluation and is an effective means to limit the analysis of issues to those that are of interest to the public and/or important to the decision making at hand. Scoping is a process that starts early and continues throughout the planning and early stages of conducting a NEPA analysis.

B. When the DHS is the lead agency, it is responsible for the scope of the NEPA analysis.

C. Scoping is required for EISs and strongly encouraged for EAs.

Figure 2: Dispute Resolution Flowchart



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2.3 Coordination with Other Government Agencies, States, and Tribes

The DHS policy is to seek out and coordinate with other federal departments and agencies, tribal, state, and local governments, non-governmental organizations, and the general public early in the environmental planning process. In many cases, these organizations have expertise not available in the DHS or they may have authorities and obligations to protect specific resources.

A. Where an agency has special expertise or jurisdiction by law, the DHS proponent should invite and encourage the federal, state, or tribal governmental agency to be a cooperating agency.

B. When another agency has expertise to analyze the potential environmental effect of a DHS proposal, the proponent will coordinate early to ensure high quality and complete analysis.

C. The DHS will coordinate draft environmental impact analyses with appropriate federal, state and tribal governments, as well as other interested parties.

D. Among the various Federal agencies that can be involved in an environmental planning effort, EPA has a special role. Section 309 of the Clean Air Act provides the Administrator of EPA with authority to review and comment in writing on the environmental impact of any matter relating to the environment contained in any authorized federal projects for construction and any major federal agency action for which NEPA applies. At a minimum, the DHS proponents must ensure that their EISs are appropriately coordinated with the EPA.

2.4 Lead Agencies (1501.5)

The lead agency in an environmental planning process has the responsibility to define the scope and substance of the environmental planning effort.

A. The DHS will be the lead agency when a proposed action is clearly within the province of the DHS authority. Likewise, an Under Secretary or designated DHS official will seek to form a joint-lead relationship, when another agency has initiated an action within the province of the DHS authority or has a significant responsibility regarding the action.

B. Unless otherwise delegated, the Department will designate lead elements within the DHS when more than one element could be involved and will represent the Department in consultations with CEQ or other federal entities in the resolution of lead agency determinations.

C. To eliminate duplication with state and local procedures, a non-federal agency may be designated as a joint lead agency when an element has a duty to comply with state or local requirements that are comparable to the NEPA requirements.

2.5 Cooperating Agencies (1501.6)

Other federal, tribal, or state agencies may share a role in the planning and execution of a DHS mission. Likewise, these agencies often have specialized expertise or authorities in environmental planning requirements that can be of benefit to the DHS mission planning.

A. The Department, when requested, will coordinate and assist requests from non-Department agencies in determining cooperating agency status.

B. Any federal, tribal, state, or local government entity with special expertise or jurisdiction may be a cooperating agency by agreement, and elements of the Department are urged to use this process.

2.6 Public Involvement (1506.6)

The DHS believes that public involvement early in the NEPA analysis process will help produce better decisions. The DHS also believes that the public and NGOs play an important role in the protection of resources. The DHS will encourage early and open public involvement in proposals. Open communication with the American public, consistent with other federal requirements, is the DHS policy.

A. Environmental Assessments. While the proponent is encouraged to provide public involvement in EAs, the proponent has discretion regarding the type and level of public involvement in EAs (See Section 4.0). The guidance under the following section for EISs may be useful for EAs as well. Factors to be weighed include:

(1) Magnitude of the proposed project/action and impacts.

(2) Extent of anticipated public interest, based on experience with similar proposals.

(3) Urgency of the proposal.

(4) National security classification.

(5) The presence of minority or economically-disadvantaged populations that may be impacted.

B. Environmental Impact Statements. CEQ regulations mandate specific public involvement steps in the EIS. Elements will:

(1) Provide for appropriate public involvement. Public involvement must begin early in the proposal development stage, and during preparation of an EIS. The direct involvement of other agencies and state, local and tribal governments with jurisdiction or special expertise is an integral part of impact analysis, and provides information and conclusions for incorporation into EISs. Information obtained from public involvement efforts can help to focus environmental analysis effort on the impacts with the most potential for significance. A public meeting may be appropriate. The need for a formal public hearing should be determined in accordance with the criteria set forth in 40 CFR Part 1506.6(c).

(2) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents. The notice should be provided by effective and efficient means most likely to inform those persons and agencies that may be interested or affected, including minority populations and low-income populations. Special outreach efforts should be made to identify affected minority populations and low-income populations. Public notices for controversial, high-visibility, classified, or sensitive issues should be cleared with the DEE prior to publication.

(3) Tailor the methods to reach the audience of concern. Make every effort to make materials available and accessible to affected or interested populations. Special outreach efforts may be needed to reach affected tribes and minority populations and low-income populations. Translation may be required to reach limited-English speakers. Additionally, elements are encouraged to use electronic means to provide access to and distribution of environmental planning information and NEPA documents.

2.7 Review of Other Agencies' Analysis and Documents

A. The DHS elements should review and comment on other agencies' environmental analysis and documents when requested or when the proposed action may impact the DHS mission, operations, or facilities.

B. Comments should be confined to matters within the jurisdiction or expertise of the Department. However, comments need not be limited to environmental aspects, but may relate to security, immigration, enforcement, and other matters of concern to the Department.

C. If a DHS element intends to issue formal adverse comments on a non-DHS agency's analysis or document, the matter should be coordinated with DOSE prior to issuing the comments.

3.0 Categorical Exclusions (1507.3(b)(2)(ii))

This Chapter establishes the DHS categorical exclusions (CEs) and provides instructions for their implementation.

3.1 Purpose

A. CEQ regulations (1508.4) provide for federal agencies to establish categories of actions that based on experience do not individually or cumulatively have a significant impact on the human environment and, therefore do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). These CEs allow the DHS elements to avoid unnecessary analysis, process, and paperwork and concentrate their resources on those proposed actions having real potential for environmental concerns.

B. An element may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in CEQ regulations (1508.9) even though it is not required to do so.

C. All requests to establish, substantively revise, or delete CEs (along with justification) will be forwarded through the elements to the DOSE for review and comment, unless otherwise delegated. New or substantively modified CEs are subject to CEQ review and public comment before they will be available for use. Securing approval from both the DOSE and CEQ and promulgation remain the responsibility of the DHS element.

3.2 Conditions and Extraordinary Circumstances (1508.4)

For an action to be categorically excluded, the DHS element must satisfy each of the following three conditions. Proponents must involve the EPC in evaluating these conditions. If the proposed action does not meet these conditions or a statute or emergency provision does not exempt it, an EA or an EIS must be prepared before the action may proceed. Where it may not be clear whether a proposed action will meet these conditions, the proponent must ensure that the administrative record reflects consideration of these conditions. Certain categorical exclusions require documentation of the consideration of these conditions in the form of a Record of Consideration.

A. Clearly Fits the Category. The entire action clearly fits within one or more of the categories of excludable actions listed in Section 4.3 and/or in individual element's categorical exclusions. An element should not use a CE for an action with significant impacts whether they are beneficial or adverse.

B. Is Not A Small Piece of a Larger Action. The scope of the action has not been segmented. Segmentation can occur when an action or connected actions are broken into smaller parts in order to avoid the appearance of significance of the total action and thus reduce the level of NEPA review required. For purposes of NEPA, actions must be considered in the same review if the actions are connected and interdependent, such as: where one action triggers or forces another; where one action depends on another; or where actions have the potential for effects that would be cumulative.

C. No Extraordinary Circumstances Exist. No extraordinary circumstances with potentially significant impacts relating to the proposed action exist. Extraordinary circumstances are unique conditions that are associated with the potential for significant impacts. Specific actions that might otherwise be categorically excluded, but are associated with one or more extraordinary circumstances, should be carefully evaluated to determine whether a CE is appropriate. A determination of whether an action that is normally excluded requires additional analysis must focus on the action's potential effects and the environmental significance in context (whether local, state, regional, tribal, national, or international) and in intensity. This determination is made by considering whether the action is likely to involve one or more of the following circumstances:

(1) A potentially significant effect on public health or safety.

(2) A potentially significant effect on species or habitats protected by the Endangered Species Act, Marine Mammal Protection Act, or Magnuson-Stevens Fishery Conservation and Management Act.

(3) A potentially significant effect on a district, site, highway, structure, or object that is listed in or eligible for listing in the National Register of Historic Places, affects a historic or cultural resource or traditional and sacred sites, or the loss or destruction of a significant scientific, cultural, or historical resource.

(4) A potentially significant effect on a unique characteristic of the geographic area, such as park land, prime farmland, wetland, floodplain, coastal zone, or a wild and scenic river, sole or principal drinking water aquifers, or an ecologically critical area.

(5) A potential or threatened violation of a federal, state, or local law or administrative determination imposed for the protection of the environment. Some examples of administrative determinations to consider are a local noise control ordinance; the requirement to conform to an applicable State Implementation Plan (SIP); and federal, state, or local requirements for the control of hazardous or toxic substances.

(6) An effect on the quality of the human environment that is likely to be highly controversial in terms of scientific validity, likely to be highly uncertain, likely to involve unique or unknown environmental risks.

(7) Employment of new technology or unproven technology that is likely to involve unique or unknown environmental risks, where the effect on the human environment is likely to be highly uncertain, or where the effect on the human environment is likely to be highly controversial in terms of scientific validity.

(8) A precedent is set that forecloses future options that have significant effects.

(9) Significantly greater scope or size than normally experienced for a particular category of action.

(10) Potential for significant degradation of already existing poor environmental conditions. Also, initiation of a potentially significant environmental degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

3.3 List of Categorically Excludable Actions

A. Table 1 is a list of Categorical Exclusions, those activities which normally require no further NEPA analysis. Proponents, in consultation with their EPC, should be alert for the presence of those extraordinary circumstances listed in section 3.2 of this attachment. These categorical exclusions were developed on the basis of an administrative record from the elements that comprise the new department, from professional staff and expert opinion, and/or past NEPA analyses. The DHS CEs are divided into the following functional groupings of activities conducted by the DHS elements in fulfilling the Department mission:

(1) Administrative and Regulatory Activities
(2) Operational Activities
(3) Real Estate Activities
(4) Repair and Maintenance Activities
(5) Construction, Installation, and Demolition Activities
(6) Hazardous/Radioactive Materials Management and Operations

(7) Training and Exercises
(8) Categorical Exclusions for specific DHS elements

B. Activities that involve greater potential for environmental effect require a Record of Environmental Consideration (REC) to justify the use of the CE. These activities are marked with an asterisk. A REC is a means of documenting whether the conditions listed in 3.2 A, B, and C are met. The DOSE will sign all RECs unless signature authority has been delegated to the element. The REC will normally not exceed two pages.

TABLE 1.—CATEGORICAL EXCLUSIONS

CE#	
	ADMINISTRATIVE AND REGULATORY ACTIVITIES[1]
A1	Personnel, fiscal, management, and administrative activities, such as recruiting, processing, paying, recordkeeping, resource management, budgeting, personnel actions, and travel.
A2	Reductions, realignments, or relocation of personnel that do not result in exceeding the infrastructure capacity or change the use of space. An example of a substantial change in use of the supporting infrastructure would be an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase.
A3	Promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature: (a) Those of a strictly administrative or procedural nature; (b) Those that implement, without substantive change, statutory or regulatory requirements; (c) Those that implement, without substantive change, procedures, manuals, and other guidance documents; (d) Those that interpret or amend an existing regulation without changing its environmental effect; (e) Technical guidance on safety and security matters; or (f) Guidance for the preparation of security plans.
A4	Information gathering, data analysis and processing, information dissemination, review, interpretation, and development of documents, that involves no commitment of resources or recommendations for future commitments of resources other than the associated manpower and funding. Examples include but are not limited to: (a) Document mailings, publication and distribution, and training and information programs, historical and cultural demonstrations, and public affairs actions. (b) Studies, reports, proposals, analyses, literature reviews; computer modeling; and other non-intrusive intelligence gathering activities.
A5	Contingency planning and administrative activities in anticipation of emergency and disaster response and recovery. Examples include response plans, protocols for use of suppressants, etc.
A6	Awarding of contracts for technical support services, ongoing management and operation of government facilities, and professional services that do not involve unresolved conflicts concerning alternative uses of available resources.
A7	Procurement of non-hazardous goods and services, and storage, recycling, and disposal of non-hazardous materials and wastes, that complies with applicable requirements and that is in support of routine administrative, operational, maintenance activities. Storage activities must occur on previously disturbed land or in existing facilities. Examples include but are not limited to: (a) Office supplies. (b) Equipment. (c) Mobile assets. (d) Utility services. (e) Chemicals and low level radio nuclides for analytical testing and research. (f) Deployable emergency response supplies and equipment. (g) Waste disposal and contracts for waste disposal in permitted landfills or other authorized facilities..
A8	The commitment of resources, personnel, and funding to conduct audits, surveys, and data collection of a minimally intrusive nature. Examples include, but are not limited to: (a) Activities designed to support the improvement or upgrade management of natural resources, such as surveys for threatened and endangered species, wildlife and wildlife habitat, historic properties, and archeological sites; wetland delineations; timber stand examination; minimal water, air, waste, material and soil sampling; audits, photography, and interpretation. (b) Minimally-intrusive geological, geophysical, and geo- technical activities, including mapping and engineering surveys. (c) Site characterization studies and environmental monitoring, including siting, construction, operation, and dismantling or closing of characterization and monitoring devices, Facility Audits, Environmental Site Assessments, and Environmental Baseline Surveys. (d) Vulnerability, risk, and structural integrity assessments of infrastructure.
	OPERATIONAL ACTIVITIES
B1	Research, development, testing, and evaluation activities, or laboratory operations conducted within existing enclosed facilities consistent with previously established safety levels and in compliance with federal, tribal, state, and local requirements to protect the environment when it will result in no, or de minimus change in the use of the facility. If the operation will substantially increase the extent of potential environmental impacts or is controversial, an EA (and possibly an EIS) is required.
B2	Transportation of personnel, detainees, equipment, and evidentiary materials in wheeled vehicles over existing roads or established jeep trails, including access to permanent and temporary observation posts.
B3	Proposed activities and operations to be conducted in an existing structure that would be compatible with and similar in scope to its ongoing functional uses and would be consistent with previously established safety levels and in compliance with federal, tribal, state, and local requirements to protect the environment.
B4	Provision of on-site technical assistance to non-DHS organizations to prepare plans, studies, or evaluations or to conduct training at sites currently used for such activities, Examples include, but are not limited to: (a) General technical assistance to assist with development and enhancement of Weapons of Mass Destruction (WMD) response plans, exercise scenario development and evaluation, facilitation of working groups, etc.

TABLE 1.—CATEGORICAL EXCLUSIONS—Continued

CE#	
	(b) State strategy technical assistance to assist states in completing needs and threat assessments and in developing their domestic preparedness strategy. (c) Training on use, maintenance, calibration, and/or refurbishing of specialized equipment.
B5	Support for community participation projects. Examples include, but are not limited to: (a) Earth Day activities. (b) Adopting schools. (c) Cleanup of rivers and parkways. (d) Repair and alteration of housing.
B6	Approval of recreational or public activities or events at a location typically used for that type and scope (size and intensity) of that activity. Examples include, but are not limited to: (a) Picnics. (b) Encampments. (c) Interpretive programs for historic and cultural resources, such as programs in conjunction with State and Tribal Historic Preservation Officers, or with local historic preservation or re-enactment groups.
B7	Realignment or initial home porting of mobile assets, including vehicles, vessels and aircraft, to existing operational facilities that have the capacity to accommodate such assets or where supporting infrastructure changes will be minor in nature to perform as new homeports or for repair and overhaul.
B8*	Acquisition, installation, maintenance, operation, evaluation, removal, or disposal of security equipment to screen for or detect dangerous or illegal individuals or materials at existing facilities. Examples include, but are not limited to: (a) Low-level x-ray devices. (b) Cameras and biometric devices. (c) Passive inspection devices. (d) Detection or security systems for explosive, biological, or chemical substances. (e) Access controls, screening devices, and traffic management systems.
B9*	Acquisition, installation, maintenance, operation, evaluation, removal, or disposal of target hardening security equipment, devices, or controls to enhance the physical security of existing critical assets to include, but not limited to: (a) Motion detection systems. (b) Temporary use of barriers, fences, and jersey walls on or adjacent to existing facilities. (c) Impact resistant doors and gates. (d) X-ray units. (e) Remote video surveillance systems. (f) Diver/swimmer detection systems except sonar. (g) Blast/shock impact-resistant systems. (h) Column and surface wraps. (i) Breakage/shatter-resistant glass.
B10	Existing aircraft operations conducted in accordance with normal flight patterns and elevations. This categorical exclusion encompasses the actions of many component elements of the DHS during training and emergency response and recovery efforts, but would primarily be used by the elements of Coast Guard and Border and Transportation Security in their daily activities.
B11	Identifications, inspections, surveys, or sampling, testing, seizures, quarantines, removals, sanitization, and monitoring of imported products and that cause little or no physical alteration of the environment. This categorical exclusion would primarily encompass a variety of daily activities performed at the borders and ports of entry by various elements of the Border and Transportation Security Directorate.
B12	Routine monitoring and surveillance activities that support law enforcement or homeland security and defense operations, such as patrols, investigations, and intelligence gathering, but not including any construction activities except those set forth in subsection F of these categorical exclusions. This categorical exclusion would primarily encompass a variety of daily activities performed by the elements of Coast Guard, Border and Transportation Security, and the Secret Service.
B13*	Harvest of live trees on DHS facilities not to exceed 70 acres, requiring no more than ½ mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include but are not limited to: (a) Removal of individual trees for saw logs, specialty products, or fuel wood. (b) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor. This categorical exclusion would encompass property management activities at larger properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
B14*	Salvage of dead and/or dying trees on DHS facilities not to exceed 250 acres, requiring no more than ½ mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include but are not limited to: (a) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees. (b) Harvest of fire damaged trees. (c) Harvest of insect or disease damaged trees. This categorical exclusion would encompass property management activities at larger properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
REAL ESTATE ACTIVITIES	
C1	Acquisition of an interest in real property that is not within or adjacent to environmentally sensitive areas, including interests less than a fee simple, by purchase, lease, assignment, easement, condemnation, or donation, which does not result in a change in the functional use of the property.

TABLE 1.—CATEGORICAL EXCLUSIONS—Continued

CE#	
C2	Lease extensions, renewals, or succeeding leases where there is no change in the facility's use and all environmental operating permits have been acquired and are current.
C3	Reassignment of real property, including related personal property within the DHS (*e.g.*, from one DHS element or activity to another) which does not result in a change in the functional use of the property.
C4	Transfer of administrative control over real property, including related personal property, between a non-DHS federal agency and the DHS which does not result in a change in the functional use of the property.
C5	Determination that real property is excess to the needs of the DHS and, in the case of acquired real property, the subsequent reporting of such determination to the General Services Administration or, in the case of lands withdrawn or otherwise reserved from the public domain, the subsequent filing of a notice of intent to relinquish with the Bureau of Land Management, Department of Interior.
	REPAIR AND MAINTENANCE ACTIVITIES
D1	Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities that do not result in a change in the functional use of the real property (*e.g.* realigning interior spaces of an existing building, extending an existing roadway in a developed area a short distance, adding a small storage shed to an existing building, or retrofitting for energy conservation. This could also include installing a small antenna on an already existing antenna tower that does not cause the total height to exceed 200 feet and where the FCC would not require an environmental assessment or environmental impact statement of the installation).
D2	Routine upgrade, repair, maintenance, or replacement of equipment and vehicles, such as aircraft, vessels, or airfield equipment which does not result in a change in the functional use of the property.
D3	Repair and maintenance of buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use or an impact on a historically significant element or setting (*e.g.* replacing a roof, painting a building, resurfacing a road or runway, pest control activities, restoration of trails and firebreaks, culvert maintenance, grounds maintenance, existing security systems, waterfront facilities that do not require individual regulatory permits, and other facilities).
D4*	Reconstruction and/or repair by replacement of existing utilities or surveillance systems in an existing right-of-way or easement, upon agreement with the owner of the relevant property interest.
D5*	Maintenance dredging and repair activities within waterways, floodplains, and wetlands where no new depths are required, applicable permits are secured, and associated debris disposal will be at an approved disposal site. This categorical exclusion encompasses activities required for the maintenance of waterfront facilities managed primarily within the Coast Guard and Customs and Border Protection.
D6	Maintenance of aquatic and riparian habitat in streams and ponds, using native materials or best natural resource management practices. Examples include, but are not limited to: (a) Installing or repairing gabions with stone from a nearby source. (b) Adding brush for fish habitat. (c) Stabilizing stream banks through bioengineering techniques. (d) Removing and controlling exotic vegetation, not including the use of herbicides or non-native biological controls. This categorical exclusion would encompass property management activities at larger properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
	CONSTRUCTION, INSTALLATION, AND DEMOLITION ACTIVITIES
E1	Construction, operation, maintenance, and removal of utility and communication systems, mobile antennas, data processing cable, intrusion detection systems, and similar electronic equipment that use existing rights-of-way, easements, utility distribution systems, and/or facilities and for equipment and towers not higher than 200 feet where the FCC would not require an environmental assessment or environmental impact statement for the acquisition, installation, operation or maintenance.
E2*	New construction upon or improvement of land where all of the following conditions are met: (a) The structure and proposed use are compatible with applicable local planning and zoning standards. (b) The site is in a developed area and/or a previously disturbed site. (c) The proposed use will not substantially increase the number of motor vehicles at the facility or in the area. (d) The site and scale of construction or improvement are consistent with those of existing, adjacent, or nearby buildings. (e) The construction or improvement will not result in uses that exceed existing support infrastructure capacities (roads, sewer, water, parking, etc.).
E3*	Acquisition, installation, operation, and maintenance of equipment, devices, and/or controls necessary to mitigate effects of the DHS missions on health and the environment, including the execution of appropriate real estate agreements. Examples include but are not limited to: (a) Pollution prevention and pollution control equipment required to meet federal, tribal, state, or local requirements. (b) Noise abatement measures, including construction of noise barriers, installation of noise control materials, or planting native trees and/or native vegetation for use as a noise abatement measure. (c) Devices to protect human or animal life, such as raptor electrocution prevention devices, fencing to restrict wildlife movement on to airfields, fencing and grating to prevent accidental entry to hazardous or restricted areas, and rescue beacons to protect human life.
E4*	Removal or demolition, along with subsequent disposal of debris to permitted or authorized off-site locations, of non-historic buildings, structures, other improvements, and/or equipment in compliance with applicable environmental and safety requirements.
E5	Natural resource management activities to enhance native flora and fauna, including site preparation and landscaping. This categorical exclusion would encompass property management activities primarily at properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.

TABLE 1.—CATEGORICAL EXCLUSIONS—Continued

CE#	
E6	Construction or reconstruction of roads on previously disturbed areas on DHS facilities, where runoff, erosion, and sedimentation issues are mitigated through implementation of Best Management Practices. This categorical exclusion would encompass property management activities primarily at properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
E7	Construction of exercise and training trails for non-motorized use in areas that are not environmentally sensitive and that are located on DHS facilities, where run-off, erosion, and sedimentation are mitigated through implementation of Best Management Practices. This categorical exclusion would encompass property management activities primarily at properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
E8*	Construction of aquatic and riparian habitat in streams and ponds, using native materials or best natural resource management practices. Examples include, but are not limited to: (a) Installing or repairing gabions with stone from a nearby source. (b) Adding brush for fish habitat. (c) Stabilizing stream banks through bioengineering techniques. (d) Removing and controlling exotic vegetation, not including the use of herbicides or non-native biological controls. This categorical exclusion would encompass property management activities primarily at properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
E9*	Except in environmentally sensitive areas, construction, operation, modification, or closure of: (a) Wells for drinking water, sampling, and watering landscaping at DHS facilities. (b) Septic systems in accordance with State and local environmental and health requirements. (c) Field instruments, such as stream-gauging stations, flow- measuring devices, telemetry systems, geo-technical monitoring tools, geophysical exploration tools, water-level recording devices, well logging systems, water sampling systems, ambient air monitoring equipment. This categorical exclusion would encompass property management activities primarily at properties within the Coast Guard, Science and Technology Directorate, and the Border and Transportation Security Directorate.
HAZARDOUS/RADIOACTIVE MATERIALS MANAGEMENT AND OPERATIONS	
F1	Routine procurement, handling, recycling, and off-site disposal of hazardous material/waste that complies with applicable requirements. Examples include but are not limited to: (a) Process-related chemicals and metals used in repair, maintenance, alteration, and manufacturing. (b) Routine transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, radiological and special hazards conducted in accordance with all federal, state, local and tribal laws and regulations. (c) Hazardous waste minimization and recycling activities.
F2	Use of instruments that contain hazardous, radioactive, and radiological materials. Examples include, but are not limited to: (a) Gauging devices, tracers, analytical instruments, and other devices containing sealed radiological and radioactive sources. (b) Industrial radiography. (c) Devices used in medical and veterinary practices. (d) Installation, maintenance, non-destructive tests, and calibration.
F3	Use, transportation, and placement of Nuclear Regulatory Commission (NRC) approved, sealed, small source radiation devices for scanning vehicles and packages where radiation exposure to employees or the public does not exceed 0.1 rem per year and where systems are maintained within the NRC license parameters at existing facilities. This categorical exclusion would primarily encompass a variety of daily activities performed by the elements of Coast Guard, Border and Transportation Security, and the Secret Service.
TRAINING AND EXERCISES	
G1	Training of homeland security personnel, including international, tribal, state, and local agency representatives using existing facilities where the training occurs in accordance with applicable permits and other requirements for the protection of the environment. This exclusion does not apply to training that involves the use of live chemical, biological, or radiological agents except when conducted at a location designed and constructed for that training. Examples include but are not limited to: (a) Administrative or classroom training. (b) Tactical training, including but not limited to training in explosives and incendiary devices, arson investigation and firefighting, and emergency preparedness and response. (c) Vehicle and small boat operation training. (d) Small arms and less-than-lethal weapons training. (e) Security specialties and terrorist response training. (f) Crowd control training, including gas range training. (g) Enforcement response, self-defense, and interdiction techniques training. (h) Techniques for use in fingerprinting and drug analysis.
G2	Projects, grants, cooperative agreements, contracts, or activities to design, develop, and conduct national, state, local, or international exercises to test the readiness of the nation to prevent or respond to a terrorist attack of natural or manmade disasters and where in accordance with existing facility or land use designations. This exclusion does not apply to exercises that involve the use of chemical, biological, radiological, nuclear, or explosive agents/devices (other than small devices such as practice grenades/flash bang devices used to simulate an attack during exercise play).

TABLE 1.—CATEGORICAL EXCLUSIONS—Continued

CE#	
UNIQUE CATEGORICAL EXCLUSIONS FOR THE TRANSPORTATION AND SECURITY ADMINISTRATION	
H1	Approval or disapproval of security plans required under legislative or regulatory mandates unless such plans would have a significant effect on the environment.
H2	Issuance of grants for the conduct of security-related research and development or the implementation of security plans or other measures at existing facilities.
H3	Issuance of planning documents and advisory circulars on planning for security measures which are not intended for direct implementation or are issued as administrative and technical guidance.
H4	Issuance or revocation of certificates or other approvals, including but not limited to: (a) Airmen certificates. (b) Security procedures at general aviation airports. (c) Airport security plans.
UNIQUE CATEGORICAL EXCLUSION FOR THE U.S. VISIT PROGRAM	
I1*	A portable or relocatable facility or structure used to collect traveler data at or adjacent to an existing port of entry that does not significantly disturb land, air, or water resources and does not individually or cumulatively have a significant environmental effect. The building footprint of the facility must be less than 5000 square feet and the facility or structure must not foreclose future land use alternatives.
UNIQUE CATEGORICAL EXCLUSION FOR THE FEDERAL LAW ENFORCEMENT TRAINING CENTER	
J7*	Prescribed burning, wildlife habitat improvement thinning, and brush removal for southern yellow pine at the FLETC facility in Glynco, Georgia. No more than 200 acres will be treated in any single year. These activities may include up to 0.5 mile of low- standard, temporary road construction to support these operations.
UNIQUE CATEGORICAL EXCLUSIONS FOR THE CUSTOMS AND BORDER PATROL	
K1	Road dragging of existing roads and trails to maintain a clearly delineated right-of-way and to provide evidence of foot traffic and that will not expand the width, length, or footprint of the road or trail.
K2	Repair and maintenance of existing border fences that do not involve expansion in width or length of the project, and will not encroach on adjacent habitat.

[1] These categorical exclusions have the additional requirement to be conducted in conformance with the Greening the Government Executive Orders (e.g., EO 13101, 13123, 13148, 13149, and 13150).

4.0 Environmental Assessments

This Chapter provides supplementary instructions for implementing environmental assessments (EA).

An EA is a brief analysis that is prepared pursuant to NEPA to assist the proponent in decision making. An EA concludes in either a finding of no significant impact or a Notice of Intent to prepare an environmental impact statement. The EA should include alternatives to the proposed action. EAs and the associated environmental documents should be reviewed and approved by the CAS, unless signature authority has been specifically delegated to the DHS element.

Based upon the analysis and selection of mitigation measures that reduce environmental impacts until they are no longer significant, an EA may result in a FONSI. If a proponent uses mitigation measures in such a manner, the FONSI must identify these mitigating measures, and they become legally binding and must be accomplished as the project is implemented. If any of these identified mitigation measures do not occur, so that significant adverse environmental effects could reasonably be expected to result, the proponent must stop the action and prepare an EIS.

It is the DHS policy to involve the public to the extent practicable. The proponent should consider the practicality of making the EA available for public review and comment before completing the FONSI. The proponent, working in consultation with the EPC, will determine the practicality based on consideration of the factors in section 2.6, Public Involvement. When practical, an EA will be made available for public review and comment for a period of 30 days before completing the FONSI.

4.1 When to Use

A. For any action proposed by an element that does not qualify for a categorical exclusion or does not clearly require an EIS, the element will prepare and circulate an EA.

B. If changes in the scope of a proposed element action could significantly affect the quality of the human environment, an EA shall be prepared as soon as possible to determine the significance of the effects unless it is otherwise clear that an EIS is needed.

C. An EA should be prepared for proposed actions that would normally be categorically excluded except that the proposed action involves extraordinary circumstances that may result in the proposed action having potential for a significant impact on the human environment.

D. An EA need not be prepared if an element has decided to prepare an EIS on a proposed action.

4.2 Actions Normally Requiring an EA or a Programmatic EA (1501.3, 1508.9)

A. Projects for which environmental assessments will be the minimum level of analysis include, but are not limited to:

(1) Proposed construction, land use, activity, or operation that has the potential to significantly affect environmentally sensitive areas.

(2) Dredging projects that do not meet the criteria of the U.S. Army Corps of Engineers Nationwide Permit Program.

(3) New or revised regulations, directives, or policy guidance that is not categorically excluded.

(4) Proposal of new, low-altitude aircraft routes wherein over flights have the potential to significantly affect persons, endangered species, or property.

(5) Permanent closure or limitation of access to any areas that were previously

open to public use (*e.g.*, roads and recreational areas) where there is a potential for significant environmental impacts.

(6) New law enforcement field operations for which the impacts are unknown, or for which the potential for significant environmental degradation or controversy is likely.

B. A Programmatic EA may be prepared on a broad federal action, such as a program or plan, for which only very general environmental information is known, yet for which the anticipated environmental impacts are minor. A site or activity-specific EA or supplemental EA, may then be tiered to the PEA and the environmental analysis discussed in the broader statement be incorporated by reference in the site-specific EA. In some cases the programmatic assessment may be specific enough or contain sufficient information to require no or very little tiered analysis.

4.3 Decision Document: Finding of No Significant Impact (FONSI) (1508.13)

If the EA supports the conclusion that the action has no significant impact on the environment, the element will prepare a separate Finding of No Significant Impact (FONSI) that will accompany the EA.

A. The FONSI must either be attached to the EA or incorporate the EA by reference and consist of the following:

(1) The name of the proposed action.

(2) The facts and conclusions that led to the FONSI.

(3) Any mitigation commitments (including funding and/or monitoring) essential to render the impacts of the proposed action not significant, beyond those mitigations that are an integral part of the proposed action.

(4) A statement that the action will not have a significant impact on the human environment.

(5) The date of issuance and signature of the element official approving the document.

B. The proponent, in consultation with the EPC, will determine whether to make the FONSI available to the public for a reasonable period of time before making a decision or taking action. A reasonable period of time will be determined on the basis of an evaluation of the criteria in CEQ regulations at 40 CFR 1501.4(e) and an evaluation of the comments received during the EA review and comment period.

4.4 Supplemental EAs

A. The Proponent will prepare a supplemental EA if there are substantial changes to the proposal that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns.

B. The Proponent may supplement a draft or final EA at any time to further the analysis. The proponent shall introduce any such supplement into its formal administrative record if such a record exists.

C. The Proponent will prepare, circulate, and file a supplement to an EA in the same manner as any other EA. A FONSI is required for the supplement prior to any decision making.

D. While the Proponent is encouraged to provide public involvement in Supplemental EAs, the proponent has discretion regarding the type and level of public involvement in Supplemental EAs. Factors to be weighed include those listed in Section 2.6 A.

5.0 Environmental Impact Statements (EISs)

This Chapter provides supplementary instructions for implementing environmental impact statements (EIS). An EIS analyzes the environmental impacts of a proposed action and all reasonable alternatives. It displays them in a report for review by the decision maker. The EIS provides an opportunity to work collaboratively with other federal, state, and tribal authorities. The EIS provides an opportunity for the public to understand the impacts and to influence the decision. An EIS is a more detailed analysis than an EA and is prepared for actions that appear to be major federal actions significantly affecting the quality of the human environment. It includes (1) a purpose and need statement (2) a reasonable range of alternative means to meet that purpose and need (3) a description of the affected environment and (4) a description of the environmental effects of each of the alternatives. The EIS must identify the element preferred alternative (if there is one) in the draft EIS.

5.1 When To Use

An EIS is prepared when a DHS element proposes an action that does not qualify for a categorical exclusion or EA, and that could constitute a major federal action significantly affecting the quality of the human environment.

5.2 Actions Normally Requiring an EIS (1501.4), a Programmatic EIS, or a Legislative EIS (1506.8)

A. Actions normally requiring EISs include, but are not limited to:

(1) Actions where the effects of a project or operation on the human environment are likely to be highly controversial.

(2) Proposed major construction or construction of facilities that would have a significant effect on wetlands, coastal zones, or other environmentally sensitive areas.

(3) Major federal actions having a significant environmental effect on the global commons, such as the oceans or Antarctica, as described in section 2–3 of EO 12114.

(4) Change in area, scope, type, and/or tempo of operations that may result in significant environmental effects.

(5) Where an action is required by statute or treaty to develop an EIS.

B. A Programmatic EIS may be prepared on a broad federal action, such as a program or plan, for which only very general environmental information is known. A site-specific EIS or EA may then be tiered to the PEIS and the environmental analysis discussed in the broader statement be incorporated by reference in the site-specific analysis.

C. A Legislative EIS will be prepared and circulated for any legislative proposal, for which the DHS or its elements are primarily responsible and which involve significant environmental impacts.

5.3 Preparation and Filing (1506.9)

The proponent is responsible for initiation, preparation, and approval of EISs. This official has overall responsibility for formulating, reviewing, or proposing an action or, alternatively, has been delegated the authority or responsibility to develop, approve, or adopt a proposal or action. Preparation at this level will ensure that the NEPA process will be incorporated into the planning process and that the EIS will accompany the proposal through existing review processes.

5.4 Combining Documents (1506.4)

Draft and Final EISs should refer to the underlying studies, reports, and other documents considered in conjunction with the preparation. The element should indicate how such documents could be obtained. If possible, the supporting documents should be posted on a DHS web site along with the EIS. With the exception of standard reference documents, such as congressional materials, the proponent should maintain a file of the respective documents, which may be consulted by interested persons. If especially significant documents are attached to the EIS, care should be taken to ensure that the statement remains an essentially self-contained instrument easily understood without the need for undue cross-reference.

5.5 Supplemental EISs (1502.9)

A. The proponent will prepare a supplemental EIS if there are substantial changes to the proposal that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns as discussed in 40 CFR 1502.9(c)(1). In those cases where an action is not completed within a budget cycle (typically 2 years) from the execution of the ROD, the proponent will review the EIS when proceeding with the action to determine whether a supplement is needed.

B. The proponent may supplement a draft or final EIS or ROD at any time to further the analysis. The proponent shall introduce any such supplement into its formal administrative record if such a record exists.

C. Any element decision to prepare a supplemental EIS will be coordinated with the DEE unless such decision has been delegated to the respective EPC.

D. The proponent will prepare, circulate, and file a supplement to a draft or final EIS in the same manner as any other draft or final EIS, except that scoping is optional for a SEIS. A separate ROD is required for the supplement prior to any action being taken even if one had been prepared for the final EIS that is being supplemented. In special circumstances, it may be possible to negotiate alternative procedures for the SEIS with CEQ. The DEE will lead any discussions of alternative procedures with CEQ, unless delegated to the respective EPC.

E. The public notice methods should be chosen to reach persons who may be interested in or affected by the proposal, including actions with effects of primarily local concern, may include, but not be limited to, those listed in Attachment A, Section 2.6.B.

5.6 Proposals for Legislation (1506.8)

The proponent, in consultation with the DEE, is responsible for ensuring compliance with NEPA in legislative proposals. The DEE will maintain close coordination with the Office of the General Counsel whenever legislation is proposed that requires NEPA compliance.

5.7 Decision Document: Record of Decision (ROD) (1505.2)

If the element decides to take action on a proposal covered by an EIS, a ROD will be prepared. The element will publish the ROD in the appropriate manner to make it available to the public and to reach the range of interested parties involved. The element will also post the ROD on the element web site, if one exists.

5.8 Review of Other Agencies' EISs

A. If any DHS element receives a request for EIS comment directly from another agency, and the DHS element wants to provide comments on the EIS, the DHS element will notify the DOSE about the request. DOSE will check if other DHS elements have been requested to comment on the same EIS.

(1) If no other DHS elements have received a request for comment, DOSE will inform the requested element to provide comments it sees fit.

(2) If other DHS elements have received a request for comment, DOSE will either:

(a) Coordinate the response between the DHS elements, or

(b) Direct one of the DHS elements to serve as the lead commenting element.

B. Any pertinent DHS projects that are environmentally or functionally related to the action proposed in the EIS should be identified so that interrelationships can be discussed in the final statement. In such cases, the DHS element should consider serving as a joint lead agency or cooperating agency.

C. Several types of EIS proposals from non-DHS agencies should be referred by the DHS element directly to DOSE for comment, including:

(1) Actions with national policy implications relating to the DHS mission.

(2) Actions with national security, immigration, or law enforcement implications.

(3) Legislation, regulations, and program proposals having national impact on the DHS mission.

(4) Actions that may affect the DHS mission.

D. Provide a copy of formal comments on non-DHS agency EISs to DOSE.

6.0 Special Circumstances

6.1 Emergencies (1506.11)

In addition to natural and technological hazards, Americans face threats posed by hostile governments and extremist groups. These threats to national security include acts of terrorism and war, and require DHS action to protect public health and safety and may not provide adequate time to prepare the appropriate NEPA analyses and documentation.

A. In the event of such an emergency, the DHS will not delay an emergency action necessary for national defense, security, or preservation of human life or property in order to comply with this Directive or the CEQ regulations. Examples of emergencies that may require immediate DHS action include response to the release or imminent release of hazardous, biological or radiological substances.

B. The DHS senior executive on site responding to the emergency will consider the probable environmental consequences of the proposed DHS actions and will minimize environmental damage to the maximum degree practical, consistent with protecting human life, property, and national security. At the earliest practical time, the DHS Senior Executive on site responding to the emergency shall consult with the DEE on the emergency and the DHS actions that may have environmental impacts.

C. If the DHS Senior Executive on site and the DEE jointly conclude that the DHS emergency response actions would qualify for a DHS or DHS element categorical exclusion and give rise to no extraordinary circumstances as defined in this Directive or the CEQ regulations, then no further analysis or documentation is required to comply with NEPA prior to proceeding with the DHS actions.

D. For those cases when the DHS senior executive on site and the DEE jointly conclude that the DHS emergency response actions would not qualify for a categorical exclusion, the DEE will, at a minimum, document consideration of the potential environmental effects in an environmental assessment for the DHS response action. If the DEE concludes that no significant environmental effects will occur, a FONSI will be prepared and filed. In the event the EA cannot be concluded prior to the initiation of the DHS response actions, the DEE and DHS senior executive will develop alternative arrangements for the procedural requirements of other sections of this part and the CEQ regulations pertaining to environmental assessments that, to the maximum extent practical, ensure public notification and involvement and focus on minimizing the adverse environmental consequences of the DHS response action and the emergency. The DEE will inform CEQ of these arrangements at the earliest opportunity.

E. If, at any time, the DHS Senior Executive on site responding to the emergency or the DEE conclude that the emergency action appears to be a major federal action significantly affecting the quality of the human environment, the DEE will immediately notify the Council on Environmental Quality regarding the emergency and will seek alternative arrangements to comply with NEPA in accordance with 40 CFR section 1506.11.

F. The alternative arrangements developed under subsection D or E apply only to actions necessary to control the immediate effects of the

emergency to prevent further harm to life or property. Other actions remain subject to NEPA review as set forth herein.

G. A public affairs plan should be developed to ensure open communication among the media, the public, and the DHS in the event of an emergency.

6.2 Classified or Protected Information (1507.3(c))

A. Notwithstanding other sections of this Chapter, the DHS will not disclose classified, protected, proprietary, or other information that is exempted from disclosure by the Freedom of Information Act (FOIA)(5 U.S.C. 552), critical infrastructure information as defined in 6 U.S.C. 131(3), sensitive security information as defined in 49 CFR Part 1520, E.O. 12958, the DHS Management Directive 0460.1, ''Freedom of Information Act Compliance'', and the DHS Management Directive 11042, ''Safeguarding Sensitive But Unclassified (For Official Use Only) Information'', or other laws, regulations, or Executive Orders prohibiting or limiting the release of information.

B. The existence of classified or protected information does not relieve the DHS of the requirement to assess and document the environmental effects of a proposed action.

C. To the fullest extent possible, the DHS will segregate any such classified or protected information into an appendix sent to appropriate reviewers and decision makers, and allow public review of the remainder of the NEPA analysis. If exempted material cannot be segregated, or if segregation would leave essentially meaningless material, the DHS elements will withhold the entire NEPA analysis from the public; however, the DHS elements will prepare the NEPA analysis in accordance with the CEQ Regulations and this Directive, and use it in the DHS decision making process. The protected NEPA analysis may be shared with appropriately cleared officials in CEQ, EPA, and within the DHS. In such cases, other appropriate security and environmental officials will ensure that the consideration of environmental effects will be consistent with the letter and intent of NEPA. With regard to an EIS requiring a security clearance for review, a team of cleared personnel will review the classified or protected material for compliance with federal, tribal, state, and local environmental compliance. This team will be representative of internal environmental professionals and external resource professionals with appropriate clearances.

6.3 Procedures for Applicants (1501.2, 1506.5)

A. The DHS elements with the role of processing applications for permits, grants, various certifications, awards, licenses, approvals, or other major federal actions become the project proponent for environmental planning purposes. These proponents must consider the environmental effects of their action in accordance with this Directive, unless the action is exempted by statute. The requirements of this management Directive may be approached in a programmatic manner (*e.g.* one NEPA evaluation and document for an entire category of grants) or may be approached on a single application basis. In either case, the DHS element must be alert to identify circumstances that may be associated with any single application that would have potential for significant environmental impacts.

B. For major categories of DHS actions involving a large number of applicants, the appropriate DHS element will prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide and identify studies or other information foreseeably required for later federal action.

C. The DHS proponent shall begin the NEPA review as soon as possible after receiving an application. The proponent must conduct an independent and objective evaluation of the applicant's materials and complete the NEPA process (including evaluation of any EA that may be prepared by the applicant) before rendering a decision on the application. The DHS proponents must consider the NEPA analysis in reaching a decision.

D. In all cases, the DHS program proponent shall ensure that its application submittal and approval process provides for appropriate time and resources to meet the requirements of this Directive. At a minimum, the application submittal and approval process must incorporate the following provisions. Each DHS program proponent must ensure, for each separate approval authority, that the responsibility for meeting these provisions is appropriately allocated between the applicant and the DHS for each program of applications and, potentially, for each individual applicant.

(1) Consultation with the DHS proponent as early as possible in the application development process to obtain guidance with respect to the appropriate level and scope of any studies or environmental information that the program proponent may require to be submitted as part of the application. This includes the identification of the need for the DHS proponents to consult with federal, tribal, state, and local governments and with private entities and organizations potentially affected by or interested in the proposed action in accordance with 40 CFR 1501.2(d)(2).

(2) Anticipation of issues that may lead to either or both (1) a significant environmental impact; or (2) a concern with evaluating the level of significance. This may include identification of information gaps that may hinder an appropriate evaluation of significance.

(3) Performance of studies that the DHS proponent deems necessary and appropriate to determine the potential for environmental impacts of the proposed action.

(4) Identification and evaluation of appropriate options to resolve potentially significant environmental impacts. This may include development of appropriate actions to mitigate significant impacts.

(5) Consultation, as appropriate, with federal, tribal, state, and local governments and with private entities and organizations potentially affected by or interested in the proposed action as needed during the NEPA process for scoping and other public involvement activities. This would include consultation with minority populations and low-income populations in accordance with E.O. 12898.

(6) Notification to the DHS proponent as early as possible of other actions required to coordinate and complete the federal environmental review and to eliminate duplication with state and local procedures. (1506.2)

(7) Notification to the DHS proponent if the applicant changes the scope of the proposed action.

(8) Notification to the DHS proponent if the applicant plans to take an action that is within the proponent's jurisdiction that may have a significant environmental impact or limit the choice of alternatives. If the DHS proponent determines that the action would have a significant environmental impact or limit the choice of reasonable alternatives, the proponent will promptly notify the applicant that the permit, license, etc. will be withheld until the objectives and procedures of NEPA are achieved.

(9) Completion of appropriate NEPA documentation.

E. Final DHS approval of a grant, license, permit or other formal request

from an applicant may be conditioned by provisions for appropriate mitigation of potentially significant environmental impacts. The DHS proponents will ensure that all mitigation committed to as part of the ROD or FONSI is incorporated as conditions in whatever formal approval, contract, or legal document is issued. The DHS proponents will also ensure that appropriate monitoring of the implementation and success of the mitigation is also a condition of the formal documentation. The mitigation shall become a line item in the proponent's budget or other funding document, if appropriate, or included in the legal documents implementing the action (contracts, leases, or grants).

Appendix A: Definitions

Categorical exclusion (CE) (1508.4): ''Categorical exclusion'' means a category of actions which do not individually or cumulatively have a significant effect on the environment and which have been found to have no such effect in procedures adopted by a federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

Cooperating Agency (1508.5): ''Cooperating agency'' means any federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in Sec. 1501.6. A State or local agency of similar qualifications or an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Council on Environmental Quality (CEQ): NEPA created in the Executive Office of the President a Council on Environmental Quality. The Chairman is appointed by the President with the advice and consent of the Senate. The Council, among other things, appraises programs and activities of the Federal Government in the light of the policy set forth in title I of NEPA and formulates and recommends national policies to promote the improvement of the quality of the environment.

Designated DHS Official: Senior DHS officials as designated by the Secretary, Deputy Secretary, or Under Secretaries.

Effects (1508.8): ''Effects'' include: (a) Direct effects, which are caused by the action and occur at the same time and place. (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population, density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Element: Any of the DHS organizational elements, including agencies, bureaus, services, directorates, etc.

Environmental assessment (EA) (1508.9): ''Environmental Assessment'':

(a) means a concise public document for which a federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an element in compliance with the Act when no environmental impact is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by NEPA section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Environmental documents (1508.10): ''Environmental documents'' the document specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent).

Environmental impact analysis: A generic term that includes EAs and EISs.

Environmental impact statement (EIS) (1508.11): ''Environmental impact statement'' means a detailed written statement as required by section 102(2)(C) of the Act. It includes (1) a purpose and need statement, (2) a reasonable range of alternative means to meet that purpose and need, (3) a description of the affected environment and (4) a description of the environmental effects of each of the alternatives. The EIS must identify the element preferred alternative (if there is one) in the draft EIS.

Finding of No Significant Impact (FONSI) (1508.13): ''Finding of no significant impact'' means a document by a federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

Environmentally Sensitive Areas: These include, but are not limited to, (1) proposed federally listed, threatened, or endangered species or their designated critical habitats; (2) properties listed or eligible for listing on the National Register of Historic Places; (3) areas having special designation or recognition such as prime or unique agricultural lands, coastal zones, designated wilderness or wilderness study areas, wild and scenic rivers, 100 year floodplains, wetlands, sole source aquifers, National Wildlife Refuge, National Parks, etc.

Lead Agency (1508.16): ''Lead agency'' means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

Major Federal Action (1508.18): ''Major federal action'' includes actions with effects that may be major and which are potentially subject to federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as element action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised element rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future element actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected element decisions allocating element resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Mitigation (1508.20): ''Mitigation includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

National Environmental Policy Act (NEPA): Public Law 91–190 declares a national policy which will encourage productive and enjoyable harmony between man and his environment; establishes a Council on Environmental Quality in the Executive Office of the President; and requires that every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement (EIS) by the responsible official.

Notice of Intent (NOI) (1508.22): ''Notice of Intent'' means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the element's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the element who can answer questions about the proposed action and the environmental impact statement.

Proponent: The identified project or program manager. Normally this person resides in the operational line of authority. The proponent has the immediate authority to decide a course of action or has the authority to recommend course of action, from among options, to the next higher organization level (*e.g.* district to region) for approval. The proponent must also be in a position with the authority to establish the total estimate of resource requirements for the proposed action or, in the execution phase, have the authority to direct the use of resources. While the proponent is not normally expected to personally execute and document the environmental planning process, he or she has the lead role and is responsible for initiating the effort and retains responsibility (with support from the EPC) for the content and quality of the process and documentation.

Proposal (1508.23): ''Proposal'' exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

Record of Environmental Consideration (REC): A REC is a means of documenting element consideration of an action to ensure that it clearly fits a category of excludable actions (section 4.3), that it is not a small part of a larger action (section 3.2B), and that no extraordinary circumstances exist (3.2C). A REC is an internal DHS document to accompany the determination that a proposed action can be categorically excluded.

Record of Decision (ROD) (1505.2): The record, which may be integrated into any other record prepared by the agency shall:

(a) state what the decision was,

(b) identify all alternatives considered by the element in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An element may discuss preferences among alternatives based on relevant factors including economic and technical considerations and element statutory missions. An element shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the element making its decision and state how those considerations entered into its decision.

(c) State whether all practical means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

Scoping: Scoping (described at 40 CFR § 1501.7) shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (Sec. 1508.22) in the **Federal Register** except as provided in Sec. 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under Sec. 1507.3(c). An agency may give notice in accordance with Sec. 1506.6.

(2) Determine the scope (Sec. 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (Sec. 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in Sec. 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (Sec. 1502.7).

(2) Set time limits (Sec. 1501.8).

(3) Adopt procedures under Sec. 1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts. Scoping is used to define the scope of the environmental impact analysis and to identify institutional relationships in the process of the study.

The scope (described at 40 C.F.R. § 1508.25) consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs.1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

1. Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

2. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

3. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

4. No action alternative.

5. Other reasonable courses of actions.

6. Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

Tiering (1508.28): ''Tiering'' refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin-wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead element to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

[FR Doc. 04–13111 Filed 6–10–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD09–04–021]

Great Lakes Regional Waterways Management Forum

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: ''The Great Lakes Regional Waterways Management Forum'' will hold a meeting to discuss various waterways management issues. Agenda items will include navigation; maritime security issues including the implementation of Marine Transportation Security Act (MTSA) and the International Ship and Port Facility Security (ISPS) Code; waterways management; ballast water regulation; and discussions about the agenda for the next meeting. The meeting will be open to the public.

DATES: The meeting will be held on June 15, 2004, from 12 p.m. to 4 p.m. and on June 16 from 8:30 a.m. to 12 p.m. Comments must be submitted on or before June 15, 2004 to be considered at the meeting.

ADDRESSES: The meeting will be held in the U.S. Coast Guard Club located on the U.S. Coast Guard Moorings, 1055 East Ninth Street, Cleveland, OH 44199. Any written comments and materials should be submitted to Commander (map), Ninth Coast Guard District, 1240 E. Ninth Street, Room 2069, Cleveland, OH 44199.

FOR FURTHER INFORMATION CONTACT: CDR Michael Gardiner (map), Ninth Coast Guard District, OH, telephone (216) 902–6049. Persons with disabilities requiring assistance to attend this meeting should contact CDR Gardiner.

SUPPLEMENTARY INFORMATION: The Great Lakes Waterways Management Forum identifies and resolves waterways management issues that involve the Great Lakes region. The forum meets twice a year to assess the Great Lakes region, assign priorities to areas of concern and identify issues for resolution. The forum membership has identified agenda items for this meeting that include: Navigation; maritime security issues including the implementation of the MTSA and ISPS Code; waterways management; ballast water regulation; and discussions about the agenda for the next meeting. Additional topics of discussion are solicited from the public.

Dated: June 4, 2004.

R.J. Papp, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District, Cleveland, Ohio.

[FR Doc. 04–13380 Filed 6–9–04; 11:17 am]

BILLING CODE 4910–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4910–N–12]

Notice of Proposed Information Collection for Public Comment; Outline Specification

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 13, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Sherry Fobear McCown, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sherry Fobear McCown, (202) 708–0713, extension 7651, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Outline Specification.

OMB Control Number: 2577–0012.

Proposed Use: Public Housing Agencies (PHAs) in the development of public housing employ architects or turnkey developers to establish quality and kind of materials and equipment to be incorporated into the housing developments. The Outline Specifications are used by the PHAs and HUD to determine that specified items comply with code and standards and are appropriate in the development.

Agency form numbers, if applicable: HUD–5087.

Members of affected public: State, local government; businesses or other for profit groups.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 610 total by development, (450 turnkey; 160 conventional), annual, three hours per response, .25 hours per specification for

recordkeeping, for a total burden of 1,982 hours.

Status of the proposed information collection: Extension with change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 7, 2004.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–13218 Filed 6–10–04; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4910–N–13]

Notice of Proposed Information Collection for Public Comment for the Analysis of Proposed Main Construction Contract

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 13, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Sherry Fobear McCown, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sherry Fobear McCown, (202) 708–0713, extension 7651, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, 12 amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Analysis of Proposed Main Construction Contract.

OMB Control Number: 2577–0037.

Description of the need for the information and proposed use: Under the Annual Contribution Contract (ACC), Public Housing Agencies (PHAs) must prepare and submit main construction contracts and other contracts for projects being developed, or proposed to be developed under the Low-Income Housing Program. HUD will use the information to approve construction bids and budgets prior to awarding PHA's construction contracts.

Agency form numbers (if applicable): HUD–52396.

Members of affected public: State or local government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 104 respondents, annually, 2 hours average per response; total annual reporting burden 234 hours.

Status of the proposed information collection: Extension, with change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 7, 2004.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–13219 Filed 6–10–04; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4910–N–14]

Notice of Proposed Information Collection for Public Comment; Memorandum of Agreement (MOA) and Improvement Plan (IP) in Connection With the Public Housing Assessment System (PHAS)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: August 13, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Sherry Fobear McCown, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sherry Fobear McCown, (202) 708–0713, extension 7651, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection

techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Memorandum of Agreement (MOA) and Improvement Plan (IP).

OMB Control Number: 2577–0237.

Description of the need for the information and proposed use: A Public Housing Agency (PHA) that is designated troubled or substandard under the Public Housing Assessment System (PHAS) must enter into a Memorandum of Agreement (MOA) with HUD to outline its planned improvements. Similarly, a PHA that is a standard performer, but receives a total PHAS score of less than 70% but not less than 60% is required to submit an Improvement Plan (IP). These plans are designed to address deficiencies in a PHA's operations found through the PHAS assessment process (management, financial, physical, or resident related) and any other deficiencies identified by HUD through independent assessments or other methods.

Agency form number: None.

Members of affected public: Public Housing Agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: 173 respondents for either an MOA or an IP, and either monthly or quarterly reports, 36 hours average response (including reporting), 5,524 hours total reporting burden hours.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 8, 2004.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–13333 Filed 6–10–04; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 180–1150 JP]

Notice of Emergency Closure of Public Lands in El Dorado County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that certain access roads and certain areas are temporarily closed to all public uses that could result in igniting a wildfire and/or damaging or destroying Federally-listed threatened or endangered plant species. Prohibited activities include, but are not limited to the operation of motorized vehicles or other internal combustion engines, camping, campfires, smoking and fireworks from March 24, 2004, to March 24, 2005. Non-motorized entry during daylight hours will be allowed.

The closed area is portions of the Cameron Park unit of the Pine Hill Preserve, (T10N, R9E, section 34; and T9N, R9E, sections 2 and 3; Mount Diablo Baseline and Meridian). Entry will be restricted during this emergency closure to protect persons, property, public lands and resources.

Closure signs will be posted at main entry points to this area.

DATES: The closure will be in effect between March 24, 2004, and March 24, 2005.

ADDRESSES: Maps of the closure area may be obtained from the Folsom Field Office, 63 Natoma Street, Folsom, California 95630. Phone: (916) 985–4474.

FOR FURTHER INFORMATION CONTACT: Deane Swickard, Folsom Field Office Manager, 63 Natoma Street, Folsom, California 95630, telephone (916) 985–4474.

SUPPLEMENTARY INFORMATION: Under the authority of 43 CFR 9268.3(d)(1)(1), 43 CFR 8364.1(a) and 43 CFR 8341.2, the Bureau of Land Management will enforce the following rules within the closed area: No operation of motor vehicles or other internal combustion engines, no camping, no smoking, and no ignition of any fire, including campfires or fireworks will be allowed in the closed area. Non-motorized entry during daylight hours will be allowed. Official vehicles, including fire or law enforcement, are exempt from the emergency order.

The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 CFR 8360.0–7). Any person who violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more that 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 8571.

The risk to lives and property in the event of wildfire at the Cameron Park Unit of the Pine Hill Preserve is extreme and justifies emergency action. Fuels are mostly old chaparral, with large amounts of standing dead material. Summer temperatures often exceed 100 degrees Fahrenheit, and relative humidities are consistently low during fire season. Two apparently man-caused fires occurred in the Cameron Park Unit of the Preserve during the summer of 2003. Approximately 110 residences ring the perimeter of the Preserve, as well as several businesses and a courthouse. Within 1500 feet of the Preserve are 890 homes, 125 businesses and 40 medical offices. Home values average $550,000.

Four plant species that are listed as threatened or endangered under the Endangered Species Act occur at the Cameron Park Unit of the Pine Hill Preserve. Listed as endangered species are Stebbins' morning glory, (*Calystegia stebbinsii*); El Dorado bedstraw, (*Galium californicum sierrae*); and Roderick's ceanothus, (*Ceanothus roderickii*). Listed as threatened is Layne's butterweed, (*Senecio layneae*). Although two of these species have been shown to respond favorably to fires under certain conditions, a fire that occurs under the wrong conditions, or repeated fires, may negatively impact those species. The effects of fire on the other two species is not known. To conserve these species, unplanned man-caused ignitions must be prevented. The use of motor vehicles, especially non-street legal off-road vehicles, has damaged and killed plants of these listed species at the Cameron Park Unit.

An interagency management plan is being written for the Pine Hill Preserve that will address the issues addressed in this closure. The closure is an interim measure to address these issues until the plan is completed.

Dated: May 3, 2004.

D.K. Swickard,

Folsom Field Office Manager.

[FR Doc. 04–13321 Filed 6–10–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability

AGENCY: Bureau of Land Management, Interior and U.S. Forest Service, Department of Agriculture (Joint Lead Agencies).

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Federal Land Policy Management Act of 1976 and other regulatory requirements, the Joint Lead Agencies announce the availability of the Northern San Juan Basin Coal Bed Methane Development Project Draft Environmental Impact

Statement (DEIS) for coal bed natural gas development in the northern potion of the San Juan Basin, in La Plata and Achuleta Counties, Colorado. The Joint Lead Agencies have prepared the DEIS to provide agency decision makers and the public with comprehensive environmental impact information on which to base coal bed natural gas development decisions.

DATES: The Joint Lead Agencies will accept written comments on the DEIS for 90 days following the date that the Environmental Protection Agency publishes its notice of availability of the DEIS in the **Federal Register**.

The Joint Lead Agencies will hold public meetings in Durango, Bayfield and Pagosa Springs, Colorado. The times and dates for these meetings will be announced at least 15 days in advance using local media. The Joint Lead Agencies will notify all parties on this project's mailing list of the dates, times and locations of the meetings and of the timeframes for comment submittal.

ADDRESSES: Please address questions, comments or requests for copies of the DEIS to the Northern San Juan Basin CBM EIS, USDA FS Content Analysis Team, P.O. Box 221150, Salt Lake City, Utah 84122. Electronic comment may be submitted to *nbasin-cbm-eis@fs.fed.us*. The DEIS is also available on the Internet at *http://nsjb-eis.org/*.

DEIS comments, including names and street addresses of respondents, will be available for public review at the San Juan Public Lands Center, 15 Burnett Court, Durango, Colorado, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. Anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Walt Brown or Jim Powers at the above address, or phone: (970) 385–1304.

SUPPLEMENTARY INFORMATION: The DEIS analyzes industry's gas field development proposal (approximately three hundred new wells) and six other alternatives in a 125,000-acre Study Area in the Northern San Juan Basin of Colorado. The Study Area occupies portions of La Plata and Archuleta Counties, and is bounded on the south by the Southern Ute Reservation and on the west, north and east by the arching line of the base of the Pictured Cliffs sandstone.

The Study Area consists of approximately 7,000 acres of BLM administered land, 49,000 acres of U.S. Forest Service administered land, 9,000 acres of private lands with federal minerals and 60,000 acres of state or privately held (fee) lands with non-federal minerals.

Dated: December 19, 2004.

Mark W. Stiles,

BLM Center Manager/U.S.F.S. Forest Supervisor, San Juan Public Lands Center, Durango, Colorado.

Editorial Note: This document was received at the Office of the Federal Register on May 27, 2004.

[FR Doc. 04–12414 Filed 6–10–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–1220 PA]

Notice of a Pilot Study Based on a Scoping Paper To Determine the Feasibility of Commercial Kayak Instruction on the Mokelumne River in Amador and Calaveras County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Folsom Field Office is considering a study to determine the feasibility of providing commercial Kayak instruction opportunities on the Mokelumne River, between the Electra powerhouse and the East Bay Municipal Utility District's Take-out facility.

DATES: The study will take place between June 1, 2004 and September 30, 2007.

ADDRESSES: Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, California, 95630. Phone: (916) 985–4474.

FOR FURTHER INFORMATION CONTACT: Deane Swickard, Folsom Field Office Manager, 63 Natoma Street, Folsom, California 95630, telephone (916) 985–4474.

SUPPLEMENTARY INFORMATION: A pilot study is needed to determine what level, if any, of commercial activity will satisfy the public's needs and still be commensurate with maintaining resource values on this reach of river.

The study will begin in June of 2004, and could last up to three years. Upon completion of the study, the BLM, Folsom Field Office will prepare an environmental analysis to analyze the various alternatives.

The scoping paper that was developed by the BLM identified the critical issues and concerns, and provides the direction of the pilot study. A copy of this scoping paper may be obtained from the BLM, Folsom Field Office at the address listed above.

The following outfitter has been accepted by the BLM to conduct the pilot study: Current Adventures, P.O. Box 828, Lotus, CA 95651.

The BLM will issue a permit for this study.

The authority for this study can be found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 CFR 8372.0–3).

Dated: May 5, 2004.

Deane Swickard,

Folsom Field Office Manager.

[FR Doc. 04–13320 Filed 6–10–04; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–513]

Certain Electronic Devices, Including Power Adapters, Power Converters, External Batteries and Detachable Tips, Used To Power and/or Charge Mobile Electronic Products, and Components Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 7, 2004, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Mobility Electronics, Inc. Supplements to the Complaint were filed on May 12 and 13, 2004. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including power adapters, power converters, external batteries and detachable tips, used to power and/or charge mobile electronic products, and components

thereof by reason of infringement of claims 1, 3–7, 12, 14–15, 17–19, and 21 of U.S. Patent No. 5,347,211; claims 1–11 and 21 of U.S. Patent No. 6,064,177; claims 1, 8–14, 18–19, 21, 23–24, 28 and 30–31 of U.S. Patent No. 6,650,560; and claims 1–9, 13–14, 16 and 18 of U.S. Patent No. 6,700,808. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket imaging system (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 7, 2004, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electronic devices, including power adapters, power converters, external batteries and detachable tips, used to power and/or charge mobile electronic products, and components thereof by reason of infringement of claims 1, 3–7, 12, 14–15, 17–19, or 21 of U.S. Patent No. 5,347,211; claims 1–11 or 21 of U.S. Patent No. 6,064,177; claims 1, 8–14, 18–19, 21, 23–24, 28 or 30–31 of U.S. Patent No. 6,650,560; or claims 1–9, 13–14, 16 or 18 of U.S. Patent No. 6,700,808 and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Mobility Electronics, Inc., 17800 N. Perimeter Drive, Ste. 200, Scottsdale, Arizona 85255.

(b) The respondents are the following companies alleged to be in violation of section 337, and are parties upon which the complaint is to be served:

Formosa Electronics Industries, Inc., 5F, No. 8, Lane 130, Min-Chuan Rd., Hsin-Tien City, Taipei Hsien, Taiwan.

Micro Innovations, Inc., 400 Clearview Avenue, Edison, New Jersey 08837.

SPS, Inc., 1FLJYS Venture Town, 1688–5, Sinil-dong, Daeduck-gu, Daejeon 306–203, Republic of Korea.

(3) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against such respondent.

Issued: June 7, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–13226 Filed 6–10–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA–1921–167 (Second Review)]

Pressure Sensitive Plastic Tape From Italy

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping finding on pressure sensitive plastic tape from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on January 2, 2004 (69 FR 101), and determined on April 6, 2004, that it would conduct an expedited review (69 FR 21159, April 20, 2004).

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 7, 2004. The views of the Commission are contained in USITC Publication 3698 (June 2004), entitled *Pressure Sensitive Plastic Tape from Italy: Investigation No. AA1921–167 (Second Review).*

Issued: June 7, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–13247 Filed 6–10–04; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Okun, Commissioner Lane, and Commissioner Pearson dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA–1921–188 (Second Review)]

Prestressed Concrete Steel Wire Strand From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping finding on prestressed concrete steel wire strand from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on January 2, 2004 (69 FR 103), and determined on April 6, 2004, that it would conduct an expedited review (69 FR 21160, April 20, 2004).

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 7, 2004. The views of the Commission are contained in USITC Publication 3699 (June 2004), entitled *Prestressed Concrete Steel Wire Strand from Japan: Investigation No. AA1921–188 (Second Review).*

Issued: June 7, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–13248 Filed 6–10–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–04–013]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 22, 2004, at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–44 (Second Review) (Sorbitol from France)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before July 1, 2004.)
5. Inv. No. 731–TA–149 (Second Review) (Barium Chloride from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before July 1, 2004.)
6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 9, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–13433 Filed 6–9–04; 1:14 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determination as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their data of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which law is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT030001 (Jun. 13, 2003)
CT030005 (Jun. 13, 2003)
New York
NY030013 (Jun. 13, 2003)

Volume II

District of Columbia
DC030001 (Jun. 13, 2003)
DC030003 (Jun. 13, 2003)

Volume III

None

Volume IV

None

Volume V

Missouri
MO030001 (Jun. 13, 2003)
Missouri
MO030006 (Jun. 13, 2003)
Missouri
MO030010 (Jun. 13, 2003)
Missouri
MO030016 (Jun. 13, 2003)
Missouri
MO030019 (Jun. 13, 2003)
Missouri
MO030020 (Jun. 13, 2003)
Missouri
MO030041 (Jun. 13, 2003)
Missouri
MO030043 (Jun. 13, 2003)
Missouri
MO030044 (Jun. 13, 2003)
Missouri
MO030047 (Jun. 13, 2003)
Missouri
MO030051 (Jun. 13, 2003)
Missouri
MO030052 (Jun. 13, 2003)
Missouri
MO030053 (Jun. 13, 2003)
Missouri
MO030055 (Jun. 13, 2003)
Missouri
MO030056 (Jun. 13, 2003)
Missouri
MO030057 (Jun. 13, 2003)
Missouri
MO030059 (Jun. 13, 2003)
Missouri
MO030061 (Jun. 13, 2003)

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3 Day of June, 2004.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–12910 Filed 6–10–04; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

AGENCY: Bureau of Labor Statistics, DOL.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''National Compensation Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before August 13, 2004.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Compensation Survey (NCS) is an ongoing survey of earnings and benefits among private firms, State, and local government. The NCS resulted from the merger of three surveys: The NCS earnings and work level data (formerly the Occupational Compensation Survey Program), the Employment Cost Index (ECI), and the Employee Benefits Survey (EBS). Data from these surveys are critical for setting Federal white-collar salaries, determining monetary policy (as a Principal Federal Economic Indicator), and for compensation administrators and researchers in the private sector.

The survey will collect data from a sample of employers. These data will consist of information about the duties, responsibilities, and compensation (earnings and benefits) for a sample of occupations for each sampled employer.

Data will be updated on either an annual or quarterly basis. The updates will allow for production of data on change in earnings and total compensation.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget clearance is being sought for the National Compensation Survey.

The NCS collects earnings and work level data on occupations for the nation and selected localities. The NCS also collects information on the cost, provisions, and incidence of all the major employee benefits through its benefit cost (ECI) and benefit provision (EBS) programs. The NCS is currently phasing out any non-integrating data collection. This change to the NCS sample has helped to lower total respondent burden and increase the number of possible ways the BLS can provide data.

The NCS data on benefit costs will continue to be used to produce the ECI and Employer Expenditures for Employee Compensation Series. The data provided will be the same, and the series will be continuous.

The NCS will continue to provide all of the benefit provision and participation data now collected. These data include estimates of how many workers receive the various employer-sponsored benefits. The data also will include information about the common provisions of benefit plans.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: National Compensation Survey.

OMB Number: 1220–0164.

Affected Public: Businesses or other for-profit; not-for-profit institutions; and State, local, and tribal government.

Total Respondents: 41,776 (three-year average).

Frequency: Quarterly, annually.

Total Responses: 75,207 (three-year average).

Estimated Total Burden Hours: 57,934.

All figures in the table below are based on a three-year average. The total respondents and total responses in the table are greater than the figures shown above because many respondents are asked to provide information relating to more than one form.

Collection forms can have multiple uses. The table below shows the average collection times for the predominant uses of the forms. Record checks (for quality assurance and measurement) are done on a sub-sample of respondents verifying responses for pre-selected sections of the forms. The collection times for the NCS government-only forms are zero for FY 2005 and FY 2006 because they are for initiation of new government sample units and the current NCS governments sample is frozen. A new government sample will be initiated in FY 2007.

TABLE 1.—ANNUAL RESPONDENT BURDEN BY FORM

[Average of FY 2005, FY 2006, and FY 2007]

Form	Total respondents for forms	Frequency	Total responses for forms	Average minutes for the predominant form use	Estimated total burden hours
Government Establishment Collection Form (NCS Form 04–1G).	1533	Annually or Quarterly	1533	19	486
Private Establishment Collection Form (NCS Form 04–1P).	4148	Annually or Quarterly	4148	19	1314
Government Earning Form (NCS Form 04–2G)	1533	Annually or Quarterly	1533	20	511
Private Earning Form (NCS Form 04–2P)	4148	Annually or Quarterly	4148	20	1383
Computer Generated Earnings Update Form	29465	Annually or Quarterly	62896	20	20965
Government Work Level Form (NCS Form 04–3G)	1533	Annually or Quarterly	1533	25	639
Private Work Level Form (NCS FORM 04–3P)	4148	Annually or Quarterly	4148	25	1728
Government Work Schedule Form (NCS 04–4G)	1533	Annually or Quarterly	1533	10	256
Private Work Schedule Form (NCS 04–4P)	4148	Annually or Quarterly	4148	10	691
Government Benefits Collection Form (NCS 04–5G)	660	Annually or Quarterly	660	180	1980
Private Benefits Collection Form (NCS 04–5P)	2150	Annually or Quarterly	2150	180	6450
Summary of Benefits (Benefit update form SO–1003) is computer generated.	14808	Quarterly	47510	15–20	15661
Collection not tied to a specific form (testing, QA/QM, etc.).	8777	Unknown	8777	5–60	5780
Totals	77,856		144,717		57,934

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 3rd day of June, 2004.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 04–13261 Filed 6–10–04; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Record of Individual Exposure to Radon Daughters

AGENCY: Mine Safety and Health Administration, DOL.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before August 13, 2004.

ADDRESSES: Melissa Stoehr, Acting Chief, Records Management Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via e-mail to *stoehr.melissa@dol.gov*, along with an original printed copy. Ms. Stoehr can be reached at (202) 693–9827 (voice) or 202–693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

MSHA's primary goal is the protection of America's most precious mining resource, the miner. To achieve this goal, this agency has to keep information regarding the hazards faced and the progress made within the industry to develop and maintain a safe and healthy work environment. Records concerning the health and welfare of miners are especially important, given that the nature of the exposure could result in medical complications later in the miner's life. To this end, the record keeping of Radon Daughters is essential information. Each year the industry records and reports the exposure levels that its workforce has faced during the past 12 months. This information is archived and stored for retrieval by the exposed party, or legal representative, should a medical release be deemed necessary. This reporting of the exposure numbers also serves to inform MSHA of the industry expansion or decrease as well as health threats incurred.

During the past calendar year MSHA has received a decreased number of industry responses. These responses indicated that a decreasing number of miners are being employed and exposed within this industry grouping. Concurrently, the United States economy is calling for production rates that are lower than those in recent years. The decrease in production has resulted in a smaller number of employees being exposed to Radon Daughters. Regardless of the number of miners exposed, MSHA needs to keep the recording requirements for Radon Daughters to ensure that the records regarding the miners' level of exposure today is available to them tomorrow and throughout their lifetimes.

II. Desired Focus

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Record of Individual Exposure to Radon Daughters. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information-technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting ''Statutory and Regulatory Information'' then ''Paperwork Reduction Act submission (*http://www.msha.gov/regspwork.htm*)'', or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to provide miners protection from radon daughter exposure.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Record of Individual Exposure to Radon Daughters

OMB Number: 1219–0003.

Agency Form Number: MSHA 4000–9.

Frequency: Weekly.

Affected Public: Business or other for-profit.

Total Burden Respondents: 2.

Total Number of Responses: 100.

Total Burden Hours: 800.

Estimated Time per Respondent: 8 hours.

Total Burden Cost (operating/maintaining): $0.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden
Sampling	2	50 weeks	100	5.00	500
Recording Results	2	50 weeks	100	1.50	150
Calculating Reporting	2	50 weeks	100	1.25	125
Clerical	2	50 weeks	100	.25	25

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden
Totals			100		800

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 7th day of June, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–13260 Filed 6–10–04; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

Agency Holding Meeting: National Science Foundation, National Science Board, Ad hoc Committee on NSB Nominees Class of 2006–2012.

DATE AND TIME: June 18, 9:30 a.m.–10 a.m.

PLACE: National Science Foundation, Room 130, 4201 Wilson Boulevard, Arlington, VA 22230.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Friday, June 18, 2004

Open Session (9:30 a.m.–10 a.m.)

Approve schedule of selection of final slate of candidates.

Discuss process for selection of candidates.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Crosby, Executive Officer and NSB Office Director, (703) 292–7000, *www.nsf.gov/nsb.*

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 04–13455 Filed 6–9–04; 1:58 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corporation (R.E. Ginna Nuclear Power Plant); Order Modifying May 28, 2004, Order Approving Transfer of License and Conforming Amendment

I.

Rochester Gas and Electric Corporation (RG&E) is the holder of Renewed Facility Operating License No. DPR–18, which authorizes the operation of R.E. Ginna Nuclear Power Plant (Ginna) at steady-state power levels not in excess of 1520 megawatts thermal. The facility is located on the south shore of Lake Ontario, in Wayne County, New York. The license authorizes Ginna to possess, use, and operate the facility.

II.

By Order dated May 28, 2004, the Nuclear Regulatory Commission (NRC or the Commission) approved the transfer of the license for Ginna from RG&E to R.E. Ginna Nuclear Power Plant, LLC (Ginna LLC), a subsidiary of Constellation Generation Group, LLC (CGG). Condition III.(2) of the May 28, 2004, Order specified that on the closing date Ginna LLC shall obtain from RG&E a minimum of $201.6 million for decommissioning funding assurance for the facility. This amount was based on a June 30, 2004, closing date. By letter dated June 2, 2004, CGG and RG&E informed the NRC that the closing would occur on June 10, 2004. According to a June 3, 2004, submittal from CGG, the minimum amount that Ginna LLC will obtain from RG&E, based on a June 10, 2004, closing date, is $200,791,928 under the terms of the agreement of sale between RG&E and Ginna LLC.

III.

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that Condition III.(2) of the Order Approving Transfer of License and Conforming Amendment dated May 28, 2004, is modified to state:

On the closing date of the transfer of Ginna, Ginna LLC shall obtain from RG&E the greater of (1) $200,791,928 or (2) the amount necessary to meet the minimum formula amount under 10 CFR 50.75 calculated as of the date of closing for decommissioning funding assurance for the facility, and ensure the deposit of such funds into a decommissioning trust for Ginna established by Ginna LLC.

This Order is effective upon issuance.

For further details with respect to this Order, *see* the initial application dated December 16, 2003, and supplemental letters from RG&E dated March 26, and April 30, 2004, and from CGG dated February 27, April 30, May 24, June 2, and June 3, 2004, and the Order and Safety Evaluation dated May 28, 2004, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, File Public Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated in Rockville, Maryland, this 4th day of June, 2004.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 04–13255 Filed 6–10–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Unit Nos. 1 and 2; Exemption

1.0 Background

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating License Nos. DPR–77 and DPR–79, which authorize operation of the Sequoyah Nuclear Plant (facility or SQN), Unit Nos. 1 and 2, respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized water reactors located in Hamilton County, Tennessee.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, section 50.68(b)(1) sets forth the following requirement that must be met, in lieu of a monitoring system capable of detecting criticality events.

> Plant procedures shall prohibit the handling and storage at any one time of more fuel assemblies than have been determined to be safely subcritical under the most adverse moderation conditions feasible by unborated water.

The licensee is unable to satisfy the above requirement for handling of the 10 CFR part 72 licensed contents of the Holtec HI–STORM 100 Cask System. Section 50.12(a) allows licensees to apply for an exemption from the requirements of 10 CFR part 50 if the regulation is not necessary to achieve the underlying purpose of the rule and other conditions are met. The licensee stated in the application that compliance with 10 CFR 50.68(b)(1) is not necessary for handling the 10 CFR part 72 licensed contents of the cask system to achieve the underlying purpose of the rule.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present. Therefore, in determining the acceptability of the licensee's exemption request, the staff has performed the following regulatory, technical, and legal evaluations to satisfy the requirements of 10 CFR 50.12 for granting the exemption.

3.1 Regulatory Evaluation

The SQN Technical Specifications (TSs) currently permit the licensee to store spent fuel assemblies in high-density storage racks in each spent fuel pool (SFP). In accordance with the provisions of 10 CFR 50.68(b)(4), the licensee takes credit for soluble boron for criticality control and ensures that the effective multiplication factor (k_{eff}) of the SFP does not exceed 0.95, if flooded with borated water. As stated in 10 CFR 50.68(b)(4), it also requires that, if credit is taken for soluble boron, the k_{eff} must remain below 1.0 (subcritical), if flooded with unborated water. However, the licensee is unable to satisfy the requirement to maintain the k_{eff} below 1.0 (subcritical) with unborated water, which is also the requirement of 10 CFR 50.68(b)(1). Therefore, the licensee's request for exemption from 10 CFR 50.68(b)(1) proposes to permit the licensee to perform spent fuel loading, unloading, and handling operations related to dry cask storage, without being subcritical under the most adverse moderation conditions feasible by unborated water.

Title 10 of the *Code of Federal Regulations,* part 50, Appendix A, ''General Design Criteria (GDC) for Nuclear Power Plants,'' provides a list of the minimum design requirements for nuclear power plants. According to GDC 62, ''Prevention of criticality in fuel storage and handling,'' the licensee must limit the potential for criticality in the fuel handling and storage system by physical systems or processes.

Section 50.68 of 10 CFR part 50, ''Criticality accident requirements,'' provides the NRC requirements for maintaining subcritical conditions in SFPs. Section 50.68 provides criticality control requirements which, if satisfied, ensure that an inadvertent criticality in the SFP is an extremely unlikely event. These requirements ensure that the licensee has appropriately conservative criticality margins during handling and storage of spent fuel. Section 50.68(b)(1) states, ''Plant procedures shall prohibit the handling and storage at any one time of more fuel assemblies than have been determined to be safely subcritical under the most adverse moderation conditions feasible by unborated water.'' Specifically, 10 CFR 50.68(b)(1) ensures that the licensee will maintain the pool in a subcritical condition during handling and storage operations without crediting the soluble boron in the SFP water.

The licensee has received a license to construct and operate an Independent Spent Fuel Storage Installation (ISFSI) at SQN. The ISFSI would permit the licensee to store spent fuel assemblies in large concrete dry storage casks. In order to transfer the spent fuel assemblies from the SFP to the dry storage casks, the licensee must first transfer the assemblies to a Multi-Purpose Canister (MPC) in the cask pit area of the SFP. The licensee performed criticality analyses of the MPC fully loaded with fuel having the highest permissible reactivity, and determined that a soluble boron credit was necessary to ensure that the MPC would remain subcritical in the SFP. Since the licensee is unable to satisfy the requirement of 10 CFR 50.68(b)(1) to ensure subcritical conditions during handling and storage of spent fuel assemblies in the pool with unborated water, the licensee identified the need for an exemption from the 10 CFR 50.68(b)(1) requirement to support MPC loading, unloading, and handling operations, without being subcritical under the most adverse moderation conditions feasible by unborated water.

The staff evaluated the possibility of an inadvertent criticality of the spent nuclear fuel at SQN during MPC loading, unloading, and handling. The staff has established a set of acceptance criteria that, if met, satisfy the underlying intent of 10 CFR 50.68(b)(1). In lieu of complying with 10 CFR 50.68(b)(1), the staff determined that an inadvertent criticality accident is unlikely to occur if the licensee meets the following five criteria:

1. The cask criticality analyses are based on the following conservative assumptions:

a. All fuel assemblies in the cask are unirradiated and at the highest permissible enrichment,

b. Only 75 percent of the Boron-10 in the Boral panel inserts is credited,

c. No credit is taken for fuel-related burnable absorbers, and

d. The cask is assumed to be flooded with moderator at the temperature and density corresponding to optimum moderation.

2. The licensee's ISFSI TS requires the soluble boron concentration to be equal to or greater than the level assumed in the criticality analysis and surveillance requirements necessitate the periodic verification of the concentration both prior to and during loading and unloading operations.

3. Radiation monitors, as required by GDC 63, ''Monitoring Fuel and Waste Storage,'' are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

4. The quantity of other forms of special nuclear material, such as sources, detectors, etc., to be stored in the cask will not increase the effective multiplication factor above the limit calculated in the criticality analysis.

5. Sufficient time exists for plant personnel to identify and terminate a boron dilution event prior to achieving a critical boron concentration in the MPC. To demonstrate that it can safely identify and terminate a boron dilution event, the licensee must provide the following:

a. A plant-specific criticality analysis to identify the critical boron concentration in the cask based on the highest reactivity loading pattern.

b. A plant-specific boron dilution analysis to identify all potential dilution pathways, their flowrates, and the time

necessary to reach a critical boron concentration.

c. A description of all alarms and indications available to promptly alert operators of a boron dilution event.

d. A description of plant controls that will be implemented to minimize the potential for a boron dilution event.

e. A summary of operator training and procedures that will be used to ensure that operators can quickly identify and terminate a boron dilution event.

3.2 Technical Evaluation

In determining the acceptability of the licensee's exemption request, the staff reviewed three aspects of the licensee's analyses: (1) Criticality analyses submitted to support the ISFSI license application, (2) boron dilution analysis, and (3) legal basis for approving the exemption. For each of the aspects, the staff evaluated whether the licensee's analyses and methodologies provide reasonable assurance that adequate safety margins are developed and can be maintained in the SQN SFP during loading of spent fuel into canisters for dry cask storage.

3.2.1 Criticality Analyses

For evaluation of the acceptability of the licensee's exemption request, the staff reviewed the criticality analyses provided by the licensee in support of its ISFSI license application. Chapter 6, ''Criticality Evaluation,'' of the HI-STORM Final Safety Analysis Report (HI-STORM FSAR) contains detailed information regarding the methodology, assumptions, and controls used in the criticality analysis for the MPCs to be used at SQN. The staff reviewed the information contained in Chapter 6 as well as information provided by the licensee in its exemption request to determine if Criteria 1 through 4 of Section 3.1 were satisfied.

First, the staff reviewed the methodology and assumptions used by the licensee in its criticality analysis to determine if Criterion 1 was satisfied. The licensee provided a detailed list of the assumptions used in the criticality analysis in Chapter 6 of the HI-STORM FSAR as well as in its exemption request. The licensee stated that it took no credit in the criticality analyses for burnup or fuel-related burnable absorbers. The licensee also stated that all assemblies were analyzed at the highest permissible enrichment. Additionally, the licensee stated that all criticality analyses for a flooded MPC were performed at temperatures and densities of water corresponding to optimum moderation conditions. Finally, the licensee stated that it only credited 75 percent of the Boron-10 content for the fixed neutron absorber, Boral, in the MPC. Based on its review of the criticality analyses contained in Chapter 6 of the HI–STORM FSAR, the staff finds that the licensee has satisfied Criterion 1.

Second, the staff reviewed the proposed SQN ISFSI TS. The licensee's criticality analyses credit soluble boron for reactivity control during MPC loading, unloading, and handling operations. Since the boron concentration is a key safety component necessary for ensuring subcritical conditions in the pool, the licensee must have a conservative TS capable of ensuring that sufficient soluble boron is present to perform its safety function. The most limiting loading configuration of an MPC requires 2600 parts-per-million (ppm) of soluble boron to ensure the k_{eff} is maintained below 0.95, the regulatory limit relied upon by the staff for demonstrating compliance with the requirements of 10 CFR 72.124(a). SQN's ISFSI TSs require the soluble boron concentration in the MPC cavity be greater than or equal to the concentrations assumed in the criticality analyses under a variety of MPC loading configurations. In all cases, the boron concentration required by the proposed ISFSI TS ensures that the k_{eff} will be below 0.95 for the analyzed loading configuration. Additionally, the licensee's proposed ISFSI TS contains surveillance requirements which ensure it will verify that the boron concentration is above the required level both prior to and during MPC loading, unloading, and handling operations. Based on its review of the proposed SQN ISFSI TS, the staff finds that the licensee has satisfied Criterion 2.

Third, the staff reviewed the SQN FSAR Update and the information provided by the licensee in its exemption request to ensure that it complies with GDC 63. GDC 63 requires that licensees have radiation monitors in fuel storage and associated handling areas to detect conditions that may result in a loss of residual heat removal capability and excessive radiation levels and initiate appropriate safety actions. As a condition of receiving and maintaining an operating license, the licensee must comply with GDC 63. The staff reviewed the SQN FSAR Update and exemption request to determine whether it had provided sufficient information to demonstrate continued compliance with GDC 63. Based on its review of both documents, the staff finds that the licensee complies with GDC 63 and has satisfied Criterion 3.

Finally, as part of the criticality analysis review, the staff evaluated the storage of nonfuel related material in an MPC. The staff evaluated the potential to increase the reactivity of an MPC by loading it with materials other than spent nuclear fuel and fuel debris. SQN's spent fuel and nonfuel hardware are bounded by the spent fuel and non-fuel hardware analyzed and represented in Holtec Hi-Storm 100 Certificate of Compliance (COC) No. 1014, Appendix B, ''Approved Content and Design Features.'' The COC provides limitations on the materials that can be stored in the MPC design intended to be used at the SQN ISFSI. The staff determined that the loading limitations described in the COC will ensure that nonfuel hardware loaded in the MPCs will not result in a reactivity increase. Based on its review of the loading restrictions for nonfuel hardware, the staff finds that the licensee has satisfied Criterion 4.

3.2.2 Boron Dilution Analysis

Since the licensee's ISFSI application relies on soluble boron to maintain subcritical conditions within the MPCs during loading, unloading and handling operations, the staff reviewed the licensee's boron dilution analysis to determine whether appropriate controls, alarms, and procedures were available to identify and terminate a boron dilution accident prior to reaching a critical boron concentration.

By letter dated October 25, 1996, the staff issued a safety evaluation of licensing topical report WCAP–14416, ''Westinghouse Spent Fuel Rack Criticality Analysis Methodology.'' This safety evaluation specified that the following issues be evaluated for applications involving soluble boron credit: The events that could cause boron dilution, the time available to detect and mitigate each dilution event, the potential for incomplete boron mixing, and the adequacy of the boron concentration surveillance interval.

The TS requirements for the HI–STORM 100 Cask System include a minimum boron concentration of 1900 ppm boron when spent fuel assemblies with enrichments less than or equal to 4.1 weight-percent (wt-percent) U–235 are loaded into an MPC–32 canister. When fuel assemblies are enriched to greater than 4.1 wt-percent U–235 and less than or equal to 5.0 wt-percent U–235 and loaded into an MPC–32, the minimum boron concentration is 2600 ppm. These TS requirements ensure that k_{eff} is maintained less than 0.95. TS surveillance requirements require the boron concentration in the MPC water to be verified by two independent measurements within 4 hours prior to commencing any loading or unloading

of fuel; verified when one or more fuel assemblies are installed if water is to be added or recirculated through the MPC; and verified every 48 hours thereafter while the MPC is in the SFP when one or more fuel assemblies are installed.

The licensee contracted with Holtec International to perform a criticality analysis to determine the soluble boron concentration that results in a k_{eff} equal to 1.0 for both 4.1 wt-percent and 5.0 wt-percent U–235 fuel enrichments using the same methodology as approved in the HI–STORM 100 Cask System Final Safety Analysis. The analysis determined the critical boron concentration level for 4.1 wt-percent U–235 enriched fuel was 1180 ppm and for 5.0 wt-percent U–235 enrichment was 1780 ppm. Therefore, the boron concentration within the canister would have to decrease from the TS limit to the respective critical boron concentration before criticality is possible. The licensee based its boron dilution analyses and its preventive and mitigative actions on dilution sources with the potential to reduce the boron concentration from the TS minimum values for the two fuel enrichment bands to the respective concentration for criticality.

The licensee reviewed plant drawings to identify potential dilution sources and performed a plant walk-down to verify the drawing review. This review identified that, with the exception of the raw cooling water (RCW) system piping, large diameter piping with the potential to dilute the spent fuel pool boron concentration was seismically qualified to assure the piping would adequately maintain its position and pressure boundary integrity during the design basis safe-shutdown earthquake. Subsequently, the licensee evaluated the RCW piping and components on the refueling floor and concluded the RCW system would also adequately maintain its position and pressure boundary integrity during the design basis safe-shutdown earthquake. Therefore, an instantaneous complete severance of these piping systems is not credible. However, the licensee reviewed its calculation for moderate energy line breaks and performed calculations for these piping systems in the refueling pool area to determine dilution potentials from postulated critical cracks in the piping. Numerous smaller piping systems may experience critical cracks; however, the most limiting critical crack flow rate is the calculated value of 314 gallons per minute (gpm) for the RCW system.

The licensee identified the following additional credible bounding dilution sources and their flow rates: 250 gpm from the demineralized water system through an open isolation valve to the SFP cooling system; 5 gpm from the demineralized water system to make up for undetected, small leaks from the SFP or its cooling system; and 150 gpm from the fire protection system through a fire hose station to the spent fuel pool. The staff found the scope and results of the dilution source evaluation acceptable.

To demonstrate that it has ample time and opportunity to identify and terminate a boron dilution event, the licensee calculated the time necessary for dilution from the TS boron concentration to the critical boron concentration for each fuel enrichment range and described the alarms, procedures, and administrative controls it has in place. The RCW critical crack flow rate of 314 gpm, which is the limiting high flow-rate dilution event, would require more than 8 hours to dilute the SFP to the critical boron concentration. The licensee modified the SFP high level setpoint and procedural limits for initial SFP water level prior to cask loading operations to assure the SFP high level alarm would be effective in detecting dilution during cask loading operations. The RCW critical crack would cause the SFP water level to reach the high level alarm setpoint within several minutes of water beginning to spill into the pool, allowing operators ample time to stop the dilution after the alarm. The indications and response to a high-rate dilution event from the demineralized water system through the spent fuel cooling system would be similar, but the licensee committed to the additional action of tagging closed the demineralized and primary water supplies to the spent fuel cooling system during cask loading and unloading operations.

Dilution to the critical boron concentration resulting from addition of water to compensate for an undetected slow loss of SFP coolant is also not credible. The licensee calculated that the dilution from the TS required boron concentration would require hundreds of hours at leakage rates that could credibly go unnoticed. The 48-hour TS surveillance interval for boron concentration measurement provides strong assurance that such a dilution would be detected and corrected well before the critical boron concentration could be reached.

The configuration of the cask pit could allow localized boron dilution and stratification because the pit is open to the SFP only through a narrow transfer path above the level of stored fuel. Addition of cold water directly to the cask pit (*e.g.*, through a fire hose) that is denser than the warm, borated pool water could fill the bottom of the cask pit with water having a low boron concentration. However, the licensee stated that the spent fuel cooling system with a normal flow rate of 2300 gpm discharges flow through one 4-inch line into the cask pit and one 10-inch line into the SFP. The cooled return flow to the cask pit provides assurance that localized boron dilution and stratification would not occur within the cask pit during canister loading operations.

In addition to the conservative criticality and boron dilution analyses it performed, the licensee will enhance its procedures and operator training to ensure that the casks can be safely loaded, unloaded, and handled in the SQN spent fuel pool. The licensee committed to enhance its operation procedures to explicitly describe reaction to alarms and indications which are indicative of a boron dilution event prior to initial dry cask loading operations. Additionally, SQN committed to provide training on the new procedures to ensure that operators can effectively identify and terminate boron dilution sources in a minimum amount of time prior to reaching a critical boron limit. The licensee stated in its supplement that the training will emphasize the importance of avoiding any inadvertent additions of unborated water to the SFP, responses to be taken for notification or alarms that may be indicative of a potential boron dilution event during cask loading and fuel movement in the SFP, and identification of the potential for a boron dilution event during decontamination rinsing activities and abnormal SFP make-up with the fire protection system. Finally, in order to ensure rapid identification of an ongoing boron dilution event, the licensee committed either to increase the frequency of its normal rounds or station a trained monitor who is assigned to watch for a dilution event in SFP area.

Based on the staff's review of the licensee's exemption request dated February 20, 2004, the supplemental information provided by letter dated April 27, 2004, and its boron dilution analysis, the staff finds the licensee has provided sufficient information to demonstrate that an undetected and uncorrected dilution from the TS required boron concentration to the calculated critical boron concentration is not credible. Based on its review of the boron dilution analysis and enhancements to the operating procedures and operator training program, the staff finds that the licensee has satisfied Criterion 5.

Therefore, in conjunction with the conservative assumptions used to establish the TS required boron concentration and critical boron concentration, the boron dilution evaluation demonstrates that the underlying intent of 10 CFR 50.68(b)(1) is satisfied.

3.3 Legal Basis for the Exemption

Pursuant to 10 CFR 50.12, ''Specific Exemption,'' the staff reviewed the licensee's exemption request to determine if the legal basis for granting an exemption had been satisfied, and concluded that the licensee has satisfied the requirements of 10 CFR 50.12. With regards to the six special circumstances listed in 10 CFR 50.12(a)(2), the staff finds that the licensee's exemption request satisfies 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.'' Specifically, the staff concludes that since the licensee has satisfied the five criteria in Section 3.1 of this exemption, the application of the rule is not necessary to achieve its underlying purpose in this case.

3.4 Staff Conclusion

Based upon the review of the licensee's exemption request to credit soluble boron during MPC loading, unloading, and handling in the SQN SFP, the staff concludes that pursuant to 10 CFR 50.12(a)(2) the licensee's exemption request is acceptable. However, the staff limits its approval to the loading, unloading, and handling of the components of the HI-STORM 100 dual-purpose dry cask storage system at SQN.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Tennessee Valley Authority an exemption from the requirements of 10 CFR 50.68(b)(1) for the loading, unloading, and handling of the components of the HI–STORM 100 dual-purpose dry cask storage system at SQN. Any changes to the cask system design features affecting criticality or its supporting criticality analyses will invalidate this exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (69 FR 31849).

This exemption is effective upon issuance.

Dated in Rockville, Maryland, this 7th day of June, 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–13253 Filed 6–10–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on June 22, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, June 22, 2004—8 a.m.–9:30 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: June 4, 2004.

Ralph Caruso,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–13251 Filed 6–10–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Future Plant Designs; Notice of Meeting

The ACRS Subcommittee on Future Plant Designs will hold a meeting on June 25, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, June 25, 2004—8:30 a.m. until 5 p.m.

The Subcommittee will review the AP1000 Final Safety Evaluation Report (FSER) and the resolution of any remaining open items and ACRS concerns. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Medhat M. El-Zeftawy (telephone 301–415–6889) between 7:30 a.m. and 5 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: June 3, 2004.

Ralph Caruso,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–13249 Filed 6–10–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Future Plant Designs; Notice of Meeting

The ACRS Subcommittee on Future Plant Designs will hold a meeting on June 24, 2004, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, June 24, 2004–1 p.m. until 5 p.m.

The Subcommittee will review and discuss the NRC staff's proposed technology-neutral framework document for future plant licensing. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Medhat M. El-Zeftawy (telephone 301–415–6889) between 7:30 a.m. and 5 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: June 3, 2004.

Ralph Caruso,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–13250 Filed 6–10–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on June 22–23, 2004, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

Tuesday and Wednesday, June 22–23, 2004—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the ongoing staff review associated with GSI–191, Pressurized Water Reactor (PWR) Sump Performance. Representatives from the Nuclear Energy Institute (NEI) will present a description of their guidelines for use by licensees, the staff will present their initial assessment of guidelines, and the staff will present the results of the public comments on the draft Generic Letter regarding PWR sump blockage. The Office of Nuclear Regulatory Research is also expected to provide the initial results of experimental programs to investigate chemical phenomena in PWR sumps. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301–415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: June 3, 2004.

Ralph Caruso,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–13252 Filed 6–10–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Bulletin 2004–01 Inspection of Alloy 82/182/600 Materials Used in the Fabrication of Pressurizer Penetrations and Steam Space Piping Connections at Pressurized-Water Reactors (PWRs); Notice of Availability

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued NRC Bulletin 2004–01 to all holders of operating licenses for PWRs except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor pressure vessel. The NRC is issuing this bulletin to:

(1) Advise PWR licensees that current methods of inspecting Alloy 82/182/600 materials used in the fabrication of pressurizer penetrations and steam space piping connections may need to be supplemented with additional measures to detect and adequately characterize flaws due to primary water stress corrosion cracking,

(2) Request PWR addressees to provide the NRC with information related to the materials from which the pressurizer penetrations and steam space piping connections at their facilities were fabricated,

(3) Request PWR licensees to provide the NRC with information related to the inspections that have been and those that will be performed to ensure that degradation of Alloy 82/182/600 materials used in the fabrication of pressurizer penetrations and steam space piping connections will be identified, adequately characterized, and repaired, and

(4) Require PWR addresses to provide a written response to the NRC in accordance with the provisions of Section 50.54(f) of Title 10 of the Code of Federal Regulations (10 CFR 50.54(f)).

DATES: The bulletin was issued on May 28, 2004.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Timothy G. Colburn at 301–415–1402, E-mail tgc@nrc.gov or Matthew A. Mitchell at 301–415–3303, E-mail: mam4@nrc.gov.

SUPPLEMENTARY INFORMATION: NRC Bulletin 2004–01 may be examined and/or copied for a fee at the NRC's Public Document Room, located at One White Flint North Public File area, 1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publically available records are accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, http://www.nrc.gov/reading-rm/adams.html. The ADAMS Accession No. for the bulletin is ML041480034.

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at 301–415–4737 or 1–800–397–4209, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 3rd day of June 2004.

For the Nuclear Regulatory Commission.

William Beckner,

Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–13254 Filed 6–10–04; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Public Service Pension Questionnaires.

(2) *Form(s) submitted:* G–208, G–212.

(3) *OMB Number:* 3220–0136.

(4) *Expiration date of current OMB clearance:* 04/30/2007.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,170.

(8) *Total annual responses:* 1,170.

(9) *Total annual reporting hours:* 294.

(10) *Collection description:* A spouse or survivor annuity under the Railroad Retirement Act may be subjected to a reduction for a public service pension. The questionnaires obtain information needed to determine if the reduction applies and the amount of such reduction.

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 e-mail *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. 04–13228 Filed 6–10–04; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Self-Employment Questionnaire.

(2) *Form(s) submitted:* AA–4.

(3) *OMB Number:* 3220–0138.

(4) *Expiration date of current OMB clearance:* 07/31/2004.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 600.

(8) *Total annual responses:* 600.

(9) *Total annual reporting hours:* 415.

(10) *Collection description:* Section 2 of the Railroad Retirement Act provides for payment of annuities to qualified employees and their spouses. Work for a Last Pre-Retirement Non-railroad Employer (LPE), and work in self-employment affect payment in different ways. This collection obtains information to determine whether claimed self-employment is really self-employment, and not work for a railroad or LPE.

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. 04–13229 Filed 6–10–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27856]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 7, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 29, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 29, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Emera Inc., et al. (70–10227)

Emera Inc. (''Emera''), located at P.O. Box 910, Halifax, Nova Scotia, Canada B3J2W5, a registered holding company under the Act, and its direct and indirect subsidiary companies, Emera U.S. Holdings Inc. (''Emera USH''), BHE Holdings Inc. (''BHEH''), located at 1209 Orange Street, New Castle, Wilmington, DE 19801, and Bangor Hydro-Electric Company (''BHE''), located at 33 State Street, Bangor, Maine 04401, and the direct and indirect subsidiary companies of Emera listed in Exhibit A of the Application (collectively, ''Applicants''), have filed an application-declaration (''Application'') with the Commission under sections 6, 7, 9, 10, 12 and 13 of the Act and rules 43, 45, 46, 53, 87 and 90 under the Act seeking authorization for certain financing and other transactions as described below, during the period from

the effective date of any order issued in this matter authorizing the proposed transactions through June 30, 2007 (''Authorization Period'').

Emera was formed under the laws of the Province of Nova Scotia, Canada in 1998, and its common stock is listed and traded on the Toronto Stock Exchange (''TSE''). The securities commissions of each of the provinces of Canada regulate securities issuances by Emera and the company also is subject to the rules and regulations of the TSE. Emera's public disclosure documents such as annual reports and proxy statements are available on SEDAR, an electronic document management system that is administered by the Canadian Securities Administrators, an association of the Canadian provincial securities commissions. Emera became a registered holding company on October 11, 2001, after its acquisition of the outstanding common stock of BHE, a Maine electric public utility company. In connection with that acquisition, Emera organized Emera USH and BHEH to hold its interest in BHE. Emera USH is a wholly-owned direct subsidiary of Emera and BHEH is a wholly-owned direct subsidiary of Emera USH, and both are registered holding companies under the Act. Emera is the parent of Nova Scotia Power Inc. (''NSPI''), a Canadian electric utility company that owns and operates a vertically integrated electric utility system in Nova Scotia. NSPI, which is classified as a foreign utility company under section 33 of the Act (''FUCO''), serves 440,000 customers in Nova Scotia with 2,183 MW of generating capacity, approximately 5,200 km of transmission lines, 24,000 km of distribution lines, associated substations and other facilities. For the twelve months ending December 31, 2003, Emera had revenues of approximately CDN $1,231.3 million and income of CDN $129.2 million (US $878.9 and U.S. $92.2, respectively). As of December 31, 2003, Emera had assets of approximately CDN $3,840.9 million (US $2,971.9).

BHE is a public utility and holding company exempt under section 3(a)(1) of the Act in accordance with an order of the Commission issued on October 1, 2001, (HCAR No. 27445) (''Acquisition Order''). BHE provides the transmission and distribution system for the delivery of electricity to approximately 123,000 Maine customers. The Maine Public Utilities Commission (''MPUC'') regulates BHE with respect to rates, maintenance of accounting records and various other service and safety matters. BHE holds a 14.2% equity interest in Maine Electric Power Company (''MEPCO''), a Maine utility that owns and operates electric transmission facilities from Wiscasset, Maine to the Maine-New Brunswick border. MEPCO is also owned by the unaffiliated entities, Central Maine Power Company (78.3%) and Maine Public Service Company (7.5%). In addition, BHE owns a 50% general partnership interest in Chester SVC Partnership (''Chester SVC''), through BHE's wholly-owned subsidiary Bangor Var Co., Inc. (''Bangor Var''). Chester SVC is a single-purpose financing entity formed to own a static var compensator, which is electrical equipment that supports the New England Power Pool (NEPOOL)/Hydro Quebec Phase II transmission line.

Proceeds from the sale of securities in the proposed financing transactions would be used for general corporate purposes, including financing the capital expenditures and working capital requirements of Emera and its subsidiaries (''Emera Group''), the acquisition, retirement or redemption of securities previously issued by Emera Group companies, and for authorized investments in companies organized in accordance with rule 58 under the Act, Canadian Energy Related Subsidiaries (as defined below), exempt wholesale generators (''EWGs''), FUCOs, exempt telecommunications companies (''ETCs'') and for other lawful purposes.

Applicants represent that no financing proceeds will be used to acquire the securities of any company unless the acquisition has been approved by Commission order, or it is in accordance with an available exemption under the Act or the rules under the Act, including sections 32, 33 and 34 and rule 58. Financing and guarantees used to fund investments in rule 58 subsidiaries will be subject to the limitations of that rule.

Financing Authorization Requested

Applicants seek the following authorizations through the Authorization Period:

Emera requests authorization:

(i) to issue and sell through the Authorization Period up to $3 billion of securities at any one time outstanding (''Emera External Limit'') and to issue guarantees and other forms of credit support in an aggregate amount of $650 million at any one time outstanding (''Emera Guarantee Limit'');

(ii) to enter into hedging transactions, including anticipatory hedges, with respect to its indebtedness to manage and minimize interest rate costs and to lock-in current interest rates; and

(iii) to finance certain of its nonutility subsidiaries at a mark up to Emera's cost of funds.

Emera USH and BHEH request authorization to issue and sell securities to Emera, to finance one another through the issuance and acquisition of securities, and to finance BHE by acquiring its securities.

Emera requests authorization to change the terms of any wholly-owned subsidiary's authorized capital stock.

Emera's non-utility subsidiaries request authorization to pay dividends out of capital or unearned surplus.

Emera and its subsidiaries request authorization to acquire the equity securities of one or more special purpose subsidiaries (''Financing Subsidiaries'') organized solely to facilitate a financing transaction and to guarantee the securities issued by Financing Subsidiaries.

Emera requests that the Commission approve the issuance of up to 5 million shares of common stock under dividend reinvestment and stock-based management incentive and employee benefit plans (''Common Stock Plan Limit'').

BHE requests authorization to issue and sell up to $100 million in short-term debt (''BHE Limit'').

Emera requests authorization to invest up to $300 million in certain energy-related companies doing business in Canada (''Canadian Energy Related Subsidiaries'').

Emera requests authorization to issue and sell securities and guarantees in an aggregate amount of up to $2.0 billion (''EWG–FUCO Investment Limit''), which would be included within the Emera External Limit and Emera Guarantee Limit proposed above, for the purpose of financing the acquisition of EWGs and FUCOs.

Emera requests authorization to restructure its non-utility interests from time to time, including to establish one or more intermediate subsidiaries organized exclusively for the purpose of acquiring, financing, and holding the securities of one or more existing or future non-utility subsidiaries.

Parameters for Financing Authorization

Applicants propose that the following general terms and conditions (''Financing Limitations'') apply, where appropriate, to the requested financing authorizations:

a. Effective Cost of Money.

The effective cost of money on long-term debt borrowings in accordance with authorizations granted under the Application would not exceed the greater of (i) 500 basis points over the comparable-term U.S. or Canadian treasury securities or (ii) a gross spread over U.S. or Canadian treasuries that is consistent with similar securities of

comparable credit quality and maturities issued by other companies. The effective cost of money on short-term debt borrowings in accordance with the authorizations granted in the Application would not exceed the greater of (i) 500 basis points over the comparable-term London Interbank Offered Rate (''LIBOR'') or (ii) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The dividend rate on any series of preferred stock, preferred securities or equity-linked securities will not exceed the greater of (i) 500 basis points over the yield to maturity of a U.S. or Canadian treasury security having a remaining term equal to the term of that series of preferred stock or (ii) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

b. Maturity.

The maturity of long-term debt would be between one and fifty years after its issuance. Preferred securities and equity-linked securities would be redeemed no later than fifty years after their issuance, unless they were converted into common stock. Preferred stock issued directly by Emera may be perpetual in duration. Short-term debt would mature within a year.

c. Issuance Expenses.

The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities authorized in accordance with the Application would not exceed the greater of (i) 5% of the principal or total amount of the securities being issued or (ii) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

d. Common Equity Ratio.

Emera will maintain common stock equity as a percentage of total capitalization, as shown in its most recent quarterly consolidated balance sheet, of at least 30% or above. In addition, BHE will maintain common stock equity of at least 30% of total capitalization as shown in its most recent quarterly balance sheet.

e. Investment Grade Ratings.

Applicants further agree that no guarantees or other securities, other than common stock, may be issued in reliance upon authorization granted by the Commission in accordance with the Application, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer that are rated are rated investment grade; and (iii) all outstanding securities of Emera that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization (''NRSRO''), as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934, as amended (''1934 Act''). Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities in reliance upon the authorization granted by the Commission in accordance with the Application at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

Emera's Proposed External Financing Program

Emera proposes to issue equity and debt securities aggregating not more than the Emera External Limit at any one time outstanding during the Authorization Period. Those securities could include, but would not necessarily be limited to, common stock, preferred stock equivalent securities, options, warrants, purchase contracts, units (consisting of one or more purchase contracts, warrants, debt securities, shares of preferred stock, shares of common stock or any combination of those securities), long- and short-term debt (including commercial paper), subordinated debt, bank borrowings, securities with call or put options, and securities convertible into any of these securities. In addition, Emera also seeks authorization to issue shares of common stock or options to purchase shares under stock purchase/dividend reinvestment plans and stock-based management incentive and employee benefit plans up to the Common Stock Plan Limit. Securities issued under the Common Stock Plan Limit would not reduce the capacity to issue securities under the Emera External Limit. Emera also requests authorization to issue guarantees and enter into interest rate swaps and hedges as described below.

Common Stock

Emera seeks authorization to issue common stock in an aggregate amount outstanding not to exceed the Emera External Limit at any time during the Authorization Period. Specifically, Emera proposes to issue and sell common stock, options, warrants, purchase contracts, units, other stock purchase rights exercisable for common stock. Emera requests authorization, during the Authorization Period, to issue and sell from time to time those securities, either: (i) through underwritten public offerings, (ii) in private placements, (iii) under its dividend reinvestment, stock-based management incentive and employee benefit plans and any other such plans that Applicants may adopt in the future; (iv) in exchange for securities or assets being acquired from other companies, and (v) in connection with redemptions of certain series of NSPI preferred stock.

Emera may perform common stock financings in accordance with underwriting agreements of a type generally standard in the industry. Public distributions may be made by private negotiation with underwriters, dealers or agents as discussed below or through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All those common stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets. Underwriters may resell common stock from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Emera also may grant underwriters a ''green shoe'' option permitting common stock to be offered solely for the purpose of covering over-allotments.

Emera issues and sells common stock in accordance with its Common Shareholder Dividend Reinvestment Plan and its Employee Common Share Purchase Plan, which provide an opportunity for shareholders and company employees to reinvest dividends and make cash contributions for the purpose of purchasing common shares. Emera also has a stock option plan that grants options to the senior management of Emera and its subsidiary companies for a maximum term of 10 years. The option price for these shares is the market price of the shares on the day prior to the option grant. Emera may also buy back shares of that stock or those options during the Authorization Period. Emera proposes to issue shares in accordance with these plans and any other such plans that may be adopted during the Authorization Period, subject to the Common Stock Plan Limit.

Emera may seek to acquire securities of companies engaged in energy-related businesses as described in rule 58, Canadian Energy Related Subsidiaries (as defined below), or other businesses authorized by the Act, by the rules under the Act or by Commission order.

These acquisitions may involve the exchange of Emera stock for securities of the company being acquired in order to provide the seller with certain tax advantages. These transactions would be individually negotiated. The Emera common stock to be exchanged may be purchased on the open market under rule 42, or may be original issue. Original issue stock may be registered or qualified under applicable Canadian securities laws or unregistered and subject to resale restrictions. Emera does not intend to engage in any transaction where original issue stock is not registered or qualified while a public offering is being made, other than a public offering in accordance with a compensation, dividend or stock purchase plan, or a public offering of debt. Subject to the foregoing, Emera accordingly seeks authorization to issue common stock or options, warrants or other stock purchase rights exercisable for common stock in public or privately negotiated transactions as consideration for the equity securities or assets of other companies, provided that the acquisition of any equity securities or assets has been authorized by the Commission or is exempt under the Act or rules under the Act.

The ability to offer stock as consideration may make a transaction more economical for Emera as well as for the seller of the business. For purposes of calculating compliance with the Emera External Limit, Emera's common stock would be valued at market value based upon the negotiated agreement between the buyer and the seller.

Preferred Stock

Emera may issue preferred stock from time to time during the Authorization Period in accordance with the Financing Limitations and the Emera External Limit. Preferred stock or other types of preferred or equity-linked securities may be issued in one or more series with those rights, preferences, and priorities that may be designated in the instrument creating each series, as determined by Emera's board of directors. Dividends or distributions on preferred stock or other preferred securities will be made periodically and to the extent funds are legally available for that purpose, but may be made subject to terms that allow the issuer to defer dividend payments for specified periods.

Preferred stock or other preferred securities may be convertible or exchangeable into shares of Emera common stock or unsecured indebtedness.

Long-Term Debt

Emera proposes to issue long-term debt in accordance with the Financing Limitations and the Emera External Limit. Long-term debt would be unsecured and have the maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms and other terms and conditions as Emera may determine at the time of issuance.

Any long-term debt: (i) May be convertible into any other authorized securities of Emera; (ii) will have maturities ranging from one to fifty years; (iii) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount; (iv) may be entitled to mandatory or optional sinking-fund provisions; (v) may provide for reset of the coupon in accordance with a remarketing arrangement; (vi) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event; (vii) may be called from existing investors by a third party or (viii) may be entitled to the benefit of financial or other covenants.

Short-Term Debt

Emera requests authorization to issue directly, or indirectly through Financing Subsidiaries existing or to be formed under the authorization requested, short-term debt including, but not limited to, institutional borrowings, commercial paper and bid notes. The issuance of short-term debt will be in accordance with the Financing Limitations and the Emera External Limit. Proceeds of any short-term debt issuance may be used to refund Emera's outstanding debt securities and to provide financing for general corporate purposes, working capital requirements and the capital expenditures of the Emera Group until long-term financing can be obtained. Short-term debt issued by Emera will be unsecured.

Emera may sell commercial paper, from time to time, in established domestic Canadian, U.S. or European commercial paper markets. That commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from Emera will reoffer that paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies.

Emera also proposes to establish bank lines of credit, directly or indirectly through one or more financing subsidiaries. Loans under these lines will have maturities of less than one year from the date of each borrowing. Alternatively, if the notional maturity of short-term debt is greater than 364 days, the debt security will include put options at appropriate points in time to cause the security to be accounted for as a current liability under U.S. generally accepted accounting principles. Emera may engage in other types of short-term financing generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance. To the extent credit is extended under either commercial paper or short-term debt facilities during the Authorization Period, these amounts would be included within Emera's External Limit and would be subject to the Financing Limitations.

Hedges and Interest Rate Risk Management

Emera requests authorization to enter into, perform, purchase and sell financial instruments intended to manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements. Hedges may also include the issuance of structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or agency (*e.g.*, Federal National Mortgage Association) obligations or LIBOR based swap instruments (collectively, ''Hedge Instruments'').

Emera would employ Hedge Instruments as a means of managing the risk associated with any of its outstanding debt by, in effect, synthetically (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt to variable rate debt, (iii) limiting the impact of changes in interest rates resulting from variable rate debt and (iv) providing an option to enter into interest rate swap transactions in future periods for planned issuances of debt securities. In no case will the notional principal amount of any Hedge Instrument exceed that of the

underlying debt instrument and related interest rate exposure. Thus, Emera will not engage in ''leveraged'' or ''speculative'' transactions. The underlying interest rate indices of those Hedge Instrument will closely correspond to the underlying interest rate indices of Emera's debt to which those Hedge Instrument relate. Off-exchange Hedge Instruments would be entered into only with counterparties whose senior debt ratings are investment grade (''Approved Counterparties'').

In addition, Emera requests authorization to enter into Hedge Instruments with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be used to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded Hedge Instruments (''Forward Sale''), (ii) the purchase of put options on Hedge Instruments (''Put Options Purchase''), (iii) a Put Options Purchase in combination with the sale of call options on Hedge Instruments (''Zero Cost Collar''), (iv) transactions involving the purchase or sale, including short sales, of Hedge Instruments, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges.

Hedging Instruments may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. Emera will determine the optimal structure of each Hedging Instrument transaction at the time of execution.

Emera will comply with applicable standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board (''FASB'') or Canadian GAAP. In addition, Emera will endeavor to qualify these financial instruments for hedge accounting treatment under FASB rules. In the event transactions in financial instruments or products are qualified for hedge accounting treatment under Canadian GAAP, but not under U.S. GAAP, Emera's financial statements filed with the Commission will include a reconciliation of the difference between the two methods of accounting treatment. No gain or loss on a hedging transaction entered into by Emera or its subsidiaries (except BHE and its subsidiaries) will be allocated to BHE or its subsidiaries, regardless of the accounting treatment accorded to the transaction.

BHE requests authorization to enter into the transactions described above on the same terms applicable to Emera, except that BHE would comply with applicable FASB standards and U.S. GAAP.

Guarantees

Emera and BHE request authorization to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support (''Guarantees'') with respect to the obligations of their respective subsidiaries as may be appropriate or necessary to enable those subsidiaries to carry on in the ordinary course of their respective businesses in an aggregate principal amount not to exceed the Emera Guarantee Limit outstanding at any one time (not taking into account obligations exempt under rule 45) with respect to guarantees issued by Emera and $55 million with respect to guarantees issued by BHE. All debt guaranteed would comply with the Financing Limitations. Included in this amount are Guarantees entered into by Emera that were previously issued in favor of its subsidiaries to the extent that they remain outstanding during the Authorization Period. The limit on Guarantees is separate from the Emera External Limit.

Guarantees may take the form of, among others, direct guarantees, reimbursement undertakings under letters of credit, ''keep well'' undertakings, agreements to indemnify, expense reimbursement agreements, and credit support with respect to the obligations of the subsidiary companies as may be appropriate to enable those system companies to carry on their respective authorized or permitted businesses. Emera may, for example, provide credit support to Emera Energy Inc. or Emera Energy Services Inc. in connection with energy trading, transportation and physical commodity contracts. BHE may need guarantee authorization to provide credit support for a subsidiary engaged in utility construction activity. Any guarantee that is outstanding at the end of the Authorization Period shall remain in force until it expires or terminates in accordance with its terms.

Certain Guarantees may be in support of obligations that are not capable of exact quantification. In these cases, Emera and BHE will determine the exposure under a Guarantee for purposes of measuring compliance with their respective guarantee limit by appropriate means, including estimation of exposure based on loss experience or potential payment amounts. Each subsidiary may be charged a fee for any Guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the Guarantee for the period of time the Guarantee remains outstanding.

Subsidiary Financing

Emera seeks authorization to finance the capital requirements of its subsidiaries and to fund their authorized or permitted businesses through the acquisition of the securities of subsidiaries issued under the Act, the Commission's rules, regulations or orders, and within any limits applicable to investments in EWGs, FUCOs, rule 58 subsidiaries and Canadian Energy Related Subsidiaries.

Market Rate Subsidiaries

Under a prior Commission order Emera was granted authorization to lend funds to certain of its nonutility subsidiaries at a mark up to Emera's cost of funds. Emera requests that this authorization be continued for the Authorization Period. The authorization requested would apply to borrowings by all nonutility subsidiaries except (i) BHE, (ii) any of BHE's direct or indirect subsidiaries, or (iii) NSPI (''Market Rate Subsidiaries''), and would apply to loans from Emera or NSPI to Market Rate Subsidiaries and to loans between those companies. Emera requests this authority principally to allow it to operate its businesses efficiently under Canadian tax regulations.

As explained in Emera's application in SEC File No. 70–9787, which was granted by the Acquisition Order, the Income Tax Act (Canada) and the Regulations promulgated under it (collectively the ''ITA'') requires borrowed funds to be used for the purpose of earning income before it allows a taxpayer a deduction in calculating taxable income, for the interest expense associated with a borrowing. This restriction flows from the fundamental principle in the ITA that each taxable company is a separate and distinct entity for tax purposes. Consequently, Emera must earn income from lending its external borrowings to its subsidiaries or Emera will not be permitted a deduction of the related interest expense in calculating its taxable income under the ITA. Each company must independently demonstrate a business purpose for

incurring debt. If Emera would be required to on-lend funds to its Market Rate Subsidiaries at cost, Emera would not be eligible, under the rules for computation of taxable income in the ITA and the rules of administrative practice adopted by Canada's Customs and Revenue Agency (''Revenue Canada''), (administrative body responsible for the administration of the ITA) for an interest expense deduction on those borrowed funds.

Because the ITA treats each company as a separate and distinct entity for Canadian income tax purposes, an associated group of Canadian companies also cannot file a consolidated tax return. Therefore, unlike U.S. corporate groups, Canadian groups cannot use losses from affiliated companies to offset income from other companies in the same corporate group. Intercompany loans at market rates may be used where appropriate to adjust taxable income among the group members. The proposed market rate loan authority, therefore, would allow Emera to implement the most economically efficient financial structure given its tax constraints.

Emera would determine the appropriate market rate for loans from Emera or NSPI to each Market Rate Subsidiary, or between Market Rate Subsidiaries, in much the same manner practiced by an independent bank. Emera would review the nature of each subsidiary's business, evaluate its capital structure, the particular risks to which it is subject, and generally prevailing market conditions. Emera would also evaluate and take into account information from third parties such as banks that would indicate the prevailing market rates for similar businesses. In particular, Emera will obtain information on the range of rates used by one or more banks for loans to similar businesses. That independent third-party information would serve as an index against which an appropriate market rate could be determined. Emera would provide its analysis supporting its market-based rate determination to the Commission upon request.

Financing BHE

Emera intends to finance BHE's capital needs at the lowest practical cost. BHE will either finance its capital needs through short, medium and long-term borrowings from nonassociated entities or through borrowings from Emera directly, or indirectly through Emera USH and BHEH. BHE also proposes to borrow funds from NSPI if NSPI has surplus funds and the interest rate on the loan would result in a lower cost of borrowing for BHE. All borrowings by BHE from an associate company would be at the lower of Emera's effective cost of capital, NSPI's effective cost of capital (if NSPI is the lender) or BHE's effective cost of capital incurred in a direct borrowing at that time from nonassociates for a comparable term loan. In addition, borrowings by BHE from an associate company would be unsecured, *i.e.*, not backed by the pledge of specific BHE assets as collateral.

The MPUC exercises jurisdiction over the securities issued by BHE with maturities of one year or longer. BHE requests Commission authorization to issue and sell securities with maturities of less than one year. That short-term debt issued and outstanding at any time during the Authorization Period will not exceed the BHE Limit.

Financing Emera USH and BHEH

Emera USH requests authorization to issue and sell securities to Emera and NSPI and to acquire securities from BHEH and BHE. BHEH requests authorization to issue and sell securities to Emera, NSPI and Emera USH and to acquire securities from BHE. Each of Emera USH and BHEH also seeks authority to issue guarantees and other forms of credit support for the benefit of their direct and indirect subsidiaries. Emera USH and BHEH would not borrow, or receive any extension of credit or indemnity from any of their respective direct or indirect subsidiary companies.

Each of Emera USH and BHEH is intended to function as a financial conduit to facilitate Emera's U.S. investments. As authorized by the Acquisition Order, for reasons of economic efficiency, the terms and conditions of any securities issued by Emera USH and BHEH to an associate company will be on an arm's length basis. The financing proposed would be used to fund the capital requirements of BHE and its subsidiaries and any exempt or subsequently authorized activity that is hereafter acquired. That financing would not be used by Emera USH or BHEH to carry on business or investment activities, other than as described in the Application.

Changes in Capital Stock of Wholly-Owned Subsidiaries

Applicants request authority to change the terms of any wholly-owned subsidiary's authorized capital stock capitalization by an amount deemed appropriate by Emera or other intermediate parent company. The portion of an individual subsidiary's aggregate financing to be effected through the sale of stock to Emera or other immediate parent company during the Authorization Period in accordance with rule 52 and/or an order issued in this file is unknown at this time.

The proposed sale of capital securities (*i.e.*, common stock or preferred stock) may in some cases exceed the then authorized capital stock of that subsidiary. In addition, the subsidiary may choose to use capital stock with no par value. The relief requested would provide necessary financing flexibility. The requested authorization is limited to Emera's wholly-owned subsidiaries and will not affect the aggregate limits or other conditions. A subsidiary would be able to change the par value, or change between par value and no-par stock, without additional Commission approval. Any such action by BHE or any other public utility company would be subject to and would only be taken upon the receipt of any necessary approvals by the MPUC or other public utility commission with jurisdiction over the transaction. As noted previously, BHE will maintain, during the Authorization Period, a common equity capitalization of at least 30%.

Payment of Dividends Out of Capital or Unearned Surplus

Upon the acquisition of BHE by Emera, the retained earnings of BHE were eliminated. The goodwill resulting from the transaction was pushed down to BHE and reflected as additional paid-in-capital in its financial statements. The effect of these accounting adjustments was to leave BHE without retained earnings, the traditional source of dividend payment, but, nevertheless, a strong balance sheet showing a significant equity level. Accordingly, the Acquisition Order permitted BHE to pay dividends and or to repurchase or redeem its common stock held by its associate company parent after the acquisition out of its additional paid-in-capital up to the amount of BHE's pre-acquisition retained earnings plus any amortization or write-down of goodwill charged against post-acquisition earnings. The Acquisition Order provided, however, that in no event would dividends paid or share repurchases and redemptions cause BHE's common equity capitalization to fall below 30% of total capitalization. BHE will continue to rely on the Acquisition Order for the dividend authorization summarized above.

Applicants now request authorization for the nonutility companies in the Emera Group, excluding NSPI, to pay dividends with respect to their securities from time to time through the Authorization Period, out of capital and unearned surplus to the extent

permitted under applicable corporate law and state or national law applicable in the jurisdiction where each company is organized, and any applicable financing covenants. In addition, each of those nonutility companies will not declare or pay any dividend out of capital or unearned surplus unless it: (i) Has received excess cash as a result of the sale of some or all of its assets; (ii) has engaged in a restructuring or reorganization; and/or (iii) is returning capital to an associate company.

Financing Subsidiaries

The Emera Group companies (except NSPI) seek authorization to organize new corporations, trusts, partnerships or other entities that will facilitate financings by issuing short-term debt, long-term debt, income preferred securities, equity securities or other securities to third parties and transferring the proceeds of these financings to Emera or to that entity's respective parent company. To the extent not exempt under rule 52, the Financing Subsidiaries also request authorization to issue those securities to third parties. In connection with this method of financing, Emera and the subsidiaries may: (i) Issue debentures or other evidences of unsecured indebtedness to a Financing Subsidiary in return for the proceeds of the financing; (ii) acquire voting interests or equity securities issued by the Financing Subsidiary to establish ownership of the Financing Subsidiary (equity portion of the entity generally being created through a capital contribution or the purchase of equity securities, ranging from one to three percent of the capitalization of the Financing Subsidiary) and (iii) guarantee a Financing Subsidiary's obligations in connection with a financing transaction. Any amounts issued by a Financing Subsidiary to a third party under this authorization would be included in the overall external financing limitation authorized for the immediate parent of that Financing Subsidiary. However, the underlying intra-system mirror debt and parent guarantee would not be so included.

Applicants also request authorization to enter into support or expense agreements (''Expense Agreement'') with Financing Subsidiaries to provide services to and pay the expenses of those entities. In cases where it is necessary or desirable to ensure legal separation for purposes of isolating a Financing Subsidiary from its parent or another subsidiary for bankruptcy purposes, the ratings agencies require that any Expense Agreement whereby the parent or subsidiary provides services related to the financing to the Financing Subsidiary be at a price, not to exceed a market price, consistent with similar services for parties with comparable credit quality and terms entered into by other companies so that a successor service provider could assume the duties of the parent or subsidiary in the event of the bankruptcy of the parent or subsidiary without interruption or an increase of fees. Therefore, Applicants seek approval under section 13(b) of the Act and rules 87 and 90 to provide the services described in this paragraph at a charge not to exceed a market price but only for so long as the Expense Agreement established by the Financing Subsidiary is in place.

Intermediate Subsidiaries and Nonutility Reorganizations

The Acquisition Order authorized the Applicants to restructure Emera's nonutility holdings from time to time as may be necessary or appropriate to further the Emera Group's authorized nonutility activities. Applicants request the continuation of that authorization. In particular, Emera requests authorization to acquire, directly or indirectly, the equity securities of one or more entities (''Intermediate Subsidiaries'') which would be organized exclusively for the purpose of acquiring, holding and/or financing the securities of one or more existing or future EWGs, FUCOs, rule 58 subsidiaries, ETCs, Canadian Energy Related Subsidiaries or other non-exempt nonutility subsidiaries (as authorized in this proceeding or in a separate proceeding), provided that Intermediate Subsidiaries may also engage in administrative activities (''Administrative Activities'') and development activities (''Development Activities''), as those terms are defined in the Application, relating to those subsidiaries.

An Intermediate Subsidiary may be organized, among other things, (i) To facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, rule 58 Subsidiary, ETC, Canadian Energy Related Subsidiary or other authorized nonutility business; (ii) after the award of a bid proposal, to facilitate closing on the purchase or financing of the acquired company; (iii) at any time subsequent to the consummation of an acquisition of an interest in any company to, among other things, effect an adjustment in the respective ownership interests in that business held by Emera and non-affiliated investors; (iv) to facilitate the sale of ownership interests in one or more acquired nonutility companies; (v) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (vi) as a part of tax planning to limit Emera's exposure to Canadian, U.S. and foreign taxes; (vii) to further insulate Emera and its utility subsidiaries from operational or other business risks that may be associated with investments in non-utility companies; or (viii) for other lawful business purposes.

Investments in Intermediate Subsidiaries may take the form of any combination of the following: (i) Purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests; (ii) capital contributions; (iii) open account advances with or without interest; (iv) loans; and (v) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from: (i) Financings authorized in this proceeding; (ii) any appropriate future debt or equity securities issuance authorization obtained by Emera from the Commission; and (iii) other available cash resources, including proceeds of securities sales by nonutility subsidiaries in accordance with rule 52.

Emera requests authorization to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in nonutility subsidiaries, and the activities and functions related to those investments. To effect those consolidations or other reorganizations, Emera may wish to merge or contribute the equity securities of one nonutility subsidiary to another nonutility subsidiary (including a newly formed Intermediate Subsidiary) or sell (or cause a nonutility subsidiary to sell) the equity securities or all or part of the assets of one nonutility subsidiary to another one. To the extent that these transactions are not otherwise exempt under the Act or rules thereunder, Emera requests authorization under the Act to consolidate or otherwise reorganize under one or more direct or indirect Intermediate Subsidiaries Emera's ownership interests in existing and future nonutility subsidiaries. Those transactions may take the form of a nonutility subsidiary selling, contributing or transferring the equity securities of a subsidiary or all or part of that subsidiary's assets as a dividend to an Intermediate Subsidiary or to another nonutility subsidiary, and the

acquisition, directly or indirectly, of the equity securities or assets of the subsidiary, either by purchase or by receipt of a dividend. The purchasing nonutility subsidiary in any transaction structured as an intrasystem sale of equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable laws and accounting requirements.

The requested authorization would enable the Emera Group to consolidate similar businesses and to participate effectively in authorized nonutility activities, without the need to apply for or receive additional Commission approval. Those restructurings would be undertaken in order to eliminate corporate complexities, to combine related business segments for staffing and management purposes, to eliminate administrative costs, to achieve tax savings, or for other ordinary and necessary business purposes. Any new entity formed under the authority requested may be a corporation, partnership, limited liability company or other entity in which Emera, directly or indirectly, might have a 100% interest, a majority equity or debt position, or a minority debt or equity position. These entities would engage only in businesses to the extent the Emera Group is authorized, whether by statute, rule, regulation or order, to engage in those businesses. Emera does not seek authorization to acquire an interest in any nonassociate company as part of the authority requested in this application and states that the reorganization will not result in the entry by the Emera Group into a new, unauthorized line of business.

Emera requests authorization to make expenditures on Development and Administrative Activities, as defined above, in an aggregate amount of up to $150 million. Emera proposes a ''revolving fund'' concept for permitted expenditures on those activities. Thus, to the extent a nonutility subsidiary in respect of which expenditures for Development or Administrative Activities were made subsequently becomes an EWG, FUCO or qualifies as an ''energy-related company'' under rule 58, the amount so expended will cease to be considered an expenditure for Development and Administrative Activities, but will instead be considered as part of the ''aggregate investment'' in that entity in accordance with rule 53 or 58, as applicable.

Canadian Energy Related Subsidiaries

The Acquisition Order authorized Emera to invest in various businesses located in Canada that are energy related and retainable nonutility businesses under section 11 of the Act. In particular, the Acquisition Order authorized Emera to invest up to $300 million to organize or acquire companies engaged in the nonutility businesses in which Emera was then engaged and in certain other nonutility energy related businesses specifically described below without obtaining additional Commission authorization under the Act for each individual acquisition. Those businesses would derive substantially all their revenues from Canada or the U.S., or derive revenues from both countries. Emera requests a continuation of this authorization.

The specific nonutility businesses in which Emera proposes to invest include, in addition to its current nonutility businesses:

(i) Energy management services and other energy conservation related businesses,

(ii) The maintenance and monitoring of utility equipment,

(iii) The provision of utility related or derived software and services,

(iv) Engineering, consulting and technical services, operations and maintenance services,

(v) Brokering and marketing electricity and other energy commodities and providing services such as fuel management, storage and procurement; and

(vi) Oil and gas exploration, development, production, gathering, transportation, storage, processing and marketing activities, and related or incidental activities.

EWG and FUCO Investments

Emera seeks authorization to issue and sell securities for the purpose of funding investments in EWGs and FUCOs in an aggregate amount not to exceed the EWG–FUCO Investment Limit. Emera does not satisfy the conditions of rule 53(a) because its FUCO investment exceeds 50% of its consolidated retained earnings. As of December 31, 2003, Emera had consolidated retained earnings of $235.5 million and an investment of $642.7 million in NSPI. Consequently, the additional authorization requested and Emera's current investment in EWGs and FUCOs could result in an aggregate investment of approximately $2.64 billion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13277 Filed 6–10–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49813; File No. SR–Amex–2004–45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC to Extend a Pilot Program Under Which It Lists Options on Selected Stocks Trading Below $20 at One-Point Intervals Until June 5, 2005

June 4, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 4, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Amex. 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

Amex proposes to extend its pilot program under which it lists options on selected stocks trading below $20 at $1 strike price intervals (''Pilot Program'') until June 5, 2005.[3] The text of the proposed rule change is available at the Office of the Secretary, Amex, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex 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. Amex has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48024 (June 12, 2003), 68 FR 36617 (June 18, 2003)(''Pilot Program Approval Order'').

summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Pilot Program for a one-year period through June 5, 2005. The Pilot Program permits the Amex to select a total of five (5) individual stocks on which options series may be listed at $1 strike price intervals. To be eligible for the Pilot Program, an underlying stock must close below $20 in its primary market on the previous trading day. If selected, the Amex may list $1 strike prices at $1 intervals from $3 to $20, however, a $1 strike price may not be listed that is greater than $5 from the underlying stock's closing price in the primary market on the previous day. The Amex may also list $1 strikes on any other option class designated by another options exchange that employs a similar Pilot Program approved by the Commission. The Pilot Program prohibits the Amex from listing $1 strikes on any series of individual equity option classes that have greater than nine (9) months until expiration. In addition, the Exchange is also restricted from listing any series that would result in strike prices being $0.50 apart.

To date, the Amex believes that the Pilot Program has been beneficial to investors and the options market by providing investors with greater flexibility in the trading of equity options that overlie stocks trading below $20. In this manner, options investors are able to better tailor their strategies through the availability of $1 strikes. Amex has conducted a study into the impact that $1 strikes has made on the participating Pilot Program classes (''Report'').[4] The Report provides data regarding the Pilot Program as required in the Pilot Program Approval.[5] As the data indicates, the $1 strikes exhibited higher volume and open interest than the ''standard'' strike intervals. Specifically, the four (4) option classes selected by the Amex for $1 strikes had a trading volume of 582,927 contracts, while the ''standard'' strikes for the same option classes had a trading volume of 520,364 contracts. Of even greater significance, is the difference in open interest between the $1 strikes and ''standard'' strikes. As of May 18, 2004, $1 strikes open interest totaled 581,444 versus 282,713 for ''standard'' strikes. Given the limited nature of the Pilot Program, the Amex submits that the impact on systems has been minimal.

2. Statutory Basis

Amex believes the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4[9] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and Amex has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.

Under Rule 19b–4(f)(6)(iii) of the Act,[10] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and Amex is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. Amex has requested that the Commission accelerate the 30-day operative date to June 5, 2004, so that the Pilot Program may continue without interruption after it would have otherwise expired on June 5, 2004. The Commission, consistent with the protection of investors and the public interest, has determined to accelerate the 30-day operative date to June 5, 2004,[11] and, therefore, the proposal is effective and operative on that date.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2004–45 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

[4] Amex attached the Pilot Program Report as an exhibit to this proposed rule change. Copies of the Pilot Program Report are available at Amex and the Commission's Public Reference Room.

[5] *See* Pilot Program Approval Order, *supra* note 3.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of accelerating the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] In the event that Amex proposes to extend the Pilot Program beyond June 5, 2005, expand the number of options eligible for inclusion in the Pilot Program, or seek permanent approval of the Pilot Program, it should submit a Pilot Program report to the Commission along with the filing of such proposal. The report must cover the entire time the Pilot Program was in effect, and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the Amex selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the Amex's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Amex addressed them; (6) any complaints that the Amex received during the operation of the Pilot Program and how the Amex addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. The Commission expects the Amex to submit a proposed rule change at least 60 days before the expiration of the Pilot Program in the event the Amex wishes to extend, expand, or seek permanent approval of the Pilot Program.

450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–45. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of Amex. 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–Amex–2004–45 and should be submitted on or before July 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13278 Filed 6–10–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49814; File No. SR–CBOE–2004–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Frequency of Executions on the Hybrid Trading System

June 4, 2004.

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 19, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt a rule governing the frequency with which certain professional orders may be submitted for automatic execution in the Hybrid Trading System (''Hybrid''). Below is the text of the proposed rule change. Proposed new language is *italicized.*

* * * * *

Rule 6.13: CBOE Hybrid System's Automatic Execution Feature

(a) No change

(b) Automatic Execution

(i) Eligibility: Orders eligible for automatic execution through the CBOE Hybrid System may be automatically executed in accordance with the provisions of this Rule. This section governs automatic executions and split-price automatic executions. The automatic execution and allocation of orders or quotes submitted by market participants shall be governed by Rules 6.45A(c) and (d).

(A)–(B) No change

(C) Access:

(i)–(ii) No Change

(iii) 15-Second Limitation: With respect to orders eligible for submission pursuant to paragraph (b)(i)(C)(ii), members shall neither enter nor permit the entry of multiple orders on the same side of the market in an option class within any 15-second period for an account or accounts of the same beneficial owner. The appropriate FPC may shorten the duration of this 15-second period by providing notice to the membership via a Regulatory Circular that is issued at least one day prior to implementation.

(ii)–(iv) No change

(c)–(e) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 CBOE 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 represents that all of the floor-based options exchanges have rules generally restricting the entry of certain orders into their automatic execution systems to one order per 15 seconds per beneficial account.[3] CBOE has a 15-second rule applicable to its RAES system (see CBOE Rule 6.8(e)(iii)) but not to its Hybrid auto-ex system. The purpose of this rule filing is to adopt a 15-second rule applicable to certain professional orders entered for execution through CBOE's Hybrid system.

The Exchange proposes new CBOE Rule 6.13(b)(i)(C)(iii) to adopt rule language similar to that currently in effect in CBOE Rule 6.8(e)(iii).[4] As applied, the rule would prohibit members from entering or permitting the entry of multiple orders on the same side of the market in an option class within any 15-second period for an account or accounts of the same beneficial owner. The proposed language also allows the appropriate floor procedure committee (''FPC'') to shorten the duration of this 15-second timer by providing advance notice to the membership via Regulatory Circular. The timer may never exceed 15-seconds and, if shortened, would serve to allow the entry of more orders.

The Exchange also proposes to limit to whom the rule applies. The Exchange represents that while all of the floor-based options exchanges' rules, including CBOE Rule 6.8(e)(iii) broadly apply to all orders (*i.e.*, from customers and broker-dealers), the proposed amendment to CBOE Rule 6.13 would apply only to orders from options exchange market makers and stock exchange specialists, as defined in

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See, e.g.*, CBOE Rule 6.8(e)(iii), Amex Rule 933(e), PCX Rule 6.87(d)(2), and Phlx Rule 1080(c)(ii)(B)(3). NYSE Rule 1005 contains a 30-second limitation.

[4] There is one minor difference in the rule language of CBOE Rule 6.8 and that which is proposed in CBOE Rule 6.13: the use of the word ''issue'' in CBOE Rule 6.8 versus the use of the word ''class'' in CBOE Rule 6.13. ''Issue'' and ''class'' are synonymous, however, ''issue'' is not a defined term in CBOE's rules while ''class'' is.

CBOE Rule 6.13(b)(i)(C)(ii).[5] Customers and broker-dealers (as described in CBOE Rule 6.13(b)(i)(C)(i)) will not be subject to the rule and as such will continue to be eligible to receive unlimited automatic executions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act[6] in general and furthers the objectives of section 6(b)(5)[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

CBOE neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include SR–CBOE–2004–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to SR–CBOE–2004–33. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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 SR–CBOE–2004–33 and should be submitted on or before July 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13279 Filed 6–10–04; 8:45 am]

BILLING CODE 8010–01–P

[5] In SR–CBOE–2004–15, the Exchange proposed modifications to the definitions contained in this paragraph. On May 13, 2004, the Commission published the rule filing in the **Federal Register**. *See* Exchange Act Release No. 49659 (May 6, 2004), 69 FR 26627. If approved, the new rule language will be as appears below. Nothing in the instant proposed rule change proposes to change either of those definitional subparagraphs. Rather, the instant proposal merely clarifies that both of those categories (*i.e.*, options exchange market makers and stock exchange specialists) will be subject to the 15-second restriction.

(ii) (A) Options Exchange Market Makers: The appropriate FPC may also determine, on a class-by-class basis, to allow orders for the accounts of market makers or specialists on an options exchange (collectively ''options market makers'') who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to Section 7(c)(2) of the Securities Exchange Act of 1934 to be eligible for automatic execution. The appropriate FPC may establish the maximum order size eligibility for such options market maker orders at a level lower than the maximum order size eligibility available to non-broker-dealer public customers and non-market maker or non-specialist broker-dealers. Pronouncements pursuant to this provision regarding options market maker access shall be made by the appropriate FPC and announced via Regulatory Circular.

(B) Stock Exchange Specialists: The appropriate FPC may determine, on a class-by-class basis, to allow orders for the account of a stock exchange specialist, with respect to a security in which it acts as a specialist, to be eligible for automatic execution in the overlying option class. The appropriate FPC may establish the maximum order size eligibility for such specialist orders at a level lower than the maximum order size eligibility available to options exchange market makers. Stock exchange specialists, with respect to orders in securities in which they do not act as specialist, will be treated as broker-dealers that are not market makers or specialists on an options exchange and will be eligible to submit orders for automatic execution in accordance with subparagraph (i) above.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Invitation for Non-Governmental Organizations, Corporate Sponsors and Private Foundations to Volunteer Trade Capacity Building Assistance in Support of FTA Negotiations With Certain Andean Countries

AGENCIES: Office of the United States Trade Representative, United States Agency for International Development.

ACTION: Request for submissions to volunteer trade capacity building assistance.

SUMMARY: The United States seeks to attract additional resource partners that can legitimately contribute to the trade capacity building efforts in support of the U.S. free trade agreement (FTA) negotiations with certain Andean countries. The Trade Policy Staff Committee (TPSC) gives notice that, on behalf of the U.S. Government, the Office of the United States Trade Representative and the United States Agency for International Development seek to expand the circle of resource partners to non-governmental organizations (NGOs), corporate sponsors and private foundations that are prepared to provide wholly self-funded assistance to conduct trade

capacity building efforts in support of the FTA process with Colombia, Peru, Ecuador, and Bolivia (the Andean countries), subject to: (1) The priorities set by the Andean countries in their trade capacity building strategies; (2) the coordination efforts of the U.S. interagency trade capacity working group to, *inter alia*, promote transparency; and (3) consistency with U.S. Government policy. Interested parties should present a brief description of their potential contribution. This Request for Submission does not constitute a request for proposals/applications for funding from the United States Trade Representative, the United States Agency for International Development, or any other agency or department of the U.S. Government (USG). Any requests in the future for proposals or applications will be advertised on FedBizOpps or FedGrants, as appropriate. If any assistance opportunities or procurement needs are identified as part of this process, such needs will be met by the appropriate USG agency in accordance with its internal acquisition and assistance procedures.

DATES: Initial expressions of interest should be forwarded by June 30, 2004. However, expressions of interest are welcome throughout the period of the Andean FTA negotiations.

ADDRESSES: *Submissions by electronic mail: FR0426@ustr.gov* (written comments). *Submissions by facsimile:* Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at 202/395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below).

FOR FURTHER INFORMATION CONTACT: For procedural questions, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Substantive questions should be addressed to Karen Taylor, Director for Trade Capacity Building, Office of the USTR, telephone (202) 395–2839.

SUPPLEMENTARY INFORMATION: On May 18, 2004, the United States launched FTA negotiations with Colombia, Peru, and Ecuador, and hopes to include Bolivia at a later stage.

The United States seeks to attract additional resource partners that can legitimately contribute to the trade capacity building efforts in support of the FTA. The United States seeks resource partners that are prepared to provide wholly self-funded (cash or in-kind) assistance for the trade capacity building support that they propose to deliver in the context of these trade initiatives. Interested parties should present a brief description of their potential contribution.

Negotiating groups include the following topics: market access, investment, services, government procurement, intellectual property, labor, environment, sanitary and phytosanitary measures, and institutional issues such as dispute settlement. A non-negotiating cooperative group on trade capacity building (ATCB Working Group'') will be formed. The TCB Working Group seeks to address, to the extent possible, the needs of the countries in preparing for negotiations, implementation of the agreement and transition to free trade (*i.e.*, rural diversification and small and medium sized enterprises). The USG is currently assisting countries in completing trade capacity building strategies to guide the work of the TCB Working Group. Once completed, these strategies are intended to identify, define and prioritize each country's needs.

There are two parts to TCB Working Group meetings. The first involves a meeting of exclusively government officials from the United States and Andean countries. The second part involves government officials from the United States and the Andean countries and representatives from resource partners outside the governments, such as international financial institutions, NGOs, corporate sponsors and private foundations. Resource partners that volunteer to participate based on their ability to self-fund technical assistance or self-fund other trade capacity building services in response to the needs identified by the Andean countries in the FTA process may be invited to join the TCB Working Group. Resource partners that are selected to join the TCB Working Group will be welcome to attend the TCB Working Group meetings that are not restricted to government officials and are open to other resource partners. Requests for contract or grant funding from the USG will not be permitted during TCB Working Group meetings.

Submitting Comments: To ensure prompt and full consideration of responses, the TPSC strongly recommends that interested persons make submissions by electronic mail to the following e-mail address: *FR0426@ustr.gov.* Persons making submissions by e-mail should use the following subject line: AAndean TCB Assistance.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted in spreadsheet form is acceptable in either the Quattro Pro or Excel format. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.—12 noon and 1 p.m.–4 p.m., Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Additional information may be reported in websites or other public announcements related to Andean trade capacity building activities.

General information concerning USTR may be obtained by accessing its Internet server *(http://www.ustr.gov).* General information concerning USAID may be obtained by accessing its Internet server *(http://www.usaid.gov).*

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 04–13322 Filed 6–10–04; 8:45 am]

BILLING CODE 3190–W4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act. of 1995 (44 U.S.C. 3501 *et seq.),* this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 19, 2003, on page 70861.

DATES: Comments must be submitted on or before July 14, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration, Project Status Report.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0001.

Forms(s): FAA Form 7460–1, 7460–2.

Affected Public: A total of 25,000 individuals, government agencies, or businesses that conduct construction activities.

Abstract: 49 U.S.C Section 44718 states that the Secretary of Transportation shall require notice of structures that may affect navigable airspace, air commerce, or air capacity. These notice requirements are contained in 14 CFR Part 77.

Estimated Annual Burden Hours: An estimated 15,500 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 4, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 04–13305 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, Jackson Hole Airport, Jackson, WY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Airport Director of Jackson Hole Airport under the provisions of 49 U.S.C. Sec. 47504(b) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980).

On November 19, 2003, the FAA determined that the noise exposure maps submitted by the Airport Director under Part 150 were in compliance with applicable requirements. On May 17, 2004, the Associate Administrator for Airports approved the Jackson Hole Airport noise compatibility program. The Associate Administrator for Airports has made the following determinations: Elements 1 and 2 require no FAA approval action, element 3 requires no FAA determination with regard to Stage 2 aircraft and is disapproved with regard to Stage 3 aircraft, elements 4 and 7 were disapproved, and elements 5 and 6 were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Jackson Hole Airport noise compatibility program is May 17, 2004.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop; Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM–611; 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Jackson Hole Airport, effective May 17, 2004. Under 49 U.S.C. Sec. 47504(a), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. 49 U.S.C. 47503(a)(1) requires such a program to be developed in consultation with interested and affected parties including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Goverment; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in

FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Denver, Colorado.

The Airport Director of Jackson Hole Airport submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted at Jackson Hole Airport. The Jackson Hole Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 19, 2003. Notice of this determination was published in the **Federal Register** on December 2, 2003.

The Jackson Hole Airport noise compatibility program contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2008. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in 49 U.S.C. Sec. 47504(a). The FAA began its review of the program on November 19, 2003, and was required by a provision of 49 U.S.C. Sec. 47504(b) to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The FAA completed its review and determined that the procedural and substantive requirements of 49 U.S.C. Sec. 47504(b) and FAR 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective May 17, 2004.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on May 17, 2004. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal are available for review at the FAA office listed above and at the administrative offices of the Jackson Hole Airport.

Issued in Renton, Washington, on June 4, 2004.

David A. Field,

Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 04–13301 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

DATES: The ATSRAC will meet July 7 and 8, 2004, from 8:30 a.m. to 5 p.m.

ADDRESSES: On July 7, 2004, the FAA will hold the meeting at Aerospace Industries Association, 1000 Wilson Boulevard, Suite 1700, Arlington, Virginia 22209. On July 8, 2004, we will meet at the Department of Transportation, 400 7th Street, SW., Room 6244–48, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Shirley Stroman, Office of Rulemaking, ARM–208, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470; fax (202) 267–5075; or e-mail *shirley.stroman@faa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces a meeting of the Aging Transport Systems Rulemaking Advisory Committee. The FAA will hold the meeting at the locations listed under the **ADDRESSES** heading of this notice. The agenda topics for the meeting include—

- Status of tasks assigned to Harmonization Working Groups 11, 12, and 13 (68 FR 31741, May 28, 2003);
- Report on Electrical Wiring Interconnection Systems (EWIS) Inspection Tools;
- A Review of Minimum Equipment List (MEL) Results;
- How Master Minimum Equipment Lists (MMEL) are Approved;
- The FAA's Aging Airplane Program Review; and
- European Aging Systems Coordination Group (EASCG) Status.

The meeting is open to the public; however, attendance will be limited by the size of the meeting room. The FAA will make the following services available if you request them by June 21, 2004:

- Teleconferencing
- Sign and oral interpretation
- A listening device

Individuals using the teleconferencing service and calling from outside the Washington, DC metropolitan area will be responsible for paying long-distance charges. To arrange for any of these services, contact the person listed under the **FOR FURTHER INFORMATION CONTACT** heading of this notice.

The public may present written statements to the Committee by providing 20 copies to the Committee's Executive Director or by bringing the copies to the meeting. Public statements will be considered if time allows. You may contact the person whose name appears in the **FOR FURTHER INFORMATION CONTACT** heading of this notice for more information.

Issued in Washington, DC, on June 3, 2004.

Tony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 04–13297 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 202: Portable Electronic Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 202 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting RTCA Special Committee 202: Portable Electronic Devices.

DATES: The meeting will be held on July 12–15, 2004 from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCS Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 meeting. The agenda will include:

- July 12–13:

Working Groups 1 through 4 meet all day

• July 14:
Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda, Review/Approve previous Common Plenary Summary, Review Open Action Items)
Update from Eurocae Working Group WG–58
Report from Consumer Electronic Association (CEA) Discovery Group
Update from Regulatory Agencies (FAA, UK—CAA, Canadian TSB, or other members present)
Overview of Draft 4 comments received and allocation of response action(s).
Working Groups report out/each working group will cover the following topics:
Overview and disposition of comments received on the Draft 4 document
Coverage of TOR
Effort required to complete Phase 1 documentation (schedule/skills)
Working Group 1 (PEDs characterization, test, and evaluation)
Working Group 2 (Aircraft test and analysis)
Working Group 3 (Aircraft systems susceptibility)
Working Group 4 (Risk assessment, practical application, and final documentation)
Human Factors sub—group
Process Checklist sub—group
Review actions required to complete guidance document for release to PMC approval process
—Working Groups breakout sessions to address remaining document comment issues, action items, and completion of document

• July 15:
—Chairmen's Day 2 Opening Remarks and Process Check
—Plan for start of Phase 2 (Discuss structure and plan for work in support of Phase 2)
—Report on testing done by Electronic Navigation Research Institute
—Report on testing done by industry collaborative airplane testing group
—Review open actions on document draft preparation for FRAC
—Working Group breakout sessions as required
—Committee consensus on content of draft document
—Consensus on content and closure for all appropriate comments
—Forward to RTCA with SC–202 recommendation to publish
—Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 3, 2004.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–13304 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–01–C–00–CLT To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Charlotte/Douglas International Airport, Charlotte, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Charlotte/Douglas International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 14, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to T.J. Orr, Aviation Director of the Charlotte/Douglas International Airport at the following address: 5501 Josh Birmingham Parkway, Charlotte, NC 28219.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Charlotte/Douglas International Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Charlotte/Douglas International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 3, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Charlotte/Douglas International Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 4, 2004.

The following is a brief overview of the application.

Proposed charge effective date: November 1, 2004.

Proposed charge expiration date: December 1, 2018.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $514,701,943.

Brief description of proposed project(s):

Third Parallel Runway
Overlay Runway 18L/36R
Runway 18L Safety Area Improvements
Rehabilitate Runway 18R/36L
Runway 23 Safety Area Improvements
Reconstruct Taxiway C
Ramp E Expansion
Construct Taxiway AA
Storm Drain Rehabilitation
East Airfield Lighting Vault
Additional ARFF Facility
Taxiway M Rehabilitation
Aircraft Deicing Facility
Noise Compatibility Program Update
Federal Inspection Station
Terminal Building Renovations
Terminal Expansion—West
Concourse D Expansion, Phase I
Concourse E Improvements
Access Road
1997 Part 150 Study
1997 Master Plan Land Acquisition
Part 150 Land Acquisition and Mitigation
Concourse D Expansion, Phase II
Concourse E Construction
Concourse E Apron Construction
Terminal Building Expansion
South Terminal Expansion
PFC Application Development Cost
PFC Application Administration Cost

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the

application in person at the Charlotte/Douglas International Airport.

Issued in College Park, Georgia, on June 3, 2004.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 04–13309 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at McAllen-Miller International, McAllen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at McAllen-Miller International under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 14, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments sent to the FAA must be mailed or delivered to Mr. Derald Lary of McAllen-Miller International at the following address: Mr. Derald Lary, Director of Aviation, McAllen-Miller International Airport, 2500 S. Bicentennial Blvd., Suite 100, McAllen, TX 78503–3140.

Air carriers and foreign air carriers may send copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, TX 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at McAllen-Miller International under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 2, 2004, the FAA determined the application to impose and use the revenue from a PFC sent by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 24, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: October 1, 2004.

Proposed charge expiration date: August 1, 2006.

Total estimated PFC revenue: $2,475,050.

PFC application number: 04–03–C–00–MFE.

Brief description of proposed project(s):

Projects To Impose and Use PFC's

South Perimeter Fencing and Access Road Improvements
Environmental Assessment and Cost/Benefit Analysis for Runway 13.31 Extension
Air Carrier Joint Reseal & Spall Repair
Taxiway C Overlay
Rehabilitate Taxiway A, Ga Apron, ATCT Apron and Customs Ramp

Project To Impose a PFC

Land Acquisition for Runway 13/31 Extension.

Proposed class or classes of air carriers to be exempted from collecting PFC's: AT/CO on Demand Air Carriers Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, 2601 Meacham Blvd., Fort Worth, TX 76137–4298.

In addition, any person may, on request, inspect the application, notice and other documents germane to the application in person at McAllen-Miller International.

Issued in Fort Worth, Texas, on June 2, 2004.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 04–13303 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (04–06–C–00–HDN) To Impose and To Use a Passenger Facility Charge (PFC) at the Yampa Valley Regional Airport, Submitted by the County of Routt, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at the Yampa Valley Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 14, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Craig A. Sparks, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James C. Parker, Aviation Director, at the following address: Yampa Valley Regional Airport, P.O. Box 1060, 11005 RCR 51A, Hayden, Colorado 81639.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Yampa Valley Regional Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (04–06–C–00–HDN) to impose and use a PFC at the Yampa Valley Regional Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 3, 2004, the FAA determined that the application to impose and use a PFC, submitted by the County of Routt, Colorado, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 4, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: November 1, 2004.

Proposed charge expiration date: May 1, 2007.

Total requested for use approval: $1,051,507.00.

Brief description of proposed projects: Commercial terminal expansion/modification (Phase I), Commercial terminal expansion/modification with associated access road (Phase II and III), commercial apron rehabilitation, security badging upgrade, commercial apron expansion (design).

Class or classes of air carrier which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Yampa Valley Regional Airport.

Issued in Renton, Washington, on June 3, 2004.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 04–13307 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Waiver Petition Docket Number FRA–2003–16439]

Notice of Public Hearing; Canadian Pacific Railway

On December 11, 2003, FRA published a notice in the **Federal Register** announcing Canadian Pacific Railway Company's (CPR) intent to be granted a waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR Part 229 on behalf of themselves, their U.S. subsidiaries, the Delaware & Hudson and the Soo Line Railroads, and the New York Air Brake Corporation (NYAB). *See* 68 FR 69122. Specifically, CPR requested relief from the requirements of 49 CFR 229.27(a)(2) *Annual Tests* and 49 CFR 229.29(a) *Biennial Tests,* in order to evaluate extending the required periodic maintenance time intervals for NYAB generation II Computer Controlled Brake (CCB) equipment.

CPR has proposed evaluating the extended COT&S intervals according to a test plan that NYAB developed for CPR and Transport Canada. The test plan has assigned locomotives into tests groups based on the scheduled periodic maintenance cycles. Candidate locomotives for test tear-downs would only include those units which have not had a prior COT&S and which have had the least amount of air brake maintenance activity since entering service. Approval of this waiver would permit the continued operation of the test locomotives in the United States, as the COT&S time intervals are extended beyond the five-year requirement. It will also add to the industry's knowledge of the reliability of the CCB technology, building on a similar waiver (FRA–1999–6252) which was granted to CSXT on September 1, 2000. It is CPR's intention that FRA would join Transport Canada and NYAB in evaluating the extended COT&S intervals for their CCB equipped locomotives, if this waiver is approved.

As a result of the comments received by FRA concerning this waiver petition, FRA has determined that a public hearing is necessary before a final decision is made on this petition. Accordingly, a public hearing is hereby set for 1 p.m. on July 13, 2004, at the Washington Plaza Hotel, 10 Thomas Circle, NW (at Massachusetts Avenue and 14th Street), Washington, DC 20005. Interested parties are invited to present oral statements at this hearing.

The hearing will be informal and will be conducted in accordance with FRA's Rules of Practice (49 CFR 211.25) by a representative designated by FRA. FRA's representative will make an opening statement outlining the scope of the hearing, as well as any additional procedures for the conduct of the hearing. The hearing will be a non-adversarial proceeding in which all interested parties will be given the opportunity to express their views regarding this waiver petition, without cross-examination. After all initial statements have been completed, those persons wishing to make a brief rebuttal will be given an opportunity to do so in the same order in which initial statements were made.

Issued in Washington, DC, on June 4, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–13259 Filed 6–10–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Waiver Petition Docket Number FRA–2003–16306]

Notice of Public Hearing; Union Pacific Railroad Company

On December 11, 2003, FRA published a notice in the **Federal Register** announcing the Union Pacific Railroad Company's (UP) intent to be granted a waiver of compliance from certain provisions of the *Railroad Locomotive Safety Standards,* 49 CFR Part 229. *See* 68 FR 69123. Specifically, UP requests relief from the requirements of 49 CFR 229.27(a)(2) Annual Tests and 49 CFR 229.29(a) *Biennial Tests,* applicable to all existing and future installations of electronic air brake equipment furnished by Wabtec Corporation of Wilmerding, Pennsylvania on UP locomotives.

UP requested that the provisions of § 229.27(a)(2) and § 229.29(a) be temporarily waived to allow them to conduct a long term test program designed to show that Wabtec's electronic air brake technology has sufficiently improved the overall system reliability and safety to a point where it is now possible to move toward a ''component repair as required, performance based COT&S criterion,'' similar in scope to that outlined a previous waiver granted September 1, 2000, to CSX Transportation in Docket FRA–1999–6252.

UP proposes to initiate a test program to extend the Wabtec electronic air brake COT&S based on the following assertions: (1) A reduction of pneumatic devices by substitution of computer-based logic; (2) real time fault detection and control of critical faults to a known fail-safe condition made possible by constant ''vigilance'' of the controlling computer; (3) development of emergency brake cylinder pressure accomplished conventionally by a back-up pneumatic control valve, as well as electronically under all conditions; (4) demonstrated performance to date of Wabtec ''EPIC'' brake system under the current waiver FRA 2002–13397 (formally H–92–3); and (5) supporting

test and inspection results documented over the past decade for the ''EPIC'' equipment as required by the current waiver. As part of this waiver request, UP recommends that a detailed test plan, necessary for properly tracking and documenting the results, be jointly developed between UP, Wabtec Corporation, and FRA. At the completion of the test program, UP further requests that FRA conduct a formal review of the results relative to the objective of moving toward a ''performance-based COT&S'' criterion.

As a result of the comments received by FRA concerning this waiver petition, FRA has determined that a public hearing is necessary before a final decision is made on this petition. Accordingly, a public hearing is hereby set to begin at 10 a.m. on July 13, 2004, at the Washington Plaza Hotel, 10 Thomas Circle, NW. (at Massachusetts Avenue and 14th Street), Washington, DC 20005. Interested parties are invited to present oral statements at this hearing.

The hearing will be informal and will be conducted in accordance with FRA's Rules of Practice (49 CFR 211.25) by a representative designated by FRA. FRA's representative will make an opening statement outlining the scope of the hearing, as well as any additional procedures for the conduct of the hearing. The hearing will be a non-adversarial proceeding in which all interested parties will be given the opportunity to express their views regarding this waiver petition, without cross-examination. After all initial statements have been completed, those persons wishing to make a brief rebuttal statements will be given an opportunity to do so in the same order in which initial statements were made.

Issued in Washington, DC, on June 4, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–13258 Filed 6–9–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17942]

Decision that Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: These decisions became effective on the dates specified in Annex A.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No substantive comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA has decided that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

Annex A—Nonconforming Motor Vehicles Decided to be Eligible for Importation

1. Docket No. NHTSA–2003–16629

Nonconforming Vehicles: 2000 Ford F150 Pickup Trucks.

Substantially Similar

U.S.-Certified Vehicles: 2000 Ford F150 Pickup Trucks.

Notice of Petition

Published at: 68 FR 69765 (December 15, 2003).

Vehicle Eligibility Number: VSP–425 (effective date January 20, 2004).

2. Docket No. NHTSA–2003–16672

Nonconforming Vehicles: 2003 Saab 9.3 Passenger Cars.

Substantially Similar

U.S.-Certified Vehicles: 2003 Saab 9.3 Passenger Cars.

Notice of Petition

Published at: 68 FR 69766 (December, 15, 2003).

Vehicle Eligibility Number: VSP–426 (effective date January 22, 2004).

3. Docket No. NHTSA–2003–16719

Nonconforming Vehicles: 1979–1980 Volkswagen Transporter Multipurpose Passenger Vehicles.

Substantially Similar

U.S.-Certified Vehicles: 1979–1980 Volkswagen Vanagon Multipurpose Passenger Vehicles.

Notice of Petition

Published at: 68 FR 71221 (December 22, 2003).
Vehicle Eligibility Number: VSP–427 (effective date January 29, 2004).

4. Docket No. NHTSA–2003–16720

Nonconforming Vehicles: 1996 Audi S6 Passenger Cars.

Substantially Similar

U.S.-Certified Vehicles: 1996 Audi S6 Passenger Cars.

Notice of Petition

Published at: 68 FR 71220 (December 22, 2003).
Vehicle Eligibility Number: VSP–428 (effective date January 29, 2004).

5. Docket No. NHTSA–2004–16888

Nonconforming Vehicles: 2003–2004 Mercedes Benz E Class (211) Passenger Cars.

Substantially Similar

U.S.-Certified Vehicles: 2003–2004 Mercedes Benz E Class (211) Passenger Cars.

Notice of Petition

Published at: 69 FR 2384 (January 15, 2004).
Vehicle Eligibility Number: VSP–429 (effective date February 27, 2004).

6. Docket No. NHTSA–2004–16999

Nonconforming Vehicles: 2002–2004 Aston Martin Vanquish Passenger Cars.

Substantially Similar

U.S.-Certified Vehicles: 2002–2004 Aston Martin Vanquish Passenger Cars.

Notice of Petition

Published at: 69 FR 6371 (February 10, 2004).
Vehicle Eligibility Number: VSP–430 (effective date March 18, 2004).

7. Docket No. NHTSA–2004–17021

Nonconforming Vehicles: 1997 Jeep Grand Cherokee Multipurpose Passenger Vehicles.

Substantially Similar

U.S.-Certified Vehicles: 1997 Jeep Grand Cherokee Multipurpose Passenger Vehicles.

Notice of Petition

Published at: 69 FR 7064 (February 12, 2004).
Vehicle Eligibility Number: VSP–431 (effective date March 18, 2004).

8. Docket No. NHTSA–2004–17142

Nonconforming Vehicles: 2000 Volvo C70 Passenger Cars.

Substantially Similar

U.S.-Certified Vehicles: 2000 Volvo C70 Passenger Cars.

Notice of Petition

Published at: 69 FR 8735 (February 25, 2004).
Vehicle Eligibility Number: VSP–434 (effective date April 1, 2004).

9. Docket No. NHTSA–2004–17141

Nonconforming Vehicles: 1999 Chevrolet Camaro Passenger Cars.

Substantially Similar

U.S.-Certified Vehicles: 1999 Chevrolet Camaro Passenger Cars.

Notice of Petition

Published at: 69 FR 8736 (February 25, 2004).
Vehicle Eligibility Number: VSP–435 (effective date April 1, 2004).

10. Docket No. NHTSA–2004–17181

Nonconforming Vehicles: 2003–2004 Ferrari Enzo Passenger Cars.

Substantially Similar

U.S.-Certified Vehicles: 2003–2004 Ferrari Enzo Passenger Cars.

Notice of Petition

Published at: 69 FR 9424 (February 27, 2004).
Vehicle Eligibility Number: VSP–436 (effective date April 1, 2004).

11. Docket No. NHTSA–2004–17179

Nonconforming Vehicles: 2000 Land Rover Discovery Multipurpose Passenger Vehicles.

Substantially Similar

U.S.-Certified Vehicles: 2000 Land Rover Discovery II Multipurpose Passenger Vehicles.

Notice of Petition

Published at: 69 FR 9423 (February 27, 2004).
Vehicle Eligibility Number: VSP–437 (effective date April 8, 2004).

12. Docket No. NHTSA–2004–17413

Nonconforming Vehicles: 2004 Porsche 911 (996) GT3 Passenger Cars.

Substantially Similar

U.S.-Certified Vehicles: 2004 Porsche 911 (996) GT3 Passenger Cars.

Notice of Petition

Published at: 69 FR 17029 (March 31, 2004).
Vehicle Eligibility Number: VSP–438 (effective date May 5, 2004).

13. Docket No. NHTSA–2004–17473

Nonconforming Vehicles: 2002–2004 Porsche 911 (996) Carrera Passenger Cars.

Substantially Similar

U.S.-Certified Vehicles: 2002–2004 Porsche 911 (996) Carrera Passenger Cars.

Notice of Petition

Published at: 69 FR 18418 (April 7, 2004).
Vehicle Eligibility Number: VSP–439 (effective date May 13, 2004).

14. Docket No. NHTSA–2004–17472

Nonconforming Vehicles: 1996 Honda CB750 (CB750F2T) Motorcycles.

Substantially Similar

U.S.-Certified Vehicles: 1996 Honda CB750 (CB750F2T) Motorcycles.

Notice of Petition

Published at: 69 FR 18417 (April 7, 2004).
Vehicle Eligibility Number: VSP–440 (effective date May 13, 2004).

[FR Doc. 04–13225 Filed 6–10–04; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–35

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–35, Late Spousal S Corp Consents in Community Property States.

DATES: Written comments should be received on or before August 13, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Late Spousal S Corp Consents in Community Property States.

OMB Number: 1545–1886.

Revenue Procedure Number: Revenue Procedure 2004–35.

Abstract: Revenue Procedure 2004–35 allows for the filing of certain late shareholder consents to be an S Corporation with the IRS Service Center.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Annual Average Time Per Respondent: 1 hour.

Estimated Total Annual Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 7, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–13331 Filed 6–10–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,

June 14, 2004

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

Endangered and Threatened Species: Proposed Listing Determinations for 27 ESUs of West Coast Salmonids; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 040525161–4161–01; I.D. No. 052104F]

RIN 0648–AR93

Endangered and Threatened Species: Proposed Listing Determinations for 27 ESUs of West Coast Salmonids

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has completed comprehensive status reviews for 26 West Coast salmon (chum, *Oncorhynchus keta;* coho, *O. kisutch, O. nerka;* chinook, *O. tshawytscha;* pink, *O. gorbuscha*) and *O. mykiss* (inclusive of anadromous steelhead and resident rainbow trout) Evolutionarily Significant Units (ESUs) previously listed as threatened and endangered species under the Endangered Species Act (ESA), as well as one ESU that was designated as a candidate species, for a total of 27 ESUs. Following a September 2001 U.S. District Court ruling that rejected how NMFS treats hatchery stocks in its listing determinations, the agency received several petitions seeking to delist, or to redefine and list, 17 salmon and steelhead ESUs on the basis of the Court's ruling. In response to these petitions NMFS initiated status reviews for 16 of these ESUs, and elected to conduct status reviews for an additional 11 ESUs. Based on these reviews, NMFS is now issuing a proposed rule to list four ESUs as endangered and 23 ESUs as threatened. Collectively, these 27 ESUs include 162 artificial propagation programs. NMFS also proposes amending existing protective regulations, promulgated under section 4(d) of the ESA, for threatened ESUs.

DATES: Comments must be received no later than 5 p.m. P.S.T. on September 13, 2004. (See **ADDRESSES**.) NMFS will announce the dates and locations of public hearings in California, Oregon, Washington, and Idaho in a separate **Federal Register** notice.

ADDRESSES: Comments should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street—Suite 500, Portland, OR 97232–2737. Comments on this proposed rule may be submitted by e-mail. The mailbox address for providing e-mail comments is *salmon.nwr@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: 040525161–4161–01. Comments may also be submitted via facsimile (fax) to 503–230–5435, or via the Internet at *http://www.nmfs.noaa.gov/ibrm.* Comments may also be submitted electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further information regarding this proposed rule contact Garth Griffin, NMFS, Northwest Region, (503) 231–2005; Craig Wingert, NMFS, Southwest Region, (562) 980–4021; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Organization of This Proposed Rule

This **Federal Register** notice describes the proposed listing determinations for 27 ESUs of West Coast salmon and *O. mykiss* under the ESA. The pages that follow review the information considered in formulating the proposed listing determinations. To assist the reader, this section briefly outlines the organization and content of this notice. Section headings listed in this outline are denoted in *bold text,* and subheadings in *italics* in the body of the notice.

I. Review of necessary *Background* information
- Statutory basis for Listing Species Under the Endangered Species Act
- NMFS' Previous Federal ESA Actions Related to West Coast Salmonids
- NMFS' Past Practice in Pacific Salmonid ESA Listing Determinations
- Recent court decisions (*Alsea Valley Alliance* v. *Evans*) and a Summary of Petitions seeking listing/delisting actions that precipitated the Initiation of Coast-wide ESA Status Reviews for Pacific Salmonids
- Overview of the Life History of West Coast Salmonids

II. Consideration of specific issues in Assessing Extinction Risk for Pacific Salmonids
- Consideration of Artificial Propagation in Listing Determinations
- Consideration of Resident O. mykiss Populations in Listing Determinations
- Consideration of Recent Ocean Conditions in Listing Determinations

III. Treatment of the four listing determination steps for each ESU under review
(1) Determination of ''Species'' under the ESA
(2) Review of the best available information for Updated Viability Assessments of ESUs
(3) Evaluation of Efforts Being Made to Protect West Coast Salmon and O. mykiss
(4) Proposed Listing Determinations of ''threatened,'' ''endangered,'' or ''not warranted,'' based on the foregoing information

IV. Take Prohibitions and Protective Regulations:
- Overview of the take prohibitions and protective regulations that presently apply to listed ESUs
- Description of a proposed amendment to these protective regulations

V. Summary of agency efforts in designating Critical Habitat for listed salmon and O. mykiss ESUs

VI. Description of the Public Comments Solicited and other opportunities for public involvement in this rulemaking process

VII. Description of the Classification, NMFS' compliance with various laws and executive orders with respect to this proposed rulemaking (*e.g.*, National Environmental Policy Act, Regulatory Flexibility Act)

VIII. Description of proposed amendments to the Code of Federal Regulations. This section itemizes the specific changes to federal law being proposed based on the foregoing information
- Proposed amendments to the list of threatened and endangered species
- Proposed amendment to the protective regulations for threatened West Coast salmon and *O. mykiss*

Background

Listing Species Under the Endangered Species Act

NMFS is responsible for determining whether species, subspecies, or distinct population segments (DPSs) of Pacific salmon and steelhead are threatened or endangered under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq*). To be considered for listing under the ESA, a group of organisms must constitute a ''species,'' which is defined in section 3 of the ESA to include ''any subspecies of fish or wildlife or plants, and any *distinct population segment* [emphasis added] of any species of vertebrate fish or wildlife which interbreeds when mature.'' In this notice, NMFS is proposing listing determinations for DPSs of Pacific salmon and *O. mykiss.* NMFS has determined that, to qualify as a DPS, a Pacific salmon or *O. mykiss* population must be substantially reproductively isolated from other conspecific populations and represent an important component in the evolutionary legacy of the biological species. A population meeting these criteria is considered to be an ESU (56 FR 58612; November 20, 1991). In its listing determinations for Pacific salmonids under the ESA, NMFS has treated an ESU as constituting a DPS, and hence a ''species,'' under the ESA. The terms ''DPS'' and ''ESU'' are used synonymously in this document.

Section 3 of the ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as one ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The statute lists factors that may cause a species to be threatened or endangered (ESA section 4(a)(1)): (a) The present or threatened destruction, modification, or curtailment of its habitat or range; (b) overutilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation; (d) the inadequacy of existing regulatory mechanisms; or (e) other natural or manmade factors affecting its continued existence.

Section 4(b)(1)(A) of the ESA requires NMFS to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made to protect the species (in this proposed rule the term ''status'' is used in the statutory context, referring to the ESA listing status of ''threatened,'' ''endangered,'' or listing not warranted). Accordingly, NMFS follows three steps in making its listing determinations for Pacific salmon and *O. mykiss:* (1) NMFS first determines whether a population or group of populations constitutes an ESU, that is, whether the population(s) are a ''species'' within the meaning of the ESA; (2) NMFS then determines the viability of the ESU and the factors that have led to its decline; and (3) NMFS assesses efforts being made to protect the ESU, determining if these efforts are adequate to mitigate threats to the species. Based on the foregoing information and the statutory listing criteria, NMFS then proposes a listing determination of whether the species is threatened or endangered in a significant portion of its range.

Previous Federal ESA Actions Related to West Coast Salmonids

Pacific salmon and *O. mykiss* ESUs in California and the Pacific Northwest have suffered broad declines over the past hundred years. (In this document the scientific name ''*O. mykiss*'' refers to both anadromous steelhead and resident rainbow trout life-history forms). NMFS has conducted several ESA status reviews and status review updates for six biological species of Pacific salmon and *O. mykiss* in California, Oregon, Washington, and Idaho, identifying 51 ESUs and listing 26 of these ESUs to date. Table 1 summarizes the previous NMFS scientific reviews of the viability of salmon and steelhead and the ESA listing determinations for the 27 ESUs addressed in this proposed rule.

TABLE 1.—SUMMARY OF PREVIOUS ESA LISTING ACTIONS RELATED TO THE 27 EVOLUTIONARILY SIGNIFICANT UNITS OF WEST COAST SALMON AND *Oncorhynchus Mykiss* UNDER REVIEW

Evolutionarily Significant Unit (ESU)	Current endangered species act (ESA) status	Year listed	Previous ESA listing determinations—Federal Register citations	Previous scientific viability reviews and updates
			56 FR 58619; 11/20/1991 (Final rule).	
Snake River sockeye ESU	Endangered	1991	56 FR 14055; 04/05/1991 (Proposed rule)	NMFS 1991a
			64 FR 14528; 03/25/1999 (Final rule)	NMFS 1998d
Ozette Lake sockeye ESU	Threatened	1999	63 FR 11750; 03/10/1998 (Proposed rule)	NMFS 1997f
			59 FR 440; 01/01/1994 (Final rule).	
			57 FR 27416; 06/19/1992 (Proposed rule).	
			55 FR 49623; 11/30/1990 (Final rule).	
			55 FR 12831, 04/06/1990 (Emergency rule).	
			55 FR 102260; 03/20/1990 (Proposed rule).	
			54 FR 10260; 08/04/1989 (Emergency rule).	
Sacramento River winter-run chinook ESU	Endangered	1994	52 FR 6041; 02/27/1987 (Final rule).	
			64 FR 50394; 09/16/1999 (Final rule)	NMFS 1998b.
Central Valley spring-run chinook ESU	Threatened	1999	63 FR 11482; 03/09/1998 (Proposed rule)	NMFS 1999d.
			64 FR 50394; 09/16/1999 (Final rule)	NMFS 1998b.
California Coastal chinook ESU	Threatened	1999	63 FR 11482; 03/09/1998 (Proposed rule)	NMFS 1999d.
				NMFS 1998b.
			64 FR 14308; 03/24/99 (Final rule)	NMFS 1998e.
Upper Willamette River chinook ESU	Threatened	1999	63 FR 11482; 03/09/1998 (Proposed rule)	NMFS 1999c.
				NMFS 1998b.
			64 FR 14308; 03/24/99 (Final rule)	NMFS 1998e.
Lower Columbia River chinook ESU	Threatened	1999	63 FR 11482; 03/09/1998 (Proposed rule)	NMFS 1999c.
Upper Columbia River spring-run chinook ESU.	Endangered	1999		NMFS 1998b.
			64 FR 14308; 03/24/99 (Final rule)	NMFS 1998e.
			63 FR 11482; 03/09/1998 (Proposed rule)	NMFS 1999c.

TABLE 1.—SUMMARY OF PREVIOUS ESA LISTING ACTIONS RELATED TO THE 27 EVOLUTIONARILY SIGNIFICANT UNITS OF WEST COAST SALMON AND *Oncorhynchus Mykiss* UNDER REVIEW—Continued

Evolutionarily Significant Unit (ESU)	Current endangered species act (ESA) status	Year listed	Previous ESA listing determinations—Federal Register citations	Previous scientific viability reviews and updates
				NMFS 1998b.
			64 FR 14308; 03/24/99 (Final rule)	NMFS 1998e.
Puget Sound chinook ESU	Threatened	1999	63 FR 11482; 03/09/1998 (Proposed rule)	NMFS 1999c.
			63 FR 1807; 0/12/1998 (Proposed withdrawn).	
			59 FR 66784; 12/28/1994 (Proposed rule).	
			59 FR 42529; 08/18/1994 (Emergency rule).	
			57 FR 23458; 06/03/1992 (Correction).	
			57 FR 14653; 04/22/1992 (Final rule)	NMFS 1991c.
Snake River fall-run chinook ESU	Threatened	1992	56 FR 29547; 06/27/1991 (Proposed rule)	NMFS 1999d.
			63 FR 1807; 0/12/1998 (Proposed withdrawn).	
			59 FR 66784; 12/28/1994 (Proposed rule).	
			59 FR 42529; 08/18/1994 (Emergency rule).	
			57 FR 23458; 06/03/1992 (Correction).	
			57 FR 34639; 04/22/1992 (Final rule)	NMFS 1991b.
Snake River spring/summer-run chinook ESU.	Threatened	1992	56 FR 29542; 06/27/1991 (Proposed rule)	NMFS 1998b.
			61 FR 56138;- 10/31/1996 (Final rule)	Bryant 1994
Central California Coast coho ESU.	Threatened	1996	60 FR 38011; 07/25/1995 (Proposed rule)	NMFS 1995a.
				NMFS 1997a.
				NMFS 1996c.
			62 FR 24588; 05/06/1997 (Final rule)	NMFS 1996e.
Southern Oregon/Northern California Coast coho ESU.	Threatened	1997	60 FR 38011; 07/25/1995 (Proposed rule)	NMFS 1995a.
			69 FR 19975; 04/15/2004 (Candidate list).	
			63 FR 42587; 08/10/1998 (Final rule)	NMFS 1997a.
			62 FR 24588; 05/06/1997 (Proposed withdrawn).	NMFS 1996b.
			61 FR 56138; 10/31/1996 (6 mo. extension)	NMFS 1996d.
Oregon Coast coho ESU	Threatened*	1998	60 FR 38011; 07/25/1995 (Proposed rule)	NMFS 1995a.
Lower Columbia River coho ESU	Candidate	1995	69 FR 19975; 04/15/2004 (Candidate list)	NMFS 1996e.
				NMFS 1995a.
			60 FR 38011; 07/25/1995 (Not warranted)	NMFS 1991a.
				NMFS 1997e.
			64 FR 145008; 03/25/1999 (Final rule) 3	NMFS 1999b.
Columbia River chum ESU	Threatened	1999	63 FR 11774; 03/10/1998 (Proposed rule)	NMFS 1999c.
				NMFS 1996d.
				NMFS 1997e.
			64 FR 14508; 03/25/1999 (Final rule)	NMFS 1999b.
Hood Canal summer-run chum ESU	Threatened	1999	63 FR 11774; 03/10/1998 (Proposed rule)	NMFS 1999c.
			67 FR 21568; 05/01/2002 (Redefinition of ESU).	
			62 FR 43937; 08/18/1997 (Final rule)	NMFS 1996b.

TABLE 1.—SUMMARY OF PREVIOUS ESA LISTING ACTIONS RELATED TO THE 27 EVOLUTIONARILY SIGNIFICANT UNITS OF WEST COAST SALMON AND *Oncorhynchus Mykiss* UNDER REVIEW—Continued

Evolutionarily Significant Unit (ESU)	Current endangered species act (ESA) status	Year listed	Previous ESA listing determinations—Federal Register citations	Previous scientific viability reviews and updates
Southern California steelhead ESU	Endangered	1997	61 FR 41541; 08/09/1996 (Proposed rule)	NMFS 1997b.
			62 FR 43937; 08/18/1997 (Final rule)	NMFS 1996b.
South-Central California Coast steelhead ESU.	Threatened	1997	61 FR 41541; 08/09/1996 (Proposed rule)	NMFS 1997b.
			62 FR 43937; 08/18/1997 (Final rule)	NMFS 1996b.
Central California Coast steelhead ESU	Threatened	1997	61 FR 41541; 08/09/1996 (Proposed rule)	NMFS 1997b. NMFS 1996b. NMFS 1997b.
			63 FR 13347; 03/19/1998 (Final rule)	NMFS 1997c.
			62 FR 43974; 08/18/1997 (6 mo. extension)	NMFS 1997d.
California Central Valley steelhead ESU	Threatened	1998	61 FR 41541; 08/09/1996 (Proposed rule)	NMFS 1998a.
			65 FR 36074; 06/07/2000 (Final rule). 65 FR 6960; 02/11/2000 (Proposed rule)	NMFS 1996b.
			63 FR 13347; 03/19/1998 (Not Warranted)	NMFS 1997c.
			62 FR 43974; 08/18/1997 (6 mo. extension)	NMFS 1998a.
Northern California steelhead ESU	Threatened	2000	61 FR 41541; 08/09/1996 (Proposed rule) 64 FR 14517; 03/25/1999 (Final rule)	NMFS 2000. NMFS 1996b.
			63 FR 11798; 03/10/1998 (Proposed rule)	NMFS 1997d.
Upper Willamette River steelhead ESU	Threatened	1999	62 FR 43974; 08/18/1997 (6 mo. extension)	NMFS 1999a.
			61 FR 41541; 08/09/1996 (Proposed rule)	NMFS 1999c. NMFS 1996b.
			63 FR 13347; 03/19/1998 (Final rule)	NMFS 1997c.
			62 FR 43974; 08/18/1997 (6 mo. extension)	NMFS 1997d.
Lower Columbia River steelhead ESU	Threatened	1998	61 FR 41541; 08/09/1996 (Proposed rule)	NMFS 1998a.
			64 FR 14517; 03/25/1999 (Final rule)	NMFS 1996b.
			63 FR 11798; 03/10/1998 (Proposed rule)	NMFS 1997d.
			62 FR 43974; 08/18/1997 (6 mo. extension)	NMFS 1999a.
Middle Columbia River steelhead ESU	Threatened	1999	61 FR 41541; 08/09/1996 (Proposed rule)	NMFS 1999c.
			62 FR 43937; 08/18/1997 (Final rule)	NMFS 1996b.
Upper Columbia River steelhead ESU	Endangered	1997	61 FR 41541; 08/09/1996 (Proposed rule)	NMFS 1997b.
			62 FR 43937; 08/18/1997 (Final rule)	NMFS 1996b.
Snake River Basin steelhead ESU	Threatened	1997	61 FR 41541; 08/09/1996 (Proposed rule)	NMFS 1997b.

*But see *Alsea Valley Alliance* v. *Evans*, 358 F.3d 1181 (9th Cir. Feb. 24, 2004).

Past Practice in Pacific Salmonid ESA Listing Determinations

In past ESA listing determinations, NMFS followed the four step approach described above. In the past, NMFS focused on whether the naturally spawned fish are, by themselves, self-sustaining in their natural ecosystem over the long term. NMFS listed as ''endangered'' those ESUs whose naturally spawned populations were found to have a present high risk of extinction, and listed as ''threatened'' those ESUs whose naturally spawned populations were found likely to become endangered in the foreseeable future (that is, whose present risk of extinction was not high, but whose risk of extinction was likely to become high within a foreseeable period of time).

In its listing determinations, NMFS did not explicitly consider the contribution of the hatchery fish to the overall viability of the ESU, or whether the presence of hatchery fish within the ESU might have the potential for reducing the risk of extinction of the ESU or the likelihood that the ESU would become endangered in the foreseeable future. (The listing of Snake River fall chinook, however, is an exception. See 57 FR 14653; April 22, 1992.) NMFS frequently evaluated artificial propagation only as a factor in the decline of the naturally spawned populations within an ESU.

For each ESU where hatchery fish were present, NMFS reviewed the associated hatchery populations to determine how closely related the hatchery populations were to the naturally spawned populations. This review focused on the origin of the hatchery fish and their similarity to locally adapted naturally spawned fish. Factors included in this consideration were: Genetic, life history, and habitat use characteristics; the degree to which the characteristics of the wild population may have been altered over time; and other factors that would affect the biological usefulness of hatchery fish for recovery.

Since 1993, NMFS has applied an interim policy on how it will consider artificial propagation in the listing and recovery of Pacific salmon and steelhead under the ESA (58 FR 17573, April 5, 1993). The 1993 policy provided guidance on the use of artificial propagation to assist in the conservation of these listed species and to help avoid additional species listings. The policy also provided guidance for evaluating artificial propagation in section 7 consultation, section 10 permitting, and recovery planning pursuant to the ESA.

When NMFS determined that an ESU should be listed as threatened or endangered, it applied its interim artificial propagation policy for Pacific salmon and steelhead. That policy provided that hatchery salmon and steelhead found to be part of the ESU would not be listed under the ESA unless they were found to be essential for recovery (*i.e.*, if NMFS determined that the hatchery population contained a substantial portion of the genetic diversity remaining in the ESU). The result of this policy was that a listing determination for an ESU depended solely upon the relative health of the naturally spawning component of the ESU. In most cases, hatchery fish within the ESUs were not relied upon to contribute to recovery, and therefore were not listed.

In addition, resident *O. mykiss* populations (*i.e.*, rainbow trout) included in steelhead ESUs were not listed when it was determined that the steelhead warranted listing because the U.S. Fish and Wildlife Service (FWS) retains ESA jurisdiction over resident rainbow trout.

Alsea Valley Alliance v. *Evans*

In September 2001, the U.S. District Court in Eugene, Oregon, in *Alsea Valley Alliance* v. *Evans* (161 F. Supp. 2d 1154, D. Oreg. 2001; *Alsea* decision), set aside NMFS' 1998 ESA listing of Oregon Coast coho salmon (63 FR 42587; 08/10/1998). The Court ruled that the ESA does not allow NMFS to list a subset of an ESU, and that NMFS had improperly excluded stocks from the listing once it had decided that certain hatchery stocks were part of the ESU. Although the Court's ruling affected only one ESU, the interpretive issue raised by the ruling called into question nearly all of NMFS' Pacific salmonid listing determinations. The Court struck down the 1998 final rule listing Oregon coast coho as a threatened species, thus removing the ESU from the protections of the ESA. The Court remanded the case to NMFS for reconsideration consistent with the *Alsea* decision. NMFS did not contest the Court's ruling and informed the Court it would comply. In November 2001 intervenors appealed the Court's ruling to the U.S. Ninth Circuit Court of Appeals. Pending resolution of the appeal, the Ninth Circuit stayed the District Court's remand order and invalidation of the 1998 listing. While the stay was in place, the Oregon Coast coho ESU was again afforded the protections of the ESA (*Alsea Valley Alliance* v. *Evans*, 9th Circuit appeal, No. 01–36071, December 14, 2001). On February 24, 2004, the Appeals Court dismissed the appeal, and dissolved its stay of the District Court's ruling in *Alsea*.

Following the District Court's ruling in the *Alsea* case, NMFS received several petitions (summarized below) addressing 17 listed salmonid ESUs, including five steelhead ESUs. These petitions cited the *Alsea* ruling and focused on NMFS' past practice of excluding certain ESU hatchery stocks from listing protection. Various litigants have also challenged the failure to list resident populations included in threatened and endangered steelhead ESUs. The anadromous form of *O. mykiss* (*i.e.*, steelhead) is presently under NMFS' jurisdiction, while the resident freshwater forms, usually called ''rainbow'' or ''redband'' trout, are under FWS jurisdiction. In *Environmental Defense Center et al.* v. *Evans et al.* (*EDC* v. *Evans*, SACV–00–1212–AHS (EEA)), the plaintiffs argue that NMFS failed to include resident populations in the endangered listing of the Southern California steelhead ESU (62 FR 43937; August 18, 1997). In *Modesto Irrigation District et al.* v. *Evans et al.* (*MID* v. *Evans*, CIV–F–02–6553 OWW DLB (E.D. Cal)), the plaintiffs seek to invalidate NMFS' 1997 threatened listing of the Central Valley California steelhead ESU (63 FR 13347; March 19, 1998) for failing to list hatchery and resident populations identified as part of the ESU. This same factual situation is found in all listed steelhead ESUs; the listings do not include hatchery and/or resident populations considered to be part of the ESUs. For the proposed listing determinations detailed in this proposed rule to be compliant with the Court's ruling in the *Alsea* case, all populations or stocks (natural, hatchery, resident, etc.) included in an ESU must be listed if it is determined that the ESU is threatened or endangered under the ESA.

Summary of Petitions

Following the ruling in the *Alsea* case, NMFS received several petitions seeking to delist, or to redefine and list, ESUs of Pacific salmon and steelhead. The petitioners made reference to the *Alsea* decision in arguing for NMFS to reconsider the listing status for certain ESUs. Between September 2001 and April 2002 NMFS received eight separate petitions addressing a total of 17 listed salmon and steelhead ESUs.

On September 19, 2001, NMFS received a petition from Interactive Citizens United to delist coho salmon in Siskiyou County, California. These fish are part of a larger ESU of Southern Oregon/Northern California Coast coho

salmon. NMFS determined that the Interactive Citizens United petition was not warranted, finding that it failed to present substantial scientific or commercial information to suggest that delisting may be warranted (67 FR 6215; February 11, 2002). On March 18, 2002, NMFS received a duplicate petition from the California State Grange to delist coho salmon in Siskiyou County, California. NMFS made a negative finding on the California State Grange petition (67 FR 40679; June 13, 2002), for the same reasons as for its finding on the Interactive Citizens United petition.

During October 2001, NMFS received 5 additional delisting petitions addressing 15 ESUs. On October 22, 2001, NMFS received a petition from the Washington State Farm Bureau, on the behalf of a coalition of agricultural organizations in Washington State, to delist 12 Pacific salmon ESUs including: One sockeye ESU (the endangered Snake River sockeye ESU); six chinook ESUs (the threatened Puget Sound, Snake River spring/summer, Snake River fall, and Lower Columbia River chinook ESUs, as well as the endangered Upper Columbia River spring-run chinook ESU); two chum ESUs (the threatened Hood Canal summer-run and Columbia River chum ESUs); and four steelhead ESUs (the threatened Lower Columbia River, Middle Columbia River, and Snake River steelhead ESUs, as well as the endangered Upper Columbia River steelhead ESU). On October 17, 2001, NMFS received a petition on behalf of the Columbia-Snake River Irrigators' Association to delist seven Pacific salmon ESUs including: One sockeye ESU (the endangered Snake River sockeye ESU); three chinook ESUs (the threatened Snake River fall and Snake River spring/summer chinook ESUs, as well as the endangered Upper Columbia River spring-run chinook ESU); and three steelhead ESUs (the threatened Middle Columbia River and Snake River steelhead ESUs, as well as the endangered Upper Columbia River steelhead ESUs). On October 17, 2001, NMFS received a petition on behalf of the Kitsap Alliance of Property Owners and the Skagit County Cattlemen's Association to delist the threatened Puget Sound chinook and Hood Canal summer-run chum ESUs. On October 23, 2001, NMFS received a petition on behalf of seven individuals to delist the threatened Southern Oregon/Northern California Coast coho ESU. On October 24, 2001, NMFS received a petition on behalf of the Greenberry Irrigation District to delist the threatened Upper Willamette River chinook and steelhead ESUs. NMFS determined that these petitions, in light of the *Alsea* decision, presented substantial scientific and commercial information indicating that delisting may be warranted for 14 of the 15 petitioned ESUs (67 FR 6215; February 11, 2002). In the case of the Snake River sockeye ESU, NMFS determined that the Washington State Farm Bureau and Columbia-Snake River Irrigators' Association petitions failed to present substantial scientific and commercial information that delisting may be warranted.

On March 14, 2002, NMFS received a petition from the Central Coast Forest Association to delist the threatened Central California Coast coho salmon ESU. On April 29, 2002, NMFS received two petitions from Trout Unlimited and several co-petitioners seeking to redefine and list a total of 15 ESUs including: Six chinook ESUs (the threatened Puget Sound, Upper Willamette River, Snake River spring/summer, Snake River fall, and Lower Columbia River chinook ESUs, as well as the endangered Upper Columbia River spring-run chinook ESU); two chum ESUs (the threatened Hood Canal summer and Columbia River chum ESUs); two coho ESUs (the threatened Oregon Coast and Southern Oregon/Northern California Coast coho ESUs); and five steelhead ESUs (the threatened Upper Willamette River, Snake River, Middle Columbia River, and Lower Columbia River steelhead ESUs, as well as the endangered Upper Columbia River steelhead ESU). The two Trout Unlimited petitions sought to redefine and list these ESUs as including only natural fish. NMFS determined that these three petitions presented substantial scientific and commercial information to suggest that the petitioned actions may be warranted (67 FR 48601; July 25, 2002).

The ESA requires that, as a consequence of accepting the above petitions, NMFS promptly commence a review of the species' status and make a finding within 12 months after receiving the petition, whether the petitioned action is warranted (ESA section 4(b)(3)). There are 16 ESUs (described above for the various accepted petitions) for which NMFS has statutory deadlines for the completion of ESA status reviews and listing determinations: Seven chinook ESUs (the Upper Willamette River, Lower Columbia River, Upper Columbia River spring-run, Puget Sound, Snake River fall-run, and Snake River spring/summer-run chinook ESUs); three coho ESUs (the Central California Coast, Southern Oregon/Northern California Coast, and Oregon Coast coho ESUs); two chum ESUs (the Columbia River and Hood Canal summer-run chum salmon ESUs); and five steelhead ESUs (the Upper Willamette River, Lower Columbia River, Middle Columbia River, Upper Columbia River, and Snake River Basin steelhead ESUs).

Initiation of Coast-Wide ESA Status Reviews

The ESUs addressed in this proposed rule include 26 previously listed West Coast salmon and steelhead ESUs, and one ESU designated as a candidate species (the Lower Columbia coho ESU). As part of its response to the ESA interpretive issues raised by the ruling in the *Alsea* case, NMFS elected to initiate status reviews for a total of 27 ESUs: 11 ESUs in addition to the 16 ESUs for which it had accepted delisting/listing petitions. As announced in a **Federal Register** notice published on February 11, 2002 (67 FR 6215), these 11 additional ESUs are: One sockeye ESU (the threatened Ozette Lake sockeye ESU); three chinook ESUs (the endangered Sacramento River winter-run chinook ESU, as well as the threatened Central Valley spring-run and California coastal chinook ESUs); three coho ESUs (the threatened Central California Coast and Oregon Coast coho ESUs, as well as the candidate Lower Columbia River coho ESU); and four steelhead ESUs (the threatened South-Central California Coast, Central California Coast, California Central Valley, and Northern California steelhead ESUs) (as noted above, NMFS subsequently accepted petitions addressing the Central California and Oregon Coast coho ESUs). On December 31, 2002, NMFS announced that it would also elect to review the ESA listing status of Snake River sockeye and Southern California steelhead ESUs (67 FR 79898). NMFS elected to conduct these additional status reviews to address any errors in the listing determinations brought to light by the *Alsea* decision, as well as to consider the most recent information available for these ESUs. At the time of the *Alsea* decision, NMFS was conducting a status review for the candidate Lower Columbia River coho ESU in response to a July 24, 2000, petition from Oregon Trout and co-petitioners (see 65 FR 66221, November 3, 2000). Accordingly, NMFS elected to include the Lower Columbia River coho ESU in this status review effort for the other 26 ESUs. NMFS did not elect to conduct status reviews for any other candidate ESUs (*e.g.*, the Puget Sound/Strait of Georgia coho, Central Valley fall and late-fall chinook, and Oregon Coast steelhead

ESUs) or ESUs that NMFS previously determined did not warrant ESA listing.

NMFS solicited information to ensure that the review of the ESA status for the 27 ESUs under review was based on the best available and most recent scientific and commercial data. Following an initial 60-day public comment period concerning 25 of the ESUs, which commenced on February 11, 2002 (67 FR 6215), NMFS re-opened the public comment period for an additional 30 days on June 13, 2002 (67 FR 40679). A 60-day public comment period was also opened concerning 16 petitioned ESUs with the published findings on the Central Coast Forest Association and Trout Unlimited *et al.* petitions on July 25, 2002 (67 FR 48601). Information and comment was solicited during an additional 60-day public comment period when NMFS announced that it would also be reviewing the status of the Snake River sockeye and Southern California steelhead ESUs (67 FR 79898; December 31, 2002). In this latter public comment period NMFS specifically requested information concerning resident *O. mykiss* populations in the 10 steelhead ESUs under review (67 FR at 79900).

Life History of West Coast Salmonids

Pacific salmon and steelhead are anadromous fish, meaning adults migrate from the ocean to spawn in freshwater lakes and streams where their offspring hatch and rear prior to migrating to the ocean to forage until maturity. The migration and spawning times vary considerably among and within species and populations (Groot and Margolis, 1991). At spawning, adults pair to lay and fertilize thousands of eggs in freshwater gravel nests or ''redds'' excavated by females. Depending on lake/stream temperatures, eggs incubate for several weeks to months before hatching as ''alevins'' (a larval life stage dependent on food stored in a yolk sac). Following yolk sac absorption, alevins emerge from the gravel as young juveniles called ''fry'' and begin actively feeding. Depending on the species and location, juveniles may spend from a few hours to several years in freshwater areas before migrating to the ocean. The physiological and behavioral changes required for the transition to salt water result in a distinct ''smolt'' stage in most species. Enroute to the ocean the juveniles may spend from a few days to several weeks in the estuary, depending on the species. The highly productive estuarine environment is an important feeding and acclimation area for juveniles preparing to enter marine waters.

Juveniles and subadults typically spend from 1 to 5 years foraging over thousands of miles in the North Pacific Ocean before returning to freshwater to spawn. Some species, such as coho and chinook salmon, have precocious life-history types (primarily male fish) that mature and spawn after only several months in the ocean. Spawning migrations known as ''runs'' occur throughout the year, varying in time by species and location. Most adult fish return or ''home'' with great fidelity to spawn in their natal stream, although some do stray to non-natal streams. Salmon species die after spawning, while anadromous *O. mykiss* may return to the ocean and make repeat spawning migrations.

Below we provide brief descriptions of the life histories of the Pacific salmonid species under review. More complete descriptions can be found in the status review documents listed in Table 1.

West Coast Sockeye Salmon

Spawning populations of sockeye salmon range from the Columbia River in the south to the Noatak River in the north in North America, and from Hokkaido, Japan in the south to the Anadyr River in the north in Asia (Atkinson *et al.*, 1967; Burgner, 1991). Most sockeye salmon spawn in either inlet or outlet streams of lakes or in lakes themselves. The offspring of these ''lake-type'' sockeye salmon use lake environments for juvenile rearing for 1 to 3 years and then migrate to sea, returning to the natal lake system to spawn after spending 1 to 4 years in the ocean.

Certain self-perpetuating, nonanadromous populations of *O. nerka* that become resident in lake environments over long periods of time are called kokanee in North America. Genetic differentiation among sockeye salmon and kokanee populations indicates that kokanee have arisen from sockeye salmon on multiple independent occasions, and that kokanee and sockeye salmon may have either overlapping or distinct distributions. Numerous studies (reviewed in Gustafson *et al.*, 1997) indicate that sockeye salmon and kokanee exhibit a suite of heritable differences in morphology, early development rate, seawater adaptability, growth and maturation that appear to be divergent adaptations that have arisen from different selective regimes associated with anadromous vs. nonanadromous life histories. These studies also provide evidence that overlapping populations of sockeye salmon and kokanee can be both genetically distinct and reproductively isolated (see citations in Gustafson *et al.*, 1997). Occasionally, a proportion of juveniles in an anadromous sockeye population will remain in the rearing lake environment throughout life and will be observed on the spawning grounds together with their anadromous siblings. Ricker (1938) first used the terms ''residual sockeye'' and ''residuals'' to refer to these resident, non-migratory progeny of anadromous sockeye salmon.

West Coast Chinook Salmon

Chinook salmon, also commonly referred to as king, spring, quinnat, Sacramento, California, or tyee salmon, is the largest of the Pacific salmon (Myers *et al.*, 1998). The species historically ranged from the Ventura River in California to Point Hope, Alaska, and in northeastern Asia from Hokkaido, Japan to the Anadyr River in Russia (Healey, 1991). Additionally, chinook salmon have been reported in the Mackenzie River area of Northern Canada (McPhail and Lindsey, 1970). Chinook salmon exhibit diverse and complex life history strategies (Healey, 1986). Two generalized freshwater life-history types were initially described by Gilbert (1912): ''stream-type'' chinook salmon reside in freshwater for a year or more following emergence, whereas ''ocean-type'' chinook salmon migrate to the ocean predominately within their first year.

Of the two life history types, ocean-type chinook salmon exhibit the most varied and flexible life-history trajectories. Ocean-type chinook salmon juveniles emigrate to the ocean as fry, subyearling juveniles (during their first spring or fall), or as yearling juveniles (during their second spring), depending on environmental conditions. Ocean-type chinook salmon also undertake distinct, coastally oriented, ocean migrations. The timing of the return to freshwater and spawning is closely related to the ecological characteristics of a population's spawning habitat. Five different run times are expressed by different ocean-type chinook salmon populations: Spring, summer, fall, late-fall, and winter. In general, early run times (spring and summer) are exhibited by populations that use high spring flows to access headwater or interior regions. Ocean-type populations within a basin that express different run times appear to have evolved from a common source population.

Stream-type populations appear to be nearly obligate yearling outmigrants (although some 2-year-old smolts have been identified), undertake extensive off-shore ocean migrations, and

generally return to freshwater as spring- or summer-run fish. Stream-type populations are found in northern British Columbia and Alaska, and in the headwater regions of the Fraser River and Columbia River Basin inland tributaries.

West Coast Coho Salmon

Coho salmon is a widespread species of Pacific salmon, occurring in most major river basins around the Pacific Rim from Monterey Bay, California, north to Point Hope, Alaska, through the Aleutians, and from the Anadyr River south to Korea and northern Hokkaido, Japan (Laufle *et al.*, 1986). From central British Columbia south, the vast majority of coho salmon adults are 3-year-olds, having spent approximately 18 months in fresh water and 18 months in salt water (Gilbert, 1912; Pritchard, 1940; Sandercock, 1991). The primary exceptions to this pattern are ''jacks,'' sexually mature males that return to freshwater to spawn after only 5 to 7 months in the ocean. However, in southeast and central Alaska, the majority of coho salmon adults are 4-year-olds, having spent an additional year in fresh water before going to sea (Godfrey *et al.*, 1975; Crone and Bond, 1976). The transition zone between predominantly 3-year-old and 4-year-old adults occurs somewhere between central British Columbia and southeast Alaska.

West Coast coho smolts typically leave freshwater in the spring (April to June) and re-enter freshwater when sexually mature from September to November, and spawn from November to December and occasionally into January (Sandercock, 1991). Stocks from British Columbia, Washington, and the Columbia River often have very early (entering rivers in July or August) or late (spawning into March) runs in addition to ''normally'' timed runs.

West Coast Chum Salmon

Chum salmon has the widest natural geographic and spawning distribution of any Pacific salmonid, primarily because its range extends further along the shores of the Arctic Ocean than other salmonids. Chum salmon have been documented to spawn from Korea and the Japanese island of Honshu, east, around the Pacific rim, to Monterey Bay, California. Presently, major spawning populations are found only as far south as Tillamook Bay on the Northern Oregon coast. The species' range in the Arctic Ocean extends from the Laptev Sea in Russia to the Mackenzie River in Canada. Chum salmon may historically have been the most abundant of all salmonids; prior to the 1940s, it is estimated that chum salmon contributed almost 50 percent of the total biomass of all salmonids in the Pacific Ocean (Neave, 1961).

Chum salmon spawn primarily in freshwater, and apparently exhibit obligatory anadromy, as there are no recorded landlocked or naturalized freshwater populations (Randall *et al.*, 1987). Chum salmon generally spend more of their life history in marine waters than other Pacific salmonids. Chum salmon usually spawn in coastal areas, and juveniles out-migrate to seawater almost immediately after emerging from the gravel that covers their redds (Salo, 1991). This ocean-type migratory behavior contrasts with the stream-type behavior of some other species in the genus *Oncorhynchus* (*e.g.*, coastal cutthroat trout, anadromous *O. mykiss,* coho salmon, and most types of chinook and sockeye salmon), which usually migrate to sea at a larger size, after months or years of freshwater rearing. This means survival and growth in juvenile chum salmon depends less on freshwater conditions than on favorable estuarine conditions.

West Coast *O. mykiss*

Steelhead is the name commonly applied to the anadromous form of the biological species *O. mykiss.* The present distribution of steelhead extends from Kamchatka in Asia, east to Alaska, and down to the U.S.-Mexico border (Busby *et al.*, 1996; 67 FR 21586, May 1, 2002). *O. mykiss* exhibit perhaps the most complex suite of life history traits of any species of Pacific salmonid. They can be anadromous, or freshwater residents (and under some circumstances, apparently yield offspring of the opposite form). Those that are anadromous can spend up to 7 years in fresh water prior to smoltification, and then spend up to 3 years in salt water prior to first spawning. *O. mykiss* is also iteroparous (meaning individuals may spawn more than once), whereas the Pacific salmon species are principally semelparous (meaning individuals generally spawn once and die).

Within the range of West Coast steelhead, spawning migrations occur throughout the year, with seasonal peaks of activity. In a given river basin there may be one or more peaks in migration activity; since these ''runs'' are usually named for the season in which the peak occurs, some rivers may have runs known as winter, spring, summer, or fall steelhead. For example, large rivers, such as the Columbia, Rogue, and Klamath rivers, have migrating adult steelhead at all times of the year. There are local variations in the names used to identify the seasonal runs of steelhead; in Northern California, some biologists have retained the use of the terms spring and fall steelhead to describe what others would call summer steelhead.

Steelhead can be divided into two basic reproductive ecotypes, based on the state of sexual maturity at the time of river entry and duration of spawning migration (Burgner *et al.*, 1992). The ''stream-maturing'' type (summer steelhead in the Pacific Northwest and Northern California) enters fresh water in a sexually immature condition between May and October and requires several months to mature and spawn. The ''ocean-maturing'' type (winter steelhead in the Pacific Northwest and Northern California) enters fresh water between November and April with well-developed gonads and spawns shortly thereafter. In basins with both summer and winter steelhead runs, it appears that the summer run occurs where habitat is not fully utilized by the winter run or a seasonal hydrologic barrier, such as a waterfall, separates them. Summer steelhead usually spawn farther upstream than winter steelhead (Withler, 1966; Roelofs, 1983; Behnke, 1992). Coastal streams are dominated by winter steelhead, whereas inland steelhead of the Columbia River Basin are almost exclusively summer steelhead. Winter steelhead may have been excluded from inland areas of the Columbia River Basin by Celilo Falls or by the considerable migration distance from the ocean. The Sacramento-San Joaquin River Basin may have historically had multiple runs of steelhead that probably included both ocean-maturing and stream-maturing stocks (CDFG, 1995; McEwan and Jackson, 1996). These steelhead are referred to as winter steelhead by the California Department of Fish and Game (CDFG); however, some biologists call them fall steelhead (Cramer *et al.*, 1995).

Inland steelhead of the Columbia River Basin, especially the Snake River Subbasin, are commonly referred to as either ''A-run'' or ''B-run.'' These designations are based on a bimodal distribution of migration period of adult steelhead at Bonneville Dam (235 km from the mouth of the Columbia River) and differences in age (1 versus 2 years in the ocean) and adult size observed among Snake River steelhead. It is unclear, however, if the life history and body size differences observed upstream are correlated back to the groups forming the bimodal migration observed at Bonneville Dam. Furthermore, the relationship between patterns observed at the dams and the distribution of adults in spawning areas throughout the

Snake River Basin is not well understood. A-run steelhead are believed to occur throughout the steelhead-bearing streams of the Snake River Basin and the inland Columbia River. B-run steelhead are thought to be produced only in the Clearwater, Middle Fork Salmon, and South Fork Salmon Rivers (IDFG, 1994).

The ''half-pounder'' is an immature steelhead that returns to fresh water after only 2 to 4 months in the ocean, generally overwinters in fresh water, and then outmigrates again the following spring. Half-pounders are generally less than 400 mm and are reported only from the Rogue, Klamath, Mad, and Eel Rivers of Southern Oregon and Northern California (Snyder, 1925; Kesner and Barnhart, 1972; Everest, 1973; Barnhart, 1986); however, it has been suggested that as mature steelhead, these fish may only spawn in the Rogue and Klamath River Basins (Cramer *et al.*, 1995). Various explanations for this unusual life history have been proposed, but there is still no consensus as to what, if any, advantage it affords to the steelhead of these rivers.

Assessing Extinction Risk for Pacific Salmonids

Section 4(b) of the ESA requires the Secretary of Commerce (Secretary) to make listing determinations after conducting a review of the status of the species, and after taking into account those efforts, if any, being made to protect the species. Such efforts being made to protect the species include ''conservation'' practices, defined by the ESA to include propagation and transplantation methods and procedures (section 3(3)). The ESA requires that listing determinations be made solely on the basis of the best scientific and commercial data available to the Secretary. The ESA further requires that listing decisions must take into account all members of the defined species (*Alsea Valley Alliance* v. *Evans,* 161 F. Supp. 2d 1154, D. Oreg. 2001).

NMFS' Pacific Salmonid Biological Review Team (BRT) (an expert panel of scientists from several federal agencies including NMFS, FWS, and the U.S. Geological Survey) reviewed the viability and extinction risk of naturally spawning populations in the 27 ESUs that are the subject of this proposed rule (NMFS, 2003b). The BRT evaluated the risk of extinction based on the performance of the naturally spawning populations in each of the ESUs under the assumption that present conditions will continue into the future. The BRT did not explicitly consider artificial propagation in its evaluations.

The BRT assessed ESU-level extinction risk (as indicated by the viability of the naturally spawning populations) at two levels: first, at the simpler population level; then, at the overall ESU level. The BRT used criteria for ''Viable Salmonid Populations'' (VSP; McElhany *et al.,* 2000) to guide its risk assessments. The VSP criteria were developed to provide a consistent and logical reference for making viability determinations and are based on a review and synthesis of the conservation biology and salmon literature. Individual populations were evaluated according to the four VSP criteria: Abundance, growth rate/productivity, spatial structure, and diversity. These four parameters are universal indicators of species' viability, and individually and collectively function as reasonable predictors of extinction risk. After reviewing all relevant biological information for the populations in a particular ESU, the BRT ascribed an ESU-level risk score for each of the four VSP criteria.

The viability of salmon and steelhead ESUs is characterized by the health, abundance, productivity, spatial structure, and genetic/behavioral diversity of the individual populations within the ESU (McElhany *et al.*, 2001). An ESU with a greater abundance of productive populations will be more tolerant to environmental variation, catastrophic events, genetic processes, demographic stochasticity, ecological interactions, and other processes than one with a single or a few populations (Caughley and Gunn, 1996; Foley, 1997; Meffe and Carroll, 1994; Lande, 1993; Middleton and Nisbet, 1997). Similarly, an ESU that is distributed across a variety of well-connected habitats can better respond to environmental perturbations including catastrophic events, than ESUs in which connectivity between populations has been restricted or lost (Schlosser and Angermeier, 1995; Hanski and Gilpin, 1997; Tilman and Lehman, 1997; Cooper and Mangel, 1999). Genetic and behavioral diversity and the maintenance of local adaptations within an ESU allow for the exploitation of a wide array of environments, protect against short-term environmental changes, and provide the raw material for surviving long-term environmental change (Groot and Margolis, 1991; Wood, 1995).

ESUs with fewer populations have greater risk of becoming extinct due to catastrophic events, and have a lower likelihood that the necessary phenotypic and genotypic diversity will exist to maintain future viability than ESUs with more populations. ESUs with limited geographic range are similarly at increased extinction risk due to catastrophic events. ESUs with populations that are geographically distant from each other, or are separated by severely degraded habitat, may lack the connectivity to function as metapopulations and are more likely to become extinct than populations that can function as metapopulations. ESUs with limited life-history diversity are more likely to become extinct as the result of correlated environmental catastrophes or environmental change that occurs too rapidly for an evolutionary response. ESUs comprised of a small proportion of populations meeting or exceeding these viability criteria may lack the ''source'' populations to sustain the non-viable ''sink'' populations during environmental downturns. ESUs consisting of a single population are especially vulnerable in this regard.

Assessing an ESU involves evaluating the current biological viability of the populations that comprise the ESU. The fact that the current biological status of an ESU does not reflect historical abundance, productivity, spatial structure or diversity does not mean that it is currently not viable, but historical status serves as an informative benchmark against which to weigh viability. Whether, upon assessment, the biological status of an ESU meets the ESA's standard for listing as either threatened or endangered—*i.e.*, the ESU is in danger of extinction throughout all or a significant portion of its range or is likely to become so in the foreseeable future—depends on which viability criteria it fails to meet, what the past trend has been, whether that trend is likely to continue, and how far below the benchmark it is.

Factors considered in relating the population-level VSP criteria to ESU-level risk include: the total number of viable populations; the geographic distribution of these populations; the connectivity among populations; and the genetic, behavioral, and ecological diversity among populations. ESUs with fewer populations are more likely to become extinct due to catastrophic events, and have a lower likelihood that the necessary phenotypic and genotypic diversity will exist to maintain future viability. ESUs with limited geographic range are similarly at increased extinction risk due to catastrophic events. ESUs with populations that are geographically distant from each other, or are separated by severely degraded habitat, may lack the connectivity to function as metapopulations (*i.e.*, a group of interconnected subpopulations) and are more likely to become extinct. ESUs with limited

diversity are more likely to go extinct as the result of correlated environmental catastrophes or environmental change that occurs too rapidly for an evolutionary response. ESUs comprised of a small proportion of populations meeting or exceeding VSP criteria may lack the source populations to sustain the non-viable declining populations during environmental down-turns. ESUs consisting of a single population are especially vulnerable in this regard. These considerations are described in the BRT's report (NMFS 2003b), and further detailed in McElhany *et al.* (2000) (and references therein). In short, a viable ESU has a negligible risk (over a time scale of 100 years) of going extinct as a result of normal environmental variation, genetic change, catastrophic events and human activity. Viable ESUs and populations have sufficient growth rates, possess variation in traits, and are spatially distributed to survive environmental variation and natural and human catastrophes.

After describing the ESU-level risk for each of the VSP criteria, the BRT assessed ESU-level extinction risk based on the performance of the naturally spawning populations. The BRT's assessment of ESU-level extinction risk uses categories that correspond to the definitions of endangered species and threatened species, respectively, in the ESA: in danger of extinction throughout all or a significant portion of its range, likely to become endangered within the foreseeable future throughout all or a significant portion of its range, or neither. As discussed above, these evaluations do not include consideration of hatchery stocks included in ESUs, and do not evaluate efforts being made to protect the species. Therefore, the BRT's findings are not to be considered recommendations regarding listing. The BRT's ESU-level extinction risk assessment reflects the BRT's professional scientific judgment, guided by the analysis of the VSP criteria, as well as by expectations about the likely interactions among the individual VSP criteria. For example, a single VSP criterion with a ''High Risk'' score might be sufficient to result in an overall extinction risk assessment of ''in danger of extinction,'' but a combination of several VSP criteria with more moderate risk scores could also lead to the same assessment, or a finding that the ESU is ''likely to become endangered.''

Consideration of Artificial Propagation in Listing Determinations

In proposed listing determinations described in this proposed rule, artificial propagation has been considered in (1) determining what constitutes an ESU, and (2) when evaluating the extinction risk of an entire ESU. NMFS' previous policy for these considerations for Pacific salmon and steelhead (58 FR 17573; April 5, 1993) requires revision due to the District Court's ruling in the *Alsea* case. In its February 2002 response to the *Alsea* decision and various petitions (67 FR 6215; February 11, 2002), NMFS announced its plans to revise this policy. NMFS had intended that rulemaking for the revised policy be completed prior to the formulation of the proposed listing determinations described in this notice. However, development of the revised policy has been delayed as NMFS resolved complex scientific and policy issues. Statutory and litigation deadlines compel NMFS to issue this proposed rule together with proposed policy guidance on the consideration of artificial propagation in its ESA listing determinations. A revised policy for the consideration of artificial propagation in ESA listing determinations (hereafter referred to as the proposed Hatchery Listing Policy) is proposed elsewhere in this issue of the **Federal Register**. The consideration of artificial propagation in the subject proposed listing determinations is based on the proposed Hatchery Listing Policy. Below, we summarize how artificial propagation was evaluated in determining ESU membership and evaluating extinction risk of an entire ESU. For further discussion of artificial propagation in the context of ESA listing decisions, the reader is directed to the proposed Hatchery Listing Policy.

Determining What Constitutes an ESU

In the *Alsea* ruling the Court affirmed NMFS' interpretation of what constitutes a ''distinct population segment'' (*i.e.*, the ESU Policy; 56 FR 58612; November 20, 1991), as a ''permissible agency construction of the ESA'' (*Alsea Valley Alliance* v. *Evans*, 1612 F. Supp. 2d 1154, 1161 (D. Oreg. 2001)). NMFS believes that the ESU policy provides appropriate guidance for the consideration of what populations (natural as well as hatchery or resident populations) constitute an ESU, and hence a ''species'' under the ESA. Under the ESU policy, a DPS of a Pacific salmonid species is considered an ESU if it meets two criteria: (a) It must be substantially reproductively isolated from other conspecific population units; and (b) it must represent an important component in the evolutionary legacy of the species. A key feature of the ESU concept is the recognition of genetic resources that represent the ecological and genetic diversity of the species. These genetic resources can reside in a fish spawned in a hatchery (hatchery fish) as well as in a fish spawned in the wild (natural fish).

In delineating an ESU that is to be considered for listing, NMFS has identified all populations that are part of the ESU including populations of natural fish (natural populations), populations of hatchery fish (hatchery populations), and populations that include both natural fish and hatchery fish (mixed populations). Hatchery fish with a level of genetic divergence between the hatchery stocks and the local natural populations that is no more than what would be expected between closely related populations within the ESU (hereafter described as ''genetically no more than moderately divergent from the natural population'') are considered part of the ESU and are considered in determining whether an entire ESU warrants listing under the ESA. Therefore, these hatchery fish must be included in any listing of the ESU (See proposed Hatchery Listing Policy published elsewhere in this issue of the **Federal Register**).

To assist NMFS in determining the ESU membership of individual hatchery stocks, a Salmon and Steelhead Hatchery Assessment Group (SSHAG), composed of NMFS scientists from the Northwest and Southwest Fisheries Science Centers, evaluated the best available information describing the relationships between hatchery stocks and natural ESA-listed salmon and anadromous *O. mykiss* populations in the Pacific Northwest and California. The SSHAG produced a report, entitled ''Hatchery Broodstock Summaries and Assessments for Chum, Coho, and Chinook Salmon and Steelhead Stocks within Evolutionarily Significant Units Listed under the Endangered Species Act'' (NMFS, 2003a), describing the relatedness of each hatchery stock on the basis of stock origin and the degree of known or inferred genetic divergence between the hatchery stock and the local natural population(s). NMFS used the information presented in the SSHAG Report to determine the ESU membership of those hatchery stocks determined to be within the historical geographic range of a given ESU. NMFS' assessment of individual hatchery stocks and its findings regarding the ESU membership are detailed in the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b). The hatchery stocks included in a given ESU are listed below in the

''Determination of Species Under the ESA'' section.

Evaluating ESU Extinction Risk

Once ESU membership is determined, NMFS must assess the extinction risk faced by an entire ESU. As described above, the BRT evaluated the extinction risk for the naturally spawned component of an ESU. The proposed Hatchery Listing Policy published elsewhere in this issue of the **Federal Register** provides that status determinations for Pacific salmonid ESUs will be based on the status of an entire ESU (including both hatchery and natural components). For those ESUs with associated hatchery programs, the BRT's findings represent a partial assessment of the ESU's extinction risk. To assess the viability of an entire ESU, NMFS has also assessed the contributions of within-ESU hatchery programs to the viability of an ESU in-total.

There are, however, several reasons why long-term deleterious consequences of such supplementation may outweigh the short-term advantage of increased population size (NRC, 1995). In recent years, various studies and scientific works have identified some potential adverse effects of artificial propagation, including behavioral differences that result in diminished fitness and survival of hatchery fish relative to naturally spawned fish; genetic effects resulting from poor broodstock and rearing practices (*e.g.*, inbreeding, outbreeding, domestication selection); incidence of disease; and increased rates of competition with and predation on naturally spawned populations. In assessing the risks to any particular population, however, it is often difficult to demonstrate conclusively that adverse effects are actually occurring, and, if they are demonstrated, how serious they are (CDFG/NMFS, 2001).

In response to these concerns, there have been recent changes in hatchery practices seeking to mitigate risks and enhance benefits of artificial propagation. Continued scientific work is necessary to identify and to measure these risks and benefits more completely, and to assess the operations of hatcheries that implement modern management practices. In light of the developing science on the positive and negative effects of hatchery programs on natural populations, the legacy of hatchery programs and the existing requirements to maintain many of them present a challenge for developing a framework for consideration of hatchery fish in listing determinations.

Because NMFS must base its listing determinations for Pacific salmon and steelhead on the risk of extinction of the entire ESU, including both natural and hatchery fish, the agency must consider the likelihood that the hatchery and naturally spawned components will contribute to the continued existence of the ESU into the future.

NMFS' assessment of the effects of ESU hatchery programs on ESU viability and extinction risk is presented in the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b). The Report evaluates the effects of hatchery programs on the likelihood of extinction of an ESU on the basis of the four VSP criteria (*i.e.*, abundance, productivity, spatial structure, and diversity) and how artificial propagation efforts within the ESU affect those criteria. In April 2004, NMFS convened an Artificial Propagation Evaluation Workshop of federal scientists and managers with expertise in salmonid artificial propagation. The Artificial Propagation Evaluation Workshop reviewed the BRT's findings (NMFS, 2003a), evaluated the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b), and assessed the overall extinction risk of ESUs with associated hatchery stocks. Representatives of the BRT and NMFS' Northwest and Southwest Fisheries Science Centers attended the workshop in an advisory capacity to ensure that the BRT's findings were appropriately and accurately considered, as well as to help ensure that the workshop participants were aware of the best available scientific information. The discussions and conclusions of the Artificial Propagation Evaluation Workshop are detailed in a workshop report (NMFS, 2004c).

Finding on Trout Unlimited *et al.* Petitions

Two petitions from Trout Unlimited and co-petitioners, received by the agency on April 29, 2002, sought to redefine 15 ESUs as including only natural fish (*i.e.*, naturally spawned fish and their progeny, exclusive of all hatchery fish), and to list these redefined ESUs as threatened or endangered species under the ESA, as appropriate. In a **Federal Register** notice published on July 25, 2002 (67 FR 48601), NMFS found that these petitions presented substantial scientific and commercial information to suggest that the petitioned actions may be warranted. Although proposed listing determinations for the subject ESUs are included in this proposed rule, NMFS first addresses the petitioners' arguments that the ESUs should be redefined to include only natural fish.

The Trout Unlimited *et al.* petitions argue that hatchery stocks should not be included in ESUs containing natural fish. The petitioners contend that hatchery stocks are functionally distinct and reproductively isolated from naturally spawned populations. The petitioners present a substantial body of scientific information describing the potential threats posed by hatchery stocks to natural populations. Additionally, the petitioners present scientific information documenting differences between hatchery and natural populations in behavior, genetic composition, and reproductive fitness.

NMFS finds that the petitioners' argument that hatchery stocks are functionally distinct and reproductively isolated from naturally spawned populations is unsubstantiated. The derivation of hatchery stocks from local natural populations and the established practice of incorporating natural fish as hatchery broodstock results in hatchery and natural populations that share the same evolutionary genetic and ecological legacy. The SSHAG Report (NMFS, 2003a) and the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b) describe the relationship of hatchery stocks to local natural populations, on the basis of stock origin and the degree of known or inferred genetic divergence between the hatchery stock and the local natural population(s). The shared evolutionary legacy of certain hatchery stocks with natural populations does not support the exclusion of these hatchery stocks from ESUs containing natural fish. Such an approach would also be inconsistent with NMFS' interpretation of the ESA that is contained in its ESU policy, a policy that was affirmed by the *Alsea* Court decision.

NMFS recognizes that artificial propagation under certain circumstances can pose threats to natural populations. However, it is not appropriate to include a consideration of the threats faced by an ESU (such as any risks posed by artificial propagation) when determining what constitutes a species under the ESA. Rather, such an evaluation of threats is conducted after the ''species'' has been defined, and the likelihood of extinction for the defined species is being assessed. NMFS also recognizes that hatchery stocks may exhibit differences in behavior, genetic composition, morphological traits, and reproductive fitness from natural populations. Indeed, the presence of such differences provides a valuable indicator of

divergence for determining whether a particular hatchery stock is representative of the evolutionary legacy of an ESU.

NMFS concludes that the best available scientific and commercial information does not support a finding that all hatchery stocks in the 15 petitioned ESUs should be redefined as distinct ESUs separate from the naturally spawned populations from which they are derived. Accordingly, NMFS finds that the action sought by the Trout Unlimited *et al.* petitions is not warranted.

Consideration of Resident O. mykiss Populations in Listing Determinations

In addition to an anadromous *O. mykiss* life history (*i.e.*, steelhead), *O. mykiss* exhibits nonanadromous or resident forms (*i.e.*, rainbow trout). Where the two forms co-occur, the offspring of resident fish may migrate to the sea, and the offspring of anadromous fish may remain in streams as resident fish. The change from the anadromous life form to the resident life form can also result from imposed physical or physiological barriers to migration. Genetic differences, when studied, have indicated greater differences among geographically separated *O. mykiss* populations of the same life-history form, than between anadromous and resident life-history forms in the same geographical area. No suite of morphological or genetic characteristics has been found that consistently distinguishes between the two life-history forms. As is the case with hatchery fish, it is important to determine the relationship of these resident fish to anadromous populations in the *O. mykiss* ESUs under consideration.

In its previous status reviews of steelhead ESUs (see Table 1), NMFS concluded that the available data suggest that resident rainbow trout and steelhead in the same area generally share a common gene pool (at least over evolutionary time periods), and included resident and anadromous populations in the same ESU. Resident populations above long-standing natural barriers, and those populations that have resulted from the introduction of non-native rainbow trout, were not considered part of these ESUs. In the case of resident populations upstream of impassable human-caused migration barriers (*e.g.*, large mainstem hydroelectric dams), NMFS found insufficient information to merit their inclusion in steelhead ESUs. The agency generally concluded that resident populations upstream of impassable manmade barriers must be evaluated on a case-by-case basis as more information becomes available on their relationships to below-barrier populations, or on the role these above-barrier resident populations might play in conserving below-barrier populations of *O. mykiss*.

In its previous steelhead ESA listing determinations, although NMFS considered co-occurring resident and anadromous populations as a single ESU, NMFS did not list resident populations when it was determined that the ESU in-total warranted listing. As noted above, the *Alsea* court has rejected listing under the ESA only a subset of an ESU or DPS. For the purposes of reviewing the viability of naturally spawned *O. mykiss* populations in this proposed rule, the BRT adopted a framework for determining the ESU/DPS membership of resident *O. mykiss* geographically associated with listed steelhead ESUs. These evaluations were guided by the same biological principles used to define ESUs of natural fish and determine ESU membership of hatchery fish: the extent of reproductive isolation and biological divergence from other populations within the ESU. Ideally, each resident population would be evaluated individually on a case-by-case basis, using all available biological information. In practice, little or no information is available for most resident *O. mykiss* populations. To facilitate determinations of the ESU/DPS membership of resident *O. mykiss*, the BRT identified three different cases, reflecting the range of geographic relationships between resident and anadromous forms within different watersheds: (1) No obvious physical barriers to interbreeding between resident and anadromous forms; (2) long-standing natural barriers (*e.g.*, a waterfall) between resident and anadromous forms; and (3) relatively recent (*e.g.*, within the last 100 years) human-imposed barriers (*e.g.*, a dam without a fish ladder) between resident and anadromous forms.

The BRT adopted the following working assumptions about ESU membership of resident fish falling in each of these three cases. Where there was no obvious physical barrier to interbreeding between the two life-history forms, resident fish were considered part of the ESU. Empirical studies show that resident and anadromous *O. mykiss* are typically very similar genetically when they co-occur with no physical barriers to migration or interbreeding. Where long-standing natural barriers separate resident and anadromous forms, resident populations were not regarded as part of the ESU. Many populations in this category have been isolated from contact with anadromous populations for thousands of years. Empirical studies show that in these cases the resident fish typically show substantial genetic and life-history divergence from the nearest downstream anadromous populations. In cases where the resident fish were separated from the anadromous form by relatively recent human actions (*e.g.*, impassable dams and culverts), the BRT was unable to justify any particular default assumption. The two life-history forms most likely coexisted without any barriers to interbreeding prior to the establishment of the manmade barrier(s). However, as a result of rapid divergence in a novel environment, or displacement by or genetic introgression from non-native hatchery rainbow trout, these resident populations may no longer represent the evolutionary legacy of the *O. mykiss* ESU. Given these uncertainties, the BRT left unresolved the ESU membership of *O. mykiss* above recent (usually man-made) impassable barriers. In the absence of information indicating that they are part of a common ESU, NMFS does not find such above-barrier populations to be part of the *O. mykiss* ESUs under review.

The BRT reviewed available information about individual resident populations of *O. mykiss* to determine which of the above scenarios best defined the level of reproductive isolation between the life-history forms, and whether any information exists to override the default assumptions described above about the ESU membership of resident populations. The best available information concerning resident *O. mykiss* in Columbia River Basin ESUs is summarized in the report ''The Biological Implications of Non-Anadromous *Oncorhynchus mykiss* in Columbia Basin Steelhead ESUs'' (Kostow, 2003).

As noted above, little or no population data are available for most resident *O. mykiss* populations, greatly complicating assessments of ESU-level extinction risk. Where available, the BRT incorporated information about resident populations into their analyses of the four VSP criteria and their assessments of extinction risk for *O. mykiss* ESUs. As was often the case, no data on the abundance, productivity, spatial structure, or diversity were available for resident populations in an ESU. The BRT noted that the presence of relatively numerous resident populations can significantly reduce risks to ESU abundance. However, there is considerable scientific uncertainty as to how the resident form affects

extinction risk through its influence on ESU productivity, spatial structure, and diversity. The threats to *O. mykiss* ESUs extend beyond low population size and include declining productivity, reduced resilience of productivity to environmental variation, curtailed range of distribution, impediments to population connectivity and reproductive exchange, depleted diversity stemming from loss or blockage of habitat and associated erosion of local adaptation, and erosion of the diversity of expressed migratory behaviors. Thus, the BRT concluded that, despite the reduced risk to abundance for certain *O. mykiss* ESUs due to numerically abundant residents, the collective contribution of the resident life-history form to the viability of an ESU in-total is unknown and may not substantially reduce extinction risks to an ESU in-total (NMFS, 2004). Based on present scientific understanding, the BRT could not exclude the possibility that complete loss of anadromous forms from within an ESU may be irreversible.

Consideration of Recent Ocean Conditions in Listing Determinations

In the last decade, evidence has shown: (1) Recurring, decadal-scale patterns of ocean-atmosphere climate variability in the North Pacific Ocean (Zang *et al.*, 1997; Mantua *et al.*, 1997); and (2) correlations between these oceanic productivity ''regimes'' and salmon population abundance in the Pacific Northwest and Alaska (Hare *et al.*, 1999; Mueter *et al.*, 2002). There is little doubt that survival rates in the marine environment are strong determinants of population abundance for Pacific salmon and *O. mykiss* (NMFS, 2003b). It is also generally accepted that for at least two decades, beginning about 1977, marine productivity conditions were unfavorable for the majority of salmon and *O. mykiss* populations in the Pacific Northwest (in contrast, many populations in Alaska attained record abundances during this period). Finally, there is evidence that an important shift in ocean-atmosphere conditions occurred around July 1998. One indicator of the ocean-atmosphere variation for the North Pacific is the Pacific Decadal Oscillation index (PDO). Negative PDO values are associated with relatively cool ocean temperatures (and generally high salmon productivity) off the Pacific Northwest, and positive values are associated with warmer, less productive conditions. These favorable ocean conditions may also be correlated with favorable conditions in the freshwater environment (*e.g.*, above-average rainfalls resulting in improved flow regimes for smolt outmigration). Increases in many salmon populations in recent years may be largely a result of more favorable ocean conditions. PDO values were mostly positive during the two decades preceding 1998, and this regime was generally characterized by less productive ocean conditions and declining salmonid abundances. Between July 1998 and July 2002 the PDO exhibited mostly negative values, associated with higher ocean productivity and increasing returns for many salmonid populations. It is worth noting that from August 2002 to April 2004 the PDO has exhibited positive values. It is not clear what impact, if any, these most recent conditions will have on salmonid populations. Although these facts are relatively well established, much less certainty can be attached to any predictions about what this means for the viability of salmon and *O. mykiss* ESUs into the future.

The confidence with which we can project ocean-climate regimes into the future is limited, and consequently so is our ability to project the future influence of ocean-climate conditions on salmonid productivity. There exists about a century of empirical evidence for ''cycles'' in the PDO, marine productivity, and salmon abundance. Such a timeseries represents only about three PDO periods of 20 to 40 years in duration. There are four main difficulties in inferring future behavior of a complex system from data records spanning only a couple cycles. First, the duration and magnitude of past cycles may not be indicative of future dynamics. Second, the past decade has seen particularly wide fluctuations not only in climatic indices (*e.g.*, the 1997–1998 El Nino was in many ways the most extreme ever recorded, and the 2001 drought was one of the most severe on record), but also in abundance of salmon populations. In general, as the magnitude of fluctuations in species' abundance increases, species extinction rates increase. Third, if there is anthropogenically caused climate change, it could affect future ocean productivity; however, how such change might be manifested cannot be predicted with any certainty (IPCC 2001). Finally, changes in the pattern of ocean-atmosphere interactions do not affect all species (or even all populations of a given species) in the same way (Peterman *et al.*, 1998).

Given all these uncertainties, the BRT was reluctant to make any specific assumptions about the future behavior of the ocean-atmospheric systems or their effects on the distribution and abundance of salmon and *O. mykiss*. The BRT was concerned, however, that even under the most optimistic scenario, increases in abundance might be only temporary and could mask a failure to address underlying factors for decline. The real conservation concern for West Coast salmon and *O. mykiss* is not how they perform during periods of high marine survival, but how prolonged periods of poor marine survival affect the VSP parameters of abundance, growth rate, spatial structure, and diversity. It is reasonable to assume that salmon populations have persisted over time, under pristine conditions through many such cycles in the past. Less certain is how the populations will fare in periods of poor ocean survival when their freshwater, estuary, and nearshore marine habitats are degraded.

Treatment of the Listing Determination Steps for Each ESU Under Review

Determinations of ''Species'' Under the ESA

To qualify for listing as a threatened or endangered species, a population (or group of populations) of West Coast salmonids must be considered a ''species'' as defined under the ESA. The ESA defines a species to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature'' (ESA section 3(16)). NMFS published a policy (56 FR 58612; November 20, 1991) describing the agency's application of the ESA definition of ''species'' to anadromous Pacific salmonid species. NMFS' policy provides that a Pacific salmonid population (or group of populations) will be considered a DPS, and hence a ''species'' under the ESA, if it represents an ESU of the biological species. An ESU must be reproductively isolated from other conspecific population units, and it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion is met if the population unit contributes substantially to the ecological and genetic diversity of the species in-total. Guidance on the application of this policy is contained in 56 FR 58612 (November 20, 1991) and Waples (1991). As noted in the ''*Alsea Valley Alliance* v. *Evans*'' section above, all components included in an ESU (natural populations, hatchery stocks, resident populations, etc.) must be listed if it is determined that the ESU in-

total is threatened or endangered under the ESA.

NMFS has reviewed the ESU relationships of hatchery salmon and anadromous *O. mykiss* stocks (NMFS, 2004b), as well as of resident *O. mykiss* populations. Hatchery stocks and resident populations are included in an ESU if it is determined that they are not reproductively isolated from populations in the ESU, and they are representative of the evolutionary legacy of the ESU (see the ''Consideration of Artificial Propagation in Listing Determinations'' section above). Hatchery stocks are not considered representative of the evolutionary legacy of an ESU, and hence not included in the ESU, if it is determined that they are genetically no more than moderately divergent from the natural population (See proposed Hatchery Listing Policy published elsewhere in this issue of the **Federal Register**). If a hatchery stock is more divergent from the local natural population, this indicates that the hatchery stock is reproductively isolated from the ESU. Co-occurring anadromous and resident *O. mykiss* populations below impassable barriers are likely not reproductively isolated, so that both represent important components of the evolutionary legacy of the species, and hence are considered an ESU (see the more detailed discussion above in the ''Consideration of Resident *O. mykiss* Populations in Listing Determinations'' section).

The hatchery and resident components are detailed below for each ESU, as applicable. More detailed descriptions of the hatchery stocks included in the ESUs below can be found in the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b). More detailed descriptions of the impassible barriers and resident populations associated with *O. mykiss* ESUs are provided in the final BRT Report (NMFS, 2003b) as well as in ''The Biological Implications of Non-Anadromous *Oncorhynchus mykiss* in Columbia Basin Steelhead ESUs'' (Kostow, 2003).

A given hatchery stock determined to be part of an ESU may be propagated at multiple sites. To more clearly convey the hatchery fish that are included in a given ESU, the ESU descriptions below list the artificial propagation programs that propagate hatchery stocks determined to be part of the ESUs under review. A list of those specific artificial propagation programs by ESU is provided for reference in Table 2 at the end of this section.

The following descriptions of the 27 Pacific salmon and *O. mykiss* ESUs addressed in this document generally reaffirm the ESU determinations for naturally spawning populations detailed in previous ESA status reviews and listing determinations (see Table 1). The BRT focused primarily on risk assessments of the naturally spawned component of ESUs. Apart from the consideration of hatchery stock and resident *O. mykiss* populations, NMFS did not reconsider the geographic boundaries of the ESUs under review. There was no significant scientific and commercial information indicating that specific ESUs boundaries warrant reconsideration.

Snake River Sockeye ESU

The Snake River sockeye ESU includes populations of anadromous sockeye salmon from the Snake River Basin, Idaho (extant populations occur only in the Stanley Basin) (56 FR 58619; November 20, 1991), residual sockeye salmon in Redfish Lake, Idaho, as well as one captive propagation hatchery program (Table 2). Artificially propagated sockeye salmon from the Redfish Lake Captive Propagation program are considered part of this ESU. NMFS has determined that this artificially propagated stock is genetically no more than moderately divergent from the natural population (NMFS, 2004b).

Subsequent to the 1991 listing determination for the Snake River sockeye ESU, a ''residual'' form of Snake River sockeye (hereafter ''residuals'') was identified. The residuals often occur together with anadromous sockeye salmon and exhibit similar behavior in the timing and location of spawning. Residuals are thought to be the progeny of anadromous sockeye salmon, but are generally nonanadromous. In 1993 NMFS determined that the residual population of Snake River sockeye that exists in Redfish Lake is substantially reproductively isolated from kokanee (*i.e.*, nonanadromous populations of *O. nerka* that become resident in lake environments over long periods of time), represents an important component in the evolutionary legacy of the biological species, and thus merits inclusion in the Snake River sockeye ESU. Constituents and co-managers were subsequently advised that residual sockeye salmon in Redfish Lake are part of the ESU and are listed as an endangered species ''subject to all the protection, prohibitions, and requirements of the ESA that apply to Snake River sockeye salmon'' (letter from Acting NMFS Director Nancy Foster to Constituents, dated March 19, 1993).

Ozette Lake Sockeye ESU

The Ozette Lake sockeye ESU includes all naturally spawned populations of sockeye salmon in Ozette Lake and streams and tributaries flowing into Ozette Lake, Washington (64 FR 14528; March 25, 1999). Two artificial propagation programs are considered to be part of this ESU (Table 2): the Umbrella Creek and Big River sockeye hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural population (NMFS, 2004b).

Sacramento Winter-run Chinook ESU

The Sacramento winter-run chinook ESU includes all naturally spawned populations of winter-run chinook salmon in the Sacramento River and its tributaries in California (59 FR 440; January 1, 1994), as well as two artificial propagation programs (Table 2): winter-run chinook from the Livingston Stone National Fish Hatchery (NFH), and winter run chinook in a captive broodstock program maintained at Livingston Stone NFH and the University of California Bodega Marine Laboratory. NMFS has determined that these artificially propagated stocks are no more than moderately diverged from the local natural population (NMFS 2004b).

Central Valley Spring-run Chinook ESU

The Central Valley spring-run chinook ESU includes all naturally spawned populations of spring-run chinook salmon in the Sacramento River and its tributaries in California (64 FR 50394; September 16, 1999). This ESU does not include any artificially propagated spring-run chinook stocks that reside within the historical geographic range of the ESU.

California Coastal Chinook ESU

The California Coastal chinook ESU includes all naturally spawned populations of chinook salmon from rivers and streams south of the Klamath River to the Russian River, California (64 FR 50394; September 16, 1999). Seven artificial propagation programs are considered to be part of the ESU (Table 2): the Humboldt Fish Action Council (Freshwater Creek), Yager Creek, Redwood Creek, Hollow Tree, Van Arsdale Fish Station, Mattole Salmon Group, and Mad River Hatchery fall-run chinook hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Upper Willamette River Chinook ESU

The Upper Willamette River chinook ESU includes all naturally spawned populations of spring-run chinook salmon in the Clackamas River and in the Willamette River, and its tributaries, above Willamette Falls, Oregon (64 FR 14208; March 24, 1999). Seven artificial propagation programs are considered to be part of the ESU (Table 2): the McKenzie River Hatchery (Oregon Department of Fish and Wildlife (ODFW) stock # 24), Marion Forks/ North Fork Santiam River (ODFW stock # 21), South Santiam Hatchery (ODFW stock # 23) in the South Fork Santiam River, South Santiam Hatchery in the Calapooia River, South Santiam Hatchery in the Mollala River, Willamette Hatchery (ODFW stock # 22), and Clackamas hatchery (ODFW stock # 19) spring-run chinook hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Lower Columbia River Chinook ESU

The Lower Columbia River chinook ESU includes all naturally spawned populations of chinook salmon from the Columbia River and its tributaries from its mouth at the Pacific Ocean upstream to a transitional point between Washington and Oregon east of the Hood River and the White Salmon River, and includes the Willamette River to Willamette Falls, Oregon, exclusive of spring-run chinook salmon in the Clackamas River (64 FR 14208; March 24, 1999). Seventeen artificial propagation programs are considered to be part of the ESU (Table 2): the Sea Resources Tule chinook Program, Big Creek Tule chinook Program, Astoria High School (STEP) Tule chinook Program, Warrenton High School (STEP) Tule chinook Program, Elochoman River Tule chinook Program, Cowlitz Tule Chinook Program, North Fork Toutle Tule chinook Program, Kalama Tule chinook Program, Washougal River Tule chinook Program, Spring Creek NFH Tule chinook Program, Cowlitz spring chinook Program in the Upper Cowlitz River and the Cispus River, Friends of the Cowlitz spring chinook Program, Kalama River spring chinook Program, Lewis River spring chinook Program, Fish First spring chinook Program, and the Sandy River Hatchery (ODFW stock #11) chinook hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Upper Columbia River Spring-run Chinook ESU

The Upper Columbia River spring-run chinook ESU includes all naturally spawned populations of chinook salmon in all river reaches accessible to chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington, excluding the Okanogan River (64 FR 14208; March 24, 1999). Six artificial propagation programs are considered to be part of the ESU (Table 2): the Twisp River, Chewuch River, Methow Composite, Winthrop NFH, Chiwawa River, and White River spring-run chinook hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Puget Sound Chinook ESU

The Puget Sound chinook ESU includes all naturally spawned populations of chinook salmon from rivers and streams flowing into Puget Sound including the Straits of Juan De Fuca from the Elwha River, eastward, including rivers and streams flowing into Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington (64 FR 14208; March 24, 1999). Twenty-two artificial propagation programs are considered to be part of the ESU (Table 2): the Kendal Creek Hatchery, Marblemount Hatchery (fall, spring yearlings, spring subyearlings, and summer run), Harvey Creek Hatchery, Whitehorse Springs Pond, Wallace River Hatchery (yearlings and subyearlings), Tulalip Bay, Soos Creek Hatchery, Icy Creek Hatchery, Keta Creek Hatchery, White River Hatchery, White Acclimation Pond, Hupp Springs Hatchery, Voights Creek Hatchery, Diru Creek, Clear Creek, Kalama Creek, Dungeness/Hurd Creek Hatchery, Elwha Channel Hatchery chinook hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Snake River Fall-run Chinook ESU

The Snake River fall-run chinook ESU includes all naturally spawned populations of fall-run chinook salmon in the mainstem Snake River and in the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River subbasins (57 FR 14653, April 22, 1992; 57 FR 23458, June 3, 1992). Four artificial propagation programs are considered to be part of the ESU (Table 2): the Lyons Ferry Hatchery, Fall Chinook Acclimation Ponds Program, Nez Perce Tribal Hatchery, and Oxbow Hatchery fall-run chinook hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural population (NMFS, 2004b).

Snake River Spring/Summer Chinook ESU

The Snake River spring/summer-run chinook ESU includes all naturally spawned populations of spring/summer-run chinook salmon in the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins (57 FR 23458; June 3, 1992). Fifteen artificial propagation programs are considered to be part of the ESU (Table 2): the Tucannon River conventional Hatchery, Tucannon River Captive Broodstock Program, Lostine River, Catherine Creek, Lookingglass Hatchery Reintroduction Program (Catherine Creek stock), Upper Grande Ronde, Imnaha River, Big Sheep Creek, McCall Hatchery, Johnson Creek Artificial Propagation Enhancement, Lemhi River Captive Rearing Experiment, Pahsimeroi Hatchery, East Fork Captive Rearing Experiment, West Fork Yankee Fork Captive Rearing Experiment, and the Sawtooth Hatchery spring/summer-run chinook hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Central California Coast Coho ESU

The Central California Coast coho ESU includes all naturally spawned populations of coho salmon from Punta Gorda in northern California south to and including the San Lorenzo River in central California, as well as populations in tributaries to San Francisco Bay, excluding the Sacramento-San Joaquin River system (61 FR 56138; October 31, 1996). Four artificial propagation programs are considered part of this ESU (Table 2): the Don Clausen Fish Hatchery Captive Broodstock Program, Scott Creek/King Fisher Flats Conservation Program, Scott Creek Captive Broodstock Program, and the Noyo River Fish Station Egg-take Program coho hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Southern Oregon/Northern California Coast Coho ESU

The Southern Oregon/Northern California Coast coho ESU includes all

naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California (62 FR 24588; May 6, 1997). Three artificial propagation programs are considered to be part of the ESU (Table 2): the Cole Rivers Hatchery (ODFW stock # 52), Trinity River Hatchery, and Iron Gate Hatchery coho hatchery programs. NMFS has determined that these artificially propagated stocks are no more than moderately diverged from the local natural populations (NMFS, 2004b).

Oregon Coast Coho ESU

The Oregon Coast coho ESU includes all naturally spawned populations of coho salmon in Oregon coastal streams south of the Columbia River and north of Cape Blanco (63 FR 42587; August 10, 1998). Five artificial propagation programs are considered part of the ESU (Table 2): the North Umpqua River (ODFW stock # 18), Cow Creek (ODFW stock # 37), Coos Basin (ODFW stock #37), Coquille River (ODFW stock # 44), and North Fork Nehalem River (ODFW stock # 32) coho hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Lower Columbia River Coho ESU

In NMFS' 1991 status review of Lower Columbia River (LCR) coho (NMFS, 1991d), the BRT limited the geographic scope of its review to the subject of the motivating listing petition: the LCR excluding the Willamette River. The 1991 BRT concluded that historical LCR coho populations were probably reproductively isolated from other coho populations, but the BRT was unable to identify whether an historical coho ESU still existed in the LCR. In the 1995 status review of West Coast coho salmon (NMFS, 1995a), the BRT considered new information suggesting that LCR coho may be part of a larger ESU, based on similarities in physical and biogeographical conditions, and preliminary genetic data. The 1995 BRT included LCR coho as part of a larger Southwestern Washington (SWW)/LCR coho ESU, and NMFS designated the SWW/LCR coho ESU as a candidate species (60 FR 38011; July 25, 1995). In 1996, NMFS' West Coast Coho Salmon BRT updated the 1995 status review, and concluded that the SWW/LCR ESU may warrant splitting into separate SWW and LCR ESUs (NMFS, 1996e).

In 2001 the BRT reconvened to update information on the viability of LCR coho and concluded that LCR coho is a separate ESU from SWW coho (NMFS, 2001). This conclusion was supported by new tagging data and analyses indicating that SWW and LCR coho populations have differing marine distributions and are genetically distinct (Shaklee *et al.,* 1999; NMFS, 2001). This finding is consistent with the stock structure exhibited by LCR chinook and *O. mykiss* populations (Myers *et al.,* 2003). The 2001 BRT also concluded that the historical ESU still exists in the LCR. The primary evidence to support this conclusion is the consistent genetic and life history differences between LCR coho salmon and populations from other areas. The BRT concluded that, because of presumably very low survival rates, stock transfers from Oregon coastal populations 40 to 80 years ago probably had relatively little permanent effect on the genetic makeup of LCR coho salmon. Nevertheless, the BRT recognized that the ESU as it presently exists is much altered from historical conditions, and evidence of appreciable natural production is limited to two Oregon populations (in the Sandy and Clackamas rivers) that represent the clearest link (through more or less continuous natural production) to historical populations within the ESU. Based on available information, most of the adult coho salmon returning to natural or hatchery areas outside these two streams appear to have themselves been reared as juveniles in hatcheries, or to have had parents that were reared in hatcheries. The 2001 BRT concluded that, collectively, these hatchery-produced fish contain a significant portion of the historical diversity of LCR coho salmon, albeit in somewhat altered form. In determining the upstream boundary of the LCR coho ESU, the 2001 BRT concluded that Upper Columbia River coho (now extinct) were likely not part of the LCR coho ESU, and that the Cascade Crest represents the most likely eastern terminus of the LCR coho ESU. The 2003 Pacific Salmonid BRT did not revisit the 2001 ESU boundaries for the LCR coho ESU.

Based on the foregoing, NMFS concludes that the LCR coho ESU includes all naturally spawned populations of coho salmon in the Columbia River and its tributaries from the mouth of the Columbia up to and including the Big White Salmon and Hood Rivers. Twenty-one artificial propagation programs are considered to be part of the ESU (Table 2): the Grays River, Sea Resources Hatchery, Peterson Coho Project, Big Creek Hatchery, Astoria High School (STEP) Coho Program, Warrenton High School (STEP) Coho Program, Elochoman Type-S Coho Program, Elochoman Type-N Coho Program, Cathlamet High School FFA Type-N Coho Program, Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers, Cowlitz Game and Anglers Coho Program, Friends of the Cowlitz Coho Program, North Fork Toutle River Hatchery, Lewis River Type-N Coho Program, Lewis River Type-S Coho Program, Fish First Wild Coho Program, Fish First Type-N Coho Program, Syverson Project Type-N Coho Program, Sandy Hatchery, and the Bonneville/Cascade/Oxbow complex coho hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Columbia River Chum ESU

The Columbia River chum ESU includes all naturally spawned populations of chum salmon in the Columbia River and its tributaries in Washington and Oregon (64 FR 14508; March 25, 1999). Three artificial propagation programs are considered to be part of the ESU (Table 2): the Chinook River (Sea Resources Hatchery), Grays River, and Washougal River/Duncan Creek chum hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Hood Canal Summer-run Chum ESU

The Hood Canal summer-run chum includes all naturally spawned populations of summer-run chum salmon in Hood Canal and its tributaries as well as populations in Olympic Peninsula rivers between Hood Canal and Dungeness Bay, Washington (64 FR 14508; March 25, 1999). Eight artificial propagation programs are considered to be part of the ESU (Table 2): the Quilcene NFH, Hamma Hamma Fish Hatchery, Lilliwaup Creek Fish Hatchery, Union River/Tahuya, Big Beef Creek Fish Hatchery, Salmon Creek Fish Hatchery, Chimacum Creek Fish Hatchery, and the Jimmycomelately Creek Fish Hatchery summer-run chum hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Southern California *O. mykiss* ESU

The Southern California *O. mykiss* ESU includes all naturally spawned populations of steelhead in streams from the Santa Maria River, San Luis Obispo County, California (inclusive) to the U.S.-Mexico Border (62 FR 43937,

August 18, 1997; 67 FR 21586, May 1, 2002). Resident populations of *O. mykiss* below impassible barriers (natural and manmade) that co-occur with anadromous populations are included in the Southern California *O. mykiss* ESU. According to the framework discussed above (see the *Consideration of Resident O. mykiss Populations in Listing Determinations* section), the ESU membership of native resident populations above recent (usually man-made) impassable barriers, but below natural barriers, was not resolved. These resident populations are provisionally not considered to be part of the Southern California *O. mykiss* ESU, until such time that significant scientific information becomes available affording a case-by-case evaluation of their ESU relationships.

This ESU does not include any artificially propagated *O. mykiss* stocks that reside within the historical geographic range of the ESU.

South-Central California Coast *O. mykiss* ESU

The South-Central California Coast *O. mykiss* ESU includes all naturally spawned populations of steelhead in streams from the Pajaro River (inclusive) to, but not including the Santa Maria River, California (62 FR 43937; August 18, 1997). Resident populations of *O. mykiss* below impassible barriers (natural and manmade) that co-occur with anadromous populations are included in the South-Central California Coast *O. mykiss* ESU. According to the framework discussed above (*See* the *Consideration of Resident O. mykiss Populations in Listing Determinations* section), the ESU membership of native resident populations above recent (usually man-made) impassable barriers, but below natural barriers, was not resolved. These resident populations are provisionally not considered to be part of the South-Central California Coast *O. mykiss* ESU, until such time that significant scientific information becomes available affording a case-by-case evaluation of their ESU relationships.

This ESU does not include any artificially propagated *O. mykiss* stocks that reside within the historical geographic range of the ESU.

Central California Coast *O. mykiss* ESU

The Central California Coast *O. mykiss* ESU includes all naturally spawned populations of steelhead in California streams from the Russian River to Aptos Creek, and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), excluding the Sacramento-San Joaquin River Basin (62 FR 43937; August 18, 1997). Resident populations of *O. mykiss* below impassible barriers (natural and manmade) that co-occur with anadromous populations are included in the Central California Coast *O. mykiss* ESU. According to the framework discussed above (see the *Consideration of Resident O. mykiss Populations in Listing Determinations* section), the ESU membership of native resident populations above recent (usually man-made) impassable barriers, but below natural barriers, was not resolved. These resident populations are provisionally not considered to be part of the Central California Coast *O. mykiss* ESU, until such time that significant scientific information becomes available affording a case-by-case evaluation of their ESU relationships. Recent genetic data regarding three subpopulations of native fish above Rubber Dam 1 on Alameda Creek strongly suggest that they are part of the ESU. Nielson (2003) found that these subpopulations were most similar to each other and other populations within the ESU than they were to populations outside the ESU. NMFS, therefore, considers native resident *O. mykiss* populations above Dam 1 on Alameda Creek to be part of the Central California Coast *O. mykiss* ESU.

Two artificial propagation programs are considered to be part of the ESU (Table 2): the Don Clausen Fish Hatchery, and Kingfisher Flat Hatchery/Scott Creek (Monterey Bay Salmon and Trout Project) steelhead hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

California Central Valley *O. mykiss* ESU

The California Central Valley *O. mykiss* ESU includes all naturally spawned populations of steelhead in the Sacramento and San Joaquin Rivers and their tributaries, excluding steelhead from San Francisco and San Pablo Bays and their tributaries (63 FR13347; March 19, 1998). Resident populations of *O. mykiss* below impassible barriers (natural and manmade) that co-occur with anadromous populations are included in the California Central Valley *O. mykiss* ESU. According to the framework discussed above (see the *Consideration of Resident O. mykiss Populations in Listing Determinations* section), the ESU membership of native resident populations above recent (usually man-made) impassable barriers, but below natural barriers, was not resolved. These resident populations are provisionally not considered to be part of the California Central Valley *O. mykiss* ESU, until such time that significant scientific information becomes available affording a case-by-case evaluation of their ESU relationships.

Two artificial propagation programs are considered to be part of the ESU (Table 2): the Coleman NFH, and Feather River Hatchery steelhead hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Two other artificial propagation programs, the Nimbus and Mokelumne River stocks, are derived from out-of-ESU broodstock, are genetically more than moderately divergent from the ESU populations, and are not considered part of this ESU.

Northern California *O. mykiss* ESU

The Northern California *O. mykiss* ESU includes steelhead in California coastal river basins from Redwood Creek south to the Gualala River (inclusive) (65 FR 36074; June 7, 2000). Resident populations of *O. mykiss* below impassible barriers (natural and manmade) that co-occur with anadromous populations are included in the Northern California *O. mykiss* ESU. According to the framework discussed above (see the *Consideration of Resident O. mykiss Populations in Listing Determinations* section), the ESU membership of native resident populations above recent (usually man-made) impassable barriers, but below natural barriers, was not resolved. These resident populations are provisionally not considered to be part of the Northern California *O. mykiss* ESU, until such time that significant scientific information becomes available affording a case-by-case evaluation of their ESU relationships.

Two artificial propagation programs are considered part of the ESU (Table 2): the Yager Creek Hatchery, and North Fork Gualala River Hatchery (Gualala River Steelhead Project) steelhead hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Upper Willamette River *O. mykiss* ESU

The Upper Willamette River *O. mykiss* ESU includes all naturally spawned populations of winter-run steelhead in the Willamette River, Oregon, and its tributaries upstream from Willamette Falls to the Calapooia River (inclusive) (64 FR 14517; March 25, 1999). Resident populations of *O.*

mykiss below impassible barriers (natural and manmade) that co-occur with anadromous populations are included in the Upper Willamette River *O. mykiss* ESU. Although there are no obvious physical barriers separating populations upstream of the Calapooia from those lower in the basin, resident *O. mykiss* in these upper basins are quite distinctive both phenotypically and genetically and are not considered part of the ESU. According to the framework discussed above (see the *Consideration of Resident O. mykiss Populations in Listing Determinations* section), the ESU membership of native resident populations above recent (usually man-made) impassable barriers, but below natural barriers, was not resolved. These resident populations are provisionally not considered to be part of the Upper Willamette River *O. mykiss* ESU, until such time that significant scientific information becomes available affording a case-by-case evaluation of their ESU relationships.

This ESU does not include any artificially propagated *O. mykiss* stocks that reside within the historical geographic range of the ESU. Hatchery summer steelhead occur in the Willamette Basin but are an out-of-basin stock that is not included as part of the ESU.

Lower Columbia River *O. mykiss* ESU

The Lower Columbia River *O. mykiss* ESU includes all naturally spawned populations of steelhead in streams and tributaries to the Columbia River between the Cowlitz and Wind Rivers, Washington (inclusive), and the Willamette and Hood Rivers, Oregon (inclusive). Excluded are steelhead in the upper Willamette River Basin above Willamette Falls and steelhead from the Little and Big White Salmon Rivers in Washington (62 FR43937; August 18, 1997). Resident populations of *O. mykiss* below impassible barriers (natural and manmade) that co-occur with anadromous populations are included in the Lower Columbia River *O. mykiss* ESU. According to the framework discussed above (see the *Consideration of Resident O. mykiss Populations in Listing Determinations* section), the ESU membership of native resident populations above recent (usually man-made) impassable barriers, but below natural barriers, was not resolved. These resident populations are provisionally not considered to be part of the Lower Columbia River *O. mykiss* ESU, until such time that significant scientific information becomes available affording a case-by-case evaluation of their ESU relationships.

Ten artificial propagation programs are considered to be part of the ESU (Table 2): the Cowlitz Trout Hatchery (in the Cispus, Upper Cowlitz, Lower Cowlitz, and Tilton Rivers), Kalama River Wild (winter- and summer-run), Clackamas Hatchery, Sandy Hatchery, and Hood River (winter- and summer-run) steelhead hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Middle Columbia River *O. mykiss* ESU

The Middle Columbia River *O. mykiss* ESU includes all naturally spawned populations of steelhead in streams from above the Wind River, Washington, and the Hood River, Oregon (exclusive), upstream to, and including, the Yakima River, Washington, excluding steelhead from the Snake River Basin (64 FR 14517; March 25, 1999). Resident populations of *O. mykiss* below impassible barriers (natural and manmade) that co-occur with anadromous populations are included in the Middle Columbia River *O. mykiss* ESU. According to the framework discussed above (see the *Consideration of Resident O. mykiss Populations in Listing Determinations* section), the ESU membership of native resident populations above recent (usually man-made) impassable barriers, but below natural barriers, was not resolved. These resident populations are provisionally not considered to be part of the Middle Columbia River *O. mykiss* ESU, until such time that significant scientific information becomes available affording a case-by-case evaluation of their ESU relationships.

Seven artificial propagation programs are considered part of the ESU (Table 2): the Touchet River Endemic, Yakima River Kelt Reconditioning Program (in Satus Creek, Toppenish Creek, Naches River, and Upper Yakima River), Umatilla River, and the Deschutes River steelhead hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Upper Columbia River *O. mykiss* ESU

The Upper Columbia River *O. mykiss* ESU includes all naturally spawned populations of steelhead in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the U.S.-Canada border (62 FR 43937; August 18, 1997). Resident populations of *O. mykiss* below impassible barriers (natural and manmade) that co-occur with anadromous populations are included in the Upper Columbia River *O. mykiss* ESU. According to the framework discussed above (see the *Consideration of Resident O. mykiss Populations in Listing Determinations* section), the ESU membership of native resident populations above recent (usually man-made) impassable barriers, but below natural barriers, was not resolved. These resident populations are provisionally not considered to be part of the Upper Columbia River *O. mykiss* ESU, until such time that significant scientific information becomes available affording a case-by-case evaluation of their ESU relationships.

Six artificial propagation programs are considered part of the ESU (Table 2): the Wenatchee River, Wells Hatchery (in the Methow and Okanogan Rivers), Winthrop NFH, Omak Creek, and the Ringold steelhead hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

Snake River Basin *O. mykiss* ESU

The Snake River Basin *O. mykiss* ESU includes all naturally spawned populations of steelhead in streams in the Snake River Basin of southeast Washington, northeast Oregon, and Idaho (62 FR 43937; August 18, 1997). Resident populations of *O. mykiss* below impassible barriers (natural and manmade) that co-occur with anadromous populations are included in the Snake River Basin *O. mykiss* ESU. According to the framework discussed above (see the *Consideration of Resident O. mykiss Populations in Listing Determinations* section), the ESU membership of native resident populations above recent (usually man-made) impassable barriers, but below natural barriers, was not resolved. These resident populations are provisionally not considered to be part of the Snake River Basin *O. mykiss* ESU, until such time that significant scientific information becomes available affording a case-by-case evaluation of their ESU relationships. Recent genetic data suggest that native resident *O. mykiss* above Dworshak Dam on the North Fork Clearwater River are part of this ESU. NMFS, therefore, considers native resident *O. mykiss* populations above Dworshak Dam on the North Fork Clearwater River to be part of the Snake River Basin *O. mykiss* ESU. Hatchery rainbow trout that have been introduced to the Clearwater River and other areas within the ESU are not considered part of the ESU.

Six artificial propagation programs are considered part of the ESU (Table 2): the

Tucannon River, Dworshak NFH, Lolo Creek, North Fork Clearwater, East Fork Salmon River, and the Little Sheep Creek/Imnaha River Hatchery steelhead hatchery programs. NMFS has determined that these artificially propagated stocks are genetically no more than moderately divergent from the natural populations (NMFS, 2004b).

TABLE 2.—LIST OF ARTIFICIAL PROPAGATION PROGRAMS INCLUDED IN EVOLUTIONARILY SIGNIFICANT UNITS (ESUS) OF WEST COAST SALMON AND *Oncorhynchus mykiss*

Evolutionarily significant unit (ESU)	Artificial propagation program	Run	Location (State)
Snake River sockeye ESU	Redfish Lake Captive Propagation Program.	n/a	Stanley Basin (Idaho).
Ozette Lake sockeye ESU	Umbrella Creek Hatchery—Makah Tribe	n/a	Ozette Lake (Washington).
	Big River Hatchery—Makah Tribe	n/a	Ozette Lake (Washington).
	Livingston Stone National Fish Hatchery (NFH) Conservation Program	Winter	Sacramento River (California), Livingston Stone NFH & Univ. of Calif.
Sacramento River winter-run chinook ESU.	Captive Broodstock Program	Winter	Bodega Marine Laboratory (California).
Central Valley spring-run chinook ESU	n/a.		
California Coastal chinook ESU	Freshwater Creek/Humboldt Fish Action Council.	Fall	Freshwater Creek, Humboldt Bay (California).
	Yager Creek Hatchery	Fall	Yager Creek, Van Duzen River (California). Redwood Creek, South Fork Eel River.
	Redwood Creek Hatchery	Fall	(California).
	Hollow Tree Creek Hatchery	Fall	Eel River (California).
	Mattole Salmon Group Hatchery	Fall	Squaw Creek, Mattole River (California).
	Van Arsdale Fish Station	Fall	Eel River (California).
	Mad River Hatchery	Fall	Mad River (California).
Upper Willamette River chinook ESU	McKenzie River Hatchery (Oregon Department of Fish & Wildlife (ODFW) stock #24).	Spring	McKenzie River (Oregon).
	Marion Forks Hatchery (ODFW stock #21).	Spring	North Fork Santiam River (Oregon).
	South Santiam Hatchery (ODFW stock #23).	Spring	South Fork Santiam River (Oregon).
		Spring	Calapooia River (Oregon).
		Spring	Mollala River (Oregon).
	Willamette Hatchery (ODFW stock #22)	Spring	Middle Fork Willamette River (Oregon).
	Clackamas Hatchery (ODFW stock #19)	Spring	Clackamas River (Oregon).
Lower Columbia River chinook ESU	Sea Resources Tule Chinook Program	Fall	Chinook River (Washington).
	Big Creek Tule Chinook Program	Fall	Big Creek (Oregon).
	Astoria High School (STEP) Tule Chinook Program.	Fall	Big Creek (Oregon).
	Warrenton High School (STEP) Tule Chinook Program.	Fall	Big Creek (Oregon).
	Elochoman River Tule Chinook Program.	Fall	Elochoman River (Washington).
	Cowlitz Tule Chinook Program	Fall	Lower Cowlitz River (Washington).
	North Folk Toutle Tule Chinook Program.	Fall	Cowlitz River (Washington).
	Kalama Tule Chinook Program	Fall	Kalama River (Washington).
	Washougal River Chinook Program	Fall	Washougal River (Washington).
	Spring Creek NFH Tule Chinook Program.	Fall	Upper Cowlitz River (Washington).
		Spring	Cispus River (Washington).
	Friends of Cowlitz spring chinook Program.	Spring	Upper Cowlitz River (Washington).
	Kalama River spring chinook Program	Spring	Kalama River (Washington).
	Lewis River spring chinook Program	Spring	Lewis River (Washington).
	Fish First spring chinook Program	Spring	Lewis River (Washington).
	Sandy River Hatchery (ODFW stock #11).	Spring	Sandy River (Washington).
Upper Columbia River spring chinook ESU.	Twisp River	Spring	Methow Spring (Washington).
	Chewuch River	Spring	Methow River (Washington).
	Methow Composite	Spring	Methow River (Washington).
	Winthrop NFH (Methow Composite stock).	Spring	Methow River (Washington).
	Chiwawa River	Spring	Wenatchee River (Washington).
	White River	Spring	Wenatchee River (Washington).
Puget Sound chinook ESU	Kendall Creek Hatchery	Spring	North Fork Nooksack River (Washington).
	Marblemount Hatchery	Fall	Lower Skagit River (Washington).
		Spring (Yearlings).	Upper Skagit River (Washington).

TABLE 2.—LIST OF ARTIFICIAL PROPAGATION PROGRAMS INCLUDED IN EVOLUTIONARILY SIGNIFICANT UNITS (ESUS) OF WEST COAST SALMON AND *Oncorhynchus mykiss*—Continued

Evolutionarily significant unit (ESU)	Artificial propagation program	Run	Location (State)
		Spring (sub-yearlings).	Upper Skagit River (Washington).
		Summer	Upper Skagit River (Washington).
	Harvey Creek Hatchery	Summer	North Fork Stillaguamish River (Washington).
	Whitehorse Springs Pond	Summer	North Fork Stillaguamish River (Washington).
	Wallace River Hatchery	Summer (yearlings).	Skykomish River (Washington).
		Summer (sub yearlings).	Skykomish River (Washington).
	Tulalip Bay (Bernie Kai-Kai Gobin Hatchery/Tulalip Hatchery).	Summer	Skykomish River/Tulalip Bay (Washington).
	Soos Creek Hatchery	Fall	Green River (Washington).
	Icy Creek Hatchery	Fall	Green River (Washington).
	Keta Creek—Muckleshoot Tribe	Fall	Green River (Washington).
	White River Hatchery	Spring	White River (Washington).
	White Acclimation Pond	Spring	White River (Washington).
	Hupps Springs Hatchery	Spring	White River (Washington).
	Voights Creek Hatchery	Fall	Puyallup River (Washington).
	Diru Creek	Fall	Puyallup River (Washington).
	Clear Creek	Fall	Nisqually River (Washington).
	Kalama Creek	Fall	Nisqually River (Washington).
	Dungeness/Hurd Creek Hatchery	Spring	Dungeness River (Washington).
	Elwha Channel Hatchery	Fall	Elwha River (Washington).
Snake River fall-run chinook ESU	Lyons Ferry Hatchery	Fall	Snake River (Idaho).
	Fall Chinook Acclimation Ponds Program—Pittsburg, Captain John, and Big Canyon ponds.	Fall	Snake River (Idaho).
	Nez Perce Tribal Hatchery—including North Lapwai Valley, Lakes Gulch, and Cedar Flat Satellite facilities.	Fall	Snake and Clearwater Rivers (Idaho).
	Oxbow Hatchery	Fall	Snake River (Oregon, Idaho).
Snake River spring/summer-run chinook ESU.	Tucannon River Hatchery (conventional)	Spring	Tucannon River (Idaho).
	Tucannon River Captive Broodstock Program.	Spring	Tucannon River (Idaho).
	Lostine River (captive/conventional)	Summer	Grande Ronde (Oregon).
	Catherine Creek (captive/conventional)	Summer	Grande Ronde (Oregon).
	Lookingglass Hatchery (reintroduction)	Summer	Grande Ronde (Oregon).
	Upper Grande Ronde (captive/conventional).	Summer	Grande Ronde (Oregon).
	Imnaha River	Spring/Summer	Imnaha River (Oregon).
	Big Sheep Creek	Spring/Summer	Imnaha River (Oregon).
	McCall Hatchery	Spring	South Fork Salmon River (Idaho).
	Johnson Creek Artificial Propagation Enhancement.	Spring	East Fork South Fork Salmon River (Idaho).
	Lemhi River Captive Rearing Experiment.	Spring	Lemhi River (Idaho).
	Pahsimeroi Hatchery	Summer	Salmon River (Idaho).
	East Fork Captive Rearing Experiment.	Spring	East Fork Salmon River (Idaho).
	West Fork Yankee Fork Captive Rearing Experiment.	Spring	Salmon River (Idaho).
	Sawtooth Hatchery	Spring	Upper Mainstem Salmon River (Idaho).
Central California Coast coho ESU	Don Clausen Fish Hatchery Captive Broodstock Program.	n/a	Dry Creek, Russian River (California).
	Scott Creek/Kingfisher Flat Hatchery Conservation Program (Monterey Bay Salmon and Trout Project).	n/a	Big Creek, Scott Creek (California).
	Scott Creek Captive Broodstock Program.	n/a	NOAA Southwest Fisheries Science Center, Santa Cruz (California).
	Noyo River Fish Station egg-take program.	n/a	Noyo River (California).
Southern Oregon/Northern California Coast coho ESU.	Cole Rivers Hatchery (ODFW stock #52).	n/a	Rogue River (Oregon).
	Trinity River Hatchery	n/a	Trinity River (California).
	Iron Gate Hatchery	n/a	Klamath River (California).
Oregon Coast coho ESU	North Umpqua River (ODFW stock #55)	n/a	Umpqua River (Oregon).
	Cow Creek (ODFW stock #18)	n/a	Umpqua River (Oregon).
	Coos Basin (ODFW stock #37)	n/a	Coos Basin (Oregon).

TABLE 2.—LIST OF ARTIFICIAL PROPAGATION PROGRAMS INCLUDED IN EVOLUTIONARILY SIGNIFICANT UNITS (ESUS) OF WEST COAST SALMON AND *Oncorhynchus mykiss*—Continued

Evolutionarily significant unit (ESU)	Artificial propagation program	Run	Location (State)
	Coquille River/Bandon Hatchery (ODFW stock #44).	n/a	Coquille River (Oregon).
	North Fork Nehalem River (ODFW stock #32).	n/a	Nehalem River (Oregon).
Lower Columbia River coho ESU	Grays River	Type-S	Grays River (Washington).
	Sea Resources Hatchery	Type-S	Grays River (Washington).
	Peterson Coho Project	Type-S	Grays River (Washington).
	Big Creek Hatchery (ODFW stock #13)	n/a	Big Creek (Oregon).
	Astoria High School (STEP) Coho Program.	n/a	Youngs Bay (Oregon).
	Warrention High School (STEP) Coho Program.	n/a	Youngs Bay (Oregon).
	Elochoman Type-S Coho Program	Type-S	Elochoman River (Washington).
	Elochoman Type-N Coho Program	Type-N	Elochoman River (Washington).
	Cathlamet High School FFA Type-N Coho Program.	Type-N	Elochoman River (Washington).
	Cowlitz Type-N Coho Program	Type-N	Upper Cowlitz River (Washington).
	Cowlitz Type-N Coho Program	Type-N	Lower Cowlitz River (Washington).
	Cowlitz Game and Anglers Coho Program.	n/a	Lower Cowlitz River (Washington).
	Friends of the Cowlitz Coho Program	n/a	Lower Cowlitz River (Washington).
	North Fork Toutle River Hatchery	Type-S	Cowlitz River (Washington).
	Lewis River Type-N Coho Program	Type-N	North Fork Lewis River (Washington).
	Lewis River Type-S Coho Program	Type-S	North Fork Lewis River (Washington).
	Fish First Wild Coho Program	n/a	North Fork Lewis River (Washington).
	Fish First Type-N Coho Program	Type-N	North Fork Lewis River (Washington).
	Syverson Project Type-N Coho program	Type-N	Salmon River (Washington).
	Sandy Hatchery (ODFW stock #11)	Late	Sandy River (Oregon).
	Bonneville/Cascade/Oxbow Complex (ODFW stock #14).	n/a	Lower Columbia River Gorge (Oregon)
Columbia River chum ESU	Chinook River/Sea Resources Hatchery	Fall	Chinook River (Washington).
	Grays River	Fall	Grays River (Washington).
	Washougal Hatchery/Duncan Creek	Fall	Washougal River (Washington).
Hood Canal summer-run chum ESU	Quilcene/Quilcene NFH	Summer	Big Quilcene River (Washington).
	Hamma Hamma Fish Hatchery	Summer	Western Hood Canal (Washington).
	Lilliwaup Creek Fish Hatchery	Summer	Southwestern Hood Canal (Washington).
	Union River/Tahuya	Summer	Union River (Washington).
	Big Beef Creek Fish Hatchery	Summer	North Hood Canal (Washington).
	Salmon Creek Fish Hatchery	Summer	Discovery Bay (Washington).
	Chimacum Creek Fish Hatchery	Summer	Port Townsend Bay (Washington).
	Jimmycomelately Creek Fish Hatchery	Summer	Sequim Bay (Washington).
Southern California *O. mykiss* ESU	n/a.		
South-Central California Coast *O. mykiss* ESU.	n/a.		
Central California Coast *O. mykiss* ESU	Scott Creek/Monterey Bay Salmon and Trout Project, Kingfisher Flat Hatchery.	Winter	Big Creek, Scott Creek (California).
	Don Clausen Fish Hatchery	Winter	Russian River (California).
California Central Valley *O. mykiss* ESU	Coleman NFH	Winter	Battle Creek, Sacramento River (California).
	Feather River Hatchery	Winter	Feather River (California).
Northern California *O. mykiss* ESU	Yager Creek Hatchery	Winter	Yager Creek, Van Duzen River (California).
	North Fork Gualala River Hatchery/ Gualala River Steelhead Project.	Winter	North Fork Gualala River (California).
Upper Willamette River *O. mykiss* ESU	n/a.		
Lower Columbia River *O. mykiss* ESU	Cowlitz Trout Hatchery	Late Winter	Cispus River (Washington).
	Cowlitz Trout Hatchery	Late Winter	Upper Cowlitz River (Washington).
	Cowlitz Trout Hatchery	Late Winter	Tilton River (Washington).
	Cowlitz Trout Hatchery	Late Winter	Lower Cowlitz River (Washington).
	Kalama River Wild	Winter	Kalama River (Washington).
		Summer	Kalama River (Washington).
	Clackamas Hatchery (ODFW stock #122).	Late Winter	Clackamas River (Oregon).
	Sandy Hatchery (ODFW stock #11)	Late Winter	Sandy River (Oregon).
	Hood River (ODFW stock #50)	Winter	Hood River (Oregon).
		Summer	Hood River (Oregon).
Middle Columbia River *O. mykiss* ESU	Touchet River Endemic	Summer	Touchet River (Washington).
	Yakima River Kelt Reconditioning Program.	Summer	Satus Creek (Washington).

TABLE 2.—LIST OF ARTIFICIAL PROPAGATION PROGRAMS INCLUDED IN EVOLUTIONARILY SIGNIFICANT UNITS (ESUS) OF WEST COAST SALMON AND *Oncorhynchus mykiss*—Continued

Evolutionarily significant unit (ESU)	Artificial propagation program	Run	Location (State)
	.....	Summer	Toppenish Creek (Washington).
	.....	Summer	Naches River (Washington).
	.....	Summer	Upper Yakima River (Washington).
	Umatilla River (ODFW stock #91)	Summer	Umatilla River (Oregon).
	Deschutes River (ODFW stock #66)	Summer	Deschutes River (Oregon).
Upper Columbia River *O. mykiss* ESU ...	Wenatchee River Steelhead	Summer	Wenatchee River (Washington).
	Wells Hatchery Steelhead	Summer	Methow River (Washington).
	.....	Summer	Okanogan River (Washington).
	Winthrop NFH Steelhead (Wells Steelhead).	Summer	Methow River (Washington).
	Omak Creek Steelhead	Summer	Okanogan River (Washington).
	Ringold Hatchery (Wells Steelhead)	Summer	Middle Columbia River (Washington).
Snake River Basin *O. mykiss* ESU	Tucannon River	Summer	Tucannon River (Washington).
	Dworshak NFH	Summer	South Fork Clearwater River (Idaho).
	Lolo Creek	Summer	Salmon River (Idaho).
	North Fork Clearwater	Summer	North Fork Clearwater River (Idaho).
	East Fork Salmon River	Summer	East Fork Salmon River (Idaho).
	Little Sheep Creek/Imnaha River Hatchery (ODFW stock #29).	Summer	Imnaha River (Oregon).

Updated Viability Assessments of ESUs

NMFS' Pacific Salmonid BRT evaluated the risk of extinction faced by naturally spawning populations in each of the ESUs addressed in this proposed rule (NMFS, 2003b). As noted above, the BRT did not explicitly consider hatchery stocks or protective efforts in their evaluations. For each ESU the BRT evaluated overall extinction risk after assessing ESU-level risk for the four VSP criteria: abundance, productivity, spatial structure, and diversity. NMFS then assessed the effects of ESU hatchery programs on ESU viability and extinction risk relative to the BRT's assessment for the naturally spawning component of the ESU (Salmonid Hatchery Inventory and Effects Evaluation Report; NMFS, 2004b). The effects of hatchery programs on the extinction risk of an ESU in-total was evaluated on the basis of the factors that the BRT determined are currently limiting the ESU (*e.g.*, abundance, productivity, spatial structure, and diversity), and how artificial propagation efforts within the ESU affect those factors. The Artificial Propagation Evaluation Workshop (NMFS, 2004c) reviewed the BRT's findings (NMFS, 2003a), evaluated the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b), and assessed the overall extinction risk of ESUs with associated hatchery stocks. The BRT and the Artificial Propagation Evaluation Workshop expressed the extinction risk for the naturally spawning populations in an ESU, and for the ESU in-total, respectively. The level of extinction risk was categorized into three categories: ''in danger of extinction;'' ''likely to become endangered within the foreseeable future;'' or ''not in danger of extinction or likely to become endangered within the foreseeable future.'' Although these overall risk categories resemble the definitions of ''endangered'' and ''threatened'' as defined in the ESA, the BRT and the Workshop did not evaluate protective efforts in assessing ESU extinction risk (efforts being made to protect the species are evaluated in the ''Evaluation of Protective Efforts'' section, below). Thus, the extinction risk assessments described in this section are not necessarily indicative of whether an ESU warrants listing as a threatened or endangered species. The reader is referred to the BRT's report (NMFS, 2003b), the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b), and the Workshop Report (NMFS, 2004c) for more detailed descriptions of the viability of individual natural populations and hatchery stocks within these ESUs.

Snake River Sockeye ESU

The residual form of Redfish Lake sockeye, determined to be part of the ESU in 1993, is represented by a few hundred fish. Snake River sockeye historically was distributed in four lakes within the Stanley Basin, but the only remaining population resides in Redfish Lake. Only 16 naturally produced adults have returned to Redfish Lake since the Snake River sockeye ESU was listed as an endangered species in 1991. All 16 fish were taken into the Redfish Lake Captive Propagation Program, which was initiated as an emergency measure in 1991. The return of over 250 adults in 2000 was encouraging; however, subsequent returns from the captive program in 2001 and 2002 have been fewer than 30 fish.

The BRT found extremely high risks for each of the four VSP categories. Informed by this assessment, the BRT unanimously concluded that the Snake River sockeye ESU is ''in danger of extinction.''

There is a single artificial propagation program producing Snake River sockeye salmon in the Snake River basin. The Redfish Lake sockeye salmon stock was originally founded by collecting the entire anadromous adult return of 16 fish between 1990 and 1997, the collection of a small number of residual sockeye salmon, and the collection of a few hundred smolts migrating from Redfish Lake. These fish were put into a Captive Broodstock program as an emergency measure to prevent extinction of this ESU. Since 1997, nearly 400 hatchery-origin anadromous sockeye adults have returned to the Stanley Basin from juveniles released by the program. Redfish Lake sockeye salmon have also been reintroduced into Alturas and Pettit Lakes using progeny from the captive broodstock program. The captive broodstock program presently consists of several hundred fish of different year classes maintained at facilities in Eagle (Idaho) and Manchester (Washington).

NMFS' assessment of the effects of artificial propagation on ESU extinction risk concluded that the Redfish Lake Captive Broodstock Program does not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). The Artificial Propagation Evaluation Workshop noted that the Captive

Broodstock Program has prevented likely extinction of the ESU. This program has increased the total number of anadromous adults, attempted to increase the number of lakes in which sockeye salmon are present in the upper Salmon River (Stanley Basin), and preserved what genetic diversity remains in the ESU. Although the program has increased the number of anadromous adults in some years, it has yet to produce consistent returns. The majority of the ESU now resides in the captive program composed of only a few hundred fish. The long-term effects of captive rearing are unknown. The consideration of artificial propagation does not substantially mitigate the BRT's assessment of extreme risks to ESU abundance, productivity, spatial structure, and diversity. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Snake River sockeye ESU in-total is ''in danger of extinction'' (NMFS, 2004c).

Ozette Lake Sockeye ESU

Evaluating extinction risk for the Ozette Lake sockeye ESU is complicated by incomplete data with uncertain errors and biases. The Makah Tribe's fisheries program, however, is engaged in significant efforts to improve sampling techniques and to adjust for biases in historical data. The number of returning adults has increased in recent years, but is believed to be well below historical levels. An uncertain fraction of the returns is of hatchery origin, generating uncertainty in evaluating the productivity of the naturally spawning component of the ESU. Accurately assessing trends in natural spawners is further complicated by the poor visibility in the lake. Habitat degradation, siltation, and a declining lake level have resulted in the loss of numerous beach spawning sites. The BRT expressed concern that the reduction in the number of spawning aggregations poses risks for ESU spatial structure and diversity.

The BRT expressed moderately high concern for each of the VSP risk categories. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Ozette Lake sockeye ESU is ''likely to become endangered within the foreseeable future,'' with the minority being split between ''in danger of extinction'' and ''not in danger of extinction or likely to become endangered within the foreseeable future.''

There are two artificially propagated stocks considered to be part of the Ozette Lake sockeye salmon ESU (Table 2). The program, operated by the Makah Tribe, is derived from native broodstock and has the primary objective of establishing viable sockeye salmon spawning aggregations in two Ozette Lake tributaries where spawning has not been observed for many decades, if ever. The program includes research, monitoring, and evaluation activities designed to determine success in recovering the propagated populations to viable levels, and to determine the demographic, ecological, and genetic effects on target and non-target (*i.e.*, Ozette Lake beach) spawning aggregations. The Makah Program will sunset after 12 years of operation.

NMFS' assessment of the effects of artificial propagation on ESU extinction risk concluded that the Makah supplementation program at Umbrella Creek and Big River does not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). The program has increased the abundance of natural spawners and natural-origin sockeye in the Ozette Lake tributaries. However, it is unknown whether these tributaries were historically spawning habitat. The program (by design) has not increased the abundance of natural spawners or natural origin beach spawners in Ozette Lake. Despite the relative increases in abundance due to the supplementation program, the total ESU abundance remains small for a single sockeye population. The contribution of artificial propagation to ESU productivity is uncertain. Only since 2000 have the hatchery returns been sufficient to meet the program's broodstock goals. The Makah program at present serves as an important genetic reserve with the continuing loss of beach spawning habitat. The reintroduction of spawners to Ozette Lake tributaries reduces risks to ESU spatial structure. However, the isolation of the hatchery program and adaptation to tributary habitats may cause the tributary spawning aggregations to diverge from founding beach spawning aggregations. Although the program has a beneficial effect on ESU abundance and spatial structure, it has neutral or uncertain effects on ESU productivity and diversity. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Ozette Lake sockeye ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Sacramento River Winter-run Chinook ESU

The Sacramento River winter-run ESU is represented by a single extant naturally spawning population that has been completely displaced from its historical spawning habitat by the construction of Shasta and Keswick Dams. The remaining spawning habitat is artificially maintained by cold-water releases from the reservoir behind Shasta Dam. The naturally spawning component of the ESU has exhibited marked improvements in abundance and productivity in recent years. The recent increases in abundance are encouraging, relative to the years of critically low abundance of the 1980s and early 1990s; however, the recent 5-year geometric mean is only 3 percent of the peak post-1967 5-year geometric mean. The BRT was particularly concerned about risks to the ESU's diversity and spatial structure. Construction of Shasta Dam merged at least four independent winter-run chinook populations into a single population, representing a substantial loss of genetic diversity, life-history variability, and local adaptation. Episodes of critically low abundance, particularly in the early 1990's, for the single remaining population imposed ''bottlenecks'' that further reduced genetic diversity. The BRT found extremely high risk for each of the four VSP risk categories. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Sacramento winter-run ESU is ''in danger of extinction.'' The minority opinion of the BRT was that the ESU is ''likely to become endangered within the foreseeable future.''

Two artificial propagation programs are considered to be part of the Sacramento River winter-run chinook ESU (Table 2; NMFS, 2004b). The artificial propagation of winter-run chinook is carried out at the Livingston Stone National Fish Hatchery (NFH) on the mainstem Sacramento River above Keswick Dam. The captive broodstock program is maintained at two locations: the Livingston Stone NFH and at the University of California's Bodega Marine Laboratory. These programs have been operated for conservation purposes since the early 1990's and both were identified as high priority recovery actions in NMFS' 1997 Draft Recovery Plan for this ESU. The artificial propagation program was established to supplement the abundance of the naturally spawning winter-run chinook

population and thereby assist in its population growth and recovery. The captive broodstock program was established in the early 1990s when the naturally spawning population was at critically low levels (less than 200 spawners) in order to preserve the ESU's remaining genetic resources and to establish a reserve for potential use in the artificial propagation program. Because of increased natural escapement over the last several years, consideration is being given to terminating the captive broodstock program.

An assessment of the effects of these artificial propagation programs on the viability of the ESU in-total concluded that they decrease risk to some degree by contributing to increased ESU abundance and diversity, but have a neutral or uncertain effect on productivity and spatial structure of the ESU (NMFS, 2004b). Spawning escapement of winter-run has increased since the inception of the program and may account for up to 10 percent of the total number of fish spawning naturally in a given year. Improvements in freshwater habitat conditions, harvest management, as well as improved ocean conditions, however, are thought to be the major factors responsible for the increased abundance of the ESU since the early 1990s. Effects on productivity are uncertain, but studies are underway to assess the effect of artificial propagation on fitness and productivity of artificially propagated fish. Although abundance of spawners has increased, in part due to artificial propagation, the spatial distribution of spawners has not expanded. The primary reason is that the naturally spawning population is artificially maintained by cool water releases from Shasta/Keswick dams, and the spatial distribution of spawners is largely governed by water year type and the ability of the Central Valley Project to manage water temperatures in the upper Sacramento River. A second naturally spawning population is considered critical to the long-term viability of this ESU, and plans are underway to eventually establish a second population in the upper Battle Creek watershed using the artificial propagation program as a source of fish. However, the program has yet to be implemented because of the need to complete habitat restoration efforts in that watershed. The artificial propagation program has contributed to maintaining diversity of the ESU through careful use of spawning protocols and other tools that maximize genetic diversity of propagated fish and minimize impacts on naturally spawning populations. In addition, the artificial propagation and captive broodstock programs collectively serve as a genetic repository which serves to preserve the genome of the ESU.

Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that this ESU in-total is ''in danger of extinction'' (NMFS, 2004c).

Central Valley Spring-run Chinook ESU

Extensive construction of dams throughout the Sacramento-San Joaquin basin has reduced the California Central Valley spring chinook ESU to only a small portion of its historical distribution, generating concerns about risks to the spatial structure and diversity of the ESU. The ESU has been reduced to only three extant natural populations from an estimated 17 historical populations. The remaining naturally spawning spring-run chinook populations (Mill, Deer, and Butte creek tributaries to the Sacramento River) are in close geographic proximity, increasing the ESU's vulnerability to disease or catastrophic events. The BRT was also concerned that the Feather River spring-run chinook hatchery population, which is not considered part of the ESU (see Table 2; NMFS, 2004b), represents a risk factor for the extant ESU natural populations. The Feather River Hatchery produces spring chinook fish that are genetically more similar to fall chinook, probably due to hybridization at the hatchery. The off-site release location for fish produced at the hatchery is believed to contribute to a high straying rate of hatchery fish which increases the likelihood of non-ESU hatchery fish interacting negatively with the extant natural populations in the ESU. Furthermore, few of the Feather River Hatchery fish are marked (approximately 10 percent), making their impact on ESU spring-run chinook populations difficult to resolve. Although the recent 5-year mean abundance for the three naturally spawning populations in the ESU remains small (ranging from nearly 500 to over 4,500 spawners), short- and long-term productivity trends are positive, and population sizes have shown continued increases over the abundance levels of the 1980s (with 5-year mean population sizes of 67 to 243 spawners). The BRT noted moderately high risk for the abundance, spatial structure, and diversity VSP criteria, and a lower risk for the productivity criterion reflecting recent positive trends. Informed by this risk assessment, the strong majority opinion of the BRT was that the Central Valley spring-run chinook ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion of the BRT was that the ESU is ''in danger of extinction.'' There are no artificially propagated populations of spring chinook in this ESU that mitigate the BRT's assessment that the ESU is ''likely to become endangered within the foreseeable future.''

California Coastal Chinook ESU

Evaluation of the viability of the naturally spawning component of the California Coastal chinook ESU is hindered by the limited availability of data, particularly regarding the abundance and spatial distribution of natural populations within the ESU. Additionally, the data that are available are of varying type, quality and temporal coverage, and are generally not amenable to rigorous estimation of abundance or robust statistical analyses of trends. The little historical and current abundance information that is available indicates that (putative) natural ESU population abundance levels remain depressed relative to historical levels. Evidence suggests that populations have been extirpated or nearly extirpated in the southern part of the ESU, or are extremely low in abundance. This observation, in combination with the apparent loss of the spring-run chinook life history in the Eel River Basin and elsewhere in the ESU, indicates risks to the diversity of the ESU. Recently available natural abundance estimates in the Russian River are in excess of 1,300 fish for 2000–2002. These data suggest either the presence of a naturally producing population in the Russian River, or represent straying from other basins or ESUs. No data are available to assess the genetic relationship of the Russian River fish to populations in this or other ESUs. The BRT found moderately high risks for all VSP risk categories, and underscored a strong concern due to the paucity of information and the resultant uncertainty generated in evaluating ESU viability. Informed by this risk assessment and the related uncertainty, the majority opinion of the BRT was that the naturally spawned component of the California Coastal chinook ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion of the BRT was that the naturally spawned component of the ESU is ''in danger of extinction.''

Seven artificial propagation programs that produce chinook salmon are considered to be part of the California Coastal chinook ESU (Table 2; NMFS,

2004b). Six of these programs (Freshwater Creek, Yager Creek, Redwood Creek, Hollow Tree Creek, Mattole River Salmon Group, and Mad River Hatchery) are relatively small programs with production goals of less than 80,000 fish that have been operated for restoration purposes for more than 20 years. Because of state funding limitations, it is likely that these programs will be terminated after 2004. These programs are small-scale supplementation facilities operated by local groups or companies in cooperation with the CDFG under its cooperative hatchery program. The Van Arsdale Fish Station has been operated for over 30 years by CDFG for supplementation purposes in the upper Eel River. Because of State funding limitations, the operations at the Station were terminated in 2003. The seven hatchery programs are primarily located in the northern portion of the ESU's range and most are in the Eel River.

An assessment of the effects of these small artificial propagation programs on the viability of the ESU in-total concluded that they collectively decrease risk to some degree by contributing to local increases in abundance, but have a neutral or uncertain effect on productivity, spatial structure or diversity of the ESU (NMFS, 2004b). There have been no demonstrable increases in natural abundance from the five cooperative hatchery programs, with the possible exception of increased abundance in the Freshwater Creek natural population and as a result of the rescue and rearing activities by the Mattole Salmon Group. In part, this is because there is limited natural population monitoring in the watersheds where the hatchery programs are located. No efforts have been undertaken to assess the productivity of hatchery produced fish or to assess the effects of hatchery produced fish on natural origin fish productivity. The seven hatchery populations in this ESU are primarily located in the northern portion of the ESU's range and overlap with natural origin fish populations. With the exception of Freshwater Creek where local distribution may have expanded in association with the natural population increase, there are no demonstrable beneficial effects on spatial structure. The six cooperative programs use only natural-origin fish as broodstock and mark all production with an adipose fin clip to ensure there is limited hatchery selection on fish that are released.

Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that this ESU in-total is ''likely to become endangered within the foreseeable future'' (NMFS, 2004c).

Upper Willamette River Chinook ESU

There are no direct estimates of natural-origin spawner abundance for the Upper Willamette River chinook ESU. The abundance of adult spring chinook salmon (hatchery and natural fish) passing Willamette Falls has remained relatively steady over the past 50 years (ranging from approximately 20,000 to 70,000 fish), but is only a fraction of peak abundance levels observed in the 1920s (approximately 300,000 adults). Interpretation of abundance levels is confounded by a high but uncertain fraction of hatchery produced fish. The McKenzie River population has shown substantial increases in total abundance (hatchery origin and natural origin fish) in the last 2 years, while trends in other natural populations in the ESU are generally mixed. With the relatively large incidence of naturally spawning hatchery fish in the ESU, it is difficult to determine trends in productivity for natural-origin fish. The BRT estimated that despite improving trends in total productivity (including hatchery origin and natural origin fish) since 1995, productivity would be below replacement in the absence of artificial propagation. The BRT was particularly concerned that approximately 30 to 40 percent of total historical habitat is now inaccessible behind dams. These inaccessible areas, however, represent a majority of the historical spawning habitat. The restriction of natural production to just a few areas increases the ESU's vulnerability to environmental variability and catastrophic events. Losses of local adaptation and genetic diversity through the mixing of hatchery stocks within the ESU, and the introgression of out-of-ESU hatchery fall-run chinook, have represented threats to ESU diversity. However, the BRT was encouraged by the recent cessation of the fall-run hatchery, as well as by improved marking rates of hatchery fish to assist in monitoring and in the management of a marked-fish selective fishery.

The BRT found moderately high risks for all VSP categories. Informed by this risk assessment, the strong majority opinion of the BRT was that the naturally spawned component of the Upper Willamette River chinook ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion was that this ESU is ''in danger of extinction.''

Seven artificial propagation programs in the Willamette River produce fish that are considered to be part of the Upper Willamette River chinook ESU. All of these programs are funded to mitigate for lost or degraded habitat and produce fish for harvest purposes.

NMFS' assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). An increasing proportion of hatchery-origin returns has contributed to increases in total ESU abundance. However, it is unclear whether these returning hatchery and natural fish actually survive overwintering to spawn. Estimates of pre-spawning mortality indicate that a high proportion (>70 percent) of spring chinook die before spawning in most ESU populations. In recent years, hatchery fish have been used to reintroduce spring chinook back into historical habitats above impassible dams (*e.g.*, in the South Santiam, North Santiam, and McKenzie Rivers), slightly decreasing risks to ESU spatial structure. Within-ESU hatchery fish exhibit differing life-history characteristics from natural ESU fish. High proportions of hatchery-origin natural spawners in remaining natural production areas (*i.e.*, in the Clackamas and McKenzie Rivers) may thereby have negative impacts on within and among population genetic and life-history diversity. Collectively, artificial propagation programs in the ESU have a slight beneficial effect on ESU abundance and spatial structure, but neutral or uncertain effects on ESU productivity and diversity. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Upper Willamette River chinook ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Lower Columbia River Chinook ESU

Many populations within the Lower Columbia River chinook ESU have exhibited pronounced increases in abundance and productivity in recent years, possibly due to improved ocean conditions. Abundance estimates of naturally spawned populations in this ESU, however, are uncertain due to a high (approximately 70 percent) fraction of naturally spawning hatchery fish and a low marking rate (only 1 to 2 percent) of hatchery produced fish. Abundance estimates of naturally produced spring chinook have improved since 2001 due

to the marking of all hatchery spring chinook releases, allowing for the enumeration of hatchery spring chinook at weirs, traps and on spawning grounds. Despite recent improvements, long term trends in productivity are below replacement for the majority of populations in the ESU. It is estimated that 8 to 10 historical populations in the ESU have been extirpated or nearly extirpated. Although approximately 35 percent of historical habitat has been lost in this ESU due to the construction of dams and other impassable barriers, this ESU exhibits a broad spatial distribution in a variety of watersheds and habitat types. Natural production currently occurs in approximately 20 populations, although only one population has a mean spawner abundance exceeding 1,000 fish. The BRT expressed concern that the spring-run populations comprise most of the extirpated populations. The disproportionate loss of the spring-run life history represents a risk for ESU diversity. Additionally, of the four hatchery spring-run chinook populations considered to be part of this ESU, two are propagated in rivers that are within the historical geographic range of the ESU but that likely did not support spring-run populations. High hatchery production in the Lower Columbia River poses genetic and ecological risks to the natural populations in the ESU, and complicates assessments of their performance. The BRT also expressed concern over the introgression of out-of-ESU hatchery stocks.

The BRT found moderately high risk for all VSP categories. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Lower Columbia River chinook ESU is ''likely to become endangered within the foreseeable future,'' with the minority being split between ''in danger of extinction'' and ''not in danger of extinction or likely to become endangered within the foreseeable future.''

There are seventeen artificial propagation programs releasing hatchery chinook salmon that are considered to be part of the Lower Columbia River chinook ESU (Table 2). All of these programs are designed to produce fish for harvest, with three of these programs also being implemented to augment the naturally spawning populations in the basins where the fish are released. These three programs integrate naturally produced spring chinook salmon into the broodstock in an attempt to minimize the genetic effects of returning hatchery adults that spawn naturally.

NMFS' assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Hatchery programs have increased total returns and numbers of fish spawning naturally, thus reducing risks to ESU abundance. Although these hatchery programs have been successful at producing substantial numbers of fish, their effect on the productivity of the ESU in-total is uncertain. Additionally, the high level of hatchery production in this ESU poses potential genetic and ecological risks to the ESU, and confounds the monitoring and evaluation of abundance trends and productivity. The Cowlitz River spring chinook salmon program produces parr for release into the upper Cowlitz River basin in an attempt to re-establish a naturally spawning population above Cowlitz Falls Dam. Such reintroduction efforts increase the ESU's spatial distribution into historical habitats, and slightly reduce risks to ESU spatial structure. The few programs that regularly integrate natural fish into the broodstock may help preserve genetic diversity within the ESU. However, the majority of hatchery programs in the ESU have not converted to the regular incorporation of natural broodstock, thus limiting this risk-reducing feature at the ESU scale. Past and ongoing transfers of broodstock among hatchery programs in different basins represent a risk to within and among population diversity. Collectively, artificial propagation programs in the ESU provide slight benefits to ESU abundance, spatial structure, and diversity, but have neutral or uncertain effects on ESU productivity. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Lower Columbia River chinook ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Upper Columbia River Spring-run Chinook ESU

All populations in the Upper Columbia River spring-run chinook ESU exhibited pronounced increases in abundance in 2001. These increases are particularly encouraging following the last decade of steep declines to record, critically low escapements. Despite strong returns in 2001, both recent 5-year and long term productivity trends remain below replacement. The five hatchery spring-run chinook populations considered to be part of this ESU (Table 2) are programs aimed at supplementing natural production areas. These programs have contributed substantially to the abundance of fish spawning naturally in recent years. However, little information is available to assess the impact of these high levels of supplementation on the long-term productivity of natural populations. Spatial structure in this ESU was of little concern as there is passage and connectivity among almost all ESU populations. The current geographical range of the ESU is approximately the same as its historical range. During years of critically low escapement (1996 and 1998) extreme management measures were taken in one of the three major spring chinook producing basins by collecting all returning adults into hatchery supplementation programs. Such actions reflect the ongoing vulnerability of certain segments of this ESU. The BRT expressed concern that these actions, while appropriately guarding against the catastrophic loss of populations, may have compromised ESU population structure and diversity.

The BRT's assessment of risk for the four VSP categories reflects strong concerns regarding abundance and productivity, and comparatively less concern for ESU spatial structure and diversity. The BRT's assessment of overall extinction risk faced by the naturally spawned component of the Upper Columbia River spring-run chinook ESU was divided between ''in danger of extinction'' and ''likely to become endangered within the foreseeable future,'' with a slight majority opinion that the ESU is ''in danger of extinction.''

Six artificial propagation programs in the Upper Columbia River basin produce spring-run chinook in the Methow and Wenatchee Rivers that are considered to be part of the Upper Columbia River spring-run chinook ESU (Table 2). The Entiat NFH operating in the Entiat River is not included in the ESU, and is intended to remain isolated from the local natural population. The within-ESU hatchery programs are conservation programs intended to contribute to the recovery of the ESU by increasing the abundance and spatial distribution of naturally spawned fish, while maintaining the genetic integrity of populations within the ESU. Three of the conservation programs incorporate local natural broodstock to minimize adverse genetic effects, and follow broodstock protocols guarding against the overcollection of the natural run. The remaining within-ESU hatchery programs are captive broodstock programs. These programs also adhere

to strict protocols for the collection, rearing, maintenance, and mating of the captive brood populations. All of the six artificial propagation programs considered to be part of the ESU include extensive monitoring and evaluation efforts to continually evaluate the extent and implications of any genetic and behavioral differences that might emerge between the hatchery and natural stocks.

Genetic evidence suggests that the within-ESU programs remain closely related to the naturally spawned populations and maintain local genetic distinctiveness of populations within the ESU. The captive broodstock programs may exhibit lower fecundity and younger average age-at-maturity compared to the natural populations from which they were derived. However, the extensive monitoring and evaluation efforts employed afford the adaptive management of any unintended adverse effects. Habitat Conservation Plans (HCPs) with the Chelan and Douglas Public Utility Districts and binding mitigation agreements ensure that these programs will have secure funding and will continue into the future. These hatchery programs have undergone ESA section 7 consultation to ensure that they do not jeopardize the continued existence of the ESU, and they have received ESA section 10 permits for production through 2007. Annual reports and other specific information reporting requirements ensure that the terms and conditions as specified by NMFS are followed. These programs, through adherence to best professional practices, have not experienced disease outbreaks or other catastrophic losses.

NMFS' assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Overall, the hatchery programs in the ESU have increased the total abundance of fish considered to be part of the ESU. Specifically, the two hatchery programs in the Wenatchee Basin have contributed to reducing abundance risk. However, it is uncertain whether the four programs in the Methow Basin have provided a net benefit to abundance. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. The overall impact of the hatchery programs on ESU spatial structure is neutral. The Wenatchee Basin programs are managed to promote appropriate spatial structure, and they likely reduce spatial structure risk in that basin. The Methow Basin hatchery programs, however, concentrate spawners near the hatchery facilities, altering population spatial structure and increasing vulnerability to catastrophic events. Overall, within-ESU hatchery programs do not moderate risks to ESU diversity. The Wenatchee Basin programs do help preserve population diversity though the incorporation of natural-origin fish into broodstock. The Methow Basin programs, however, incorporate few natural fish with hatchery-origin fish predominating on the spawning grounds. Additionally, the presence of out-of-ESU Carson stock chinook in the Methow Basin remains a concern, although the stock is in the process of being terminated. The out-of-ESU Entiat hatchery program is a source of significant concern to the ESU. The Entiat stock may have introgressed significantly with or replaced the native population. Although the artificial propagation programs in the ESU have a slight beneficial effect on ESU abundance, they do not mitigate other key risk factors identified by the BRT. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Upper Columbia River spring-run chinook ESU in-total is ''in danger of extinction'' (NMFS, 2004c).

Puget Sound Chinook ESU

Assessing extinction risk for the Puget Sound chinook ESU is complicated by high levels of hatchery production and a limited availability of information on the fraction of natural spawners that are of hatchery-origin. Although populations in the ESU have not experienced the dramatic increases in abundance in the last 2 to 3 years that have been evident in many other ESUs, more populations have shown modest increases in escapement in recent years than have declined (13 populations versus 9). Most populations have a recent 5-year mean abundance of fewer than 1,500 natural spawners, with the Upper Skagit population being a notable exception (the recent 5-year mean abundance for the Upper Skagit population approaches 10,000 natural spawners). Currently observed abundances of natural spawners in the ESU are several orders of magnitude lower than estimated historical spawner capacity, and well below peak historical abundance (approximately 690,000 spawners in the early 1900s). Recent 5-year and long-term productivity trends remain below replacement for the majority of the 22 extant populations of Puget Sound chinook. The BRT was concerned that the concentration of the majority of natural production in just a few sub-basins represents a significant risk. Natural production areas, due to their concentrated spatial distribution, are vulnerable to extirpation due to catastrophic events. The BRT was concerned by the disproportionate loss of early run populations and its impact on the diversity of the Puget Sound chinook ESU. The Puget Sound Technical Recovery Team has identified 31 historical populations (Ruckelshaus *et al.*, 2002), nine of which are believed to be extinct, most of which were ''early run'' or ''spring'' populations. Past hatchery practices that transplanted stocks among basins within the ESU and present programs using transplanted stocks that incorporate little local natural broodstock represent additional risk to ESU diversity. In particular, the BRT noted that the pervasive use of Green River stock, and stocks subsequently derived from the Green River stock, throughout the ESU may reduce the genetic diversity and fitness of naturally spawning populations.

The BRT found moderately high risks for all VSP categories. Informed by this risk assessment, the strong majority opinion of the BRT was that the naturally spawned component of the Puget Sound chinook ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion was in the ''not in danger of extinction or likely to become endangered within the foreseeable future'' category.

There are currently 22 programs artificially propagating Puget Sound chinook salmon that are considered to be part of the ESU (Table 2). Eight of the programs are directed at conservation, and are specifically implemented to preserve and increase the abundance of native populations in their natal watersheds where habitat needed to sustain the populations naturally at viable levels has been lost or degraded. Each of these conservation hatchery programs includes research, monitoring, and evaluation activities designed to determine success in recovering the propagated populations to viable levels, and to determine the demographic, ecological, and genetic effects of each program on target and non-target salmonid populations. The remaining programs considered to be part of the ESU are operated primarily for fisheries harvest augmentation purposes (some of which also function as research programs) using transplanted within-ESU-origin chinook salmon as broodstock.

NMFS' assessment of the effects of artificial propagation on ESU extinction

risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). The conservation and hatchery augmentation programs collectively have increased the total abundance of the ESU. The conservation programs have increased the abundance of naturally spawning chinook, and likely have reduced abundance risks for these populations. The large numbers of chinook produced by the harvest augmentation programs, however, have resulted in considerable numbers of strays. Any potential benefits from these programs to abundance likely are offset by increased ecological and genetic risks. There is no evidence that any of the twenty-two ESU hatchery programs have contributed to increased abundances of natural-origin chinook, despite decades of infusing natural spawning areas with hatchery fish. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. Four programs are planting hatchery fish above impassible dams, providing some benefit to ESU spatial structure. However, the ongoing practice of transplanting stocks within the ESU and incorporating little natural local-origin broodstock continues to pose significant risks to ESU spatial structure and diversity. The conservation hatchery programs function to preserve remaining genetic diversity, and likely have prevented the loss of several populations. Among the harvest augmentation programs are yearling chinook release programs. Yearling chinook programs may be harmful to local natural-origin populations due to increased risks of predation and the reduction of within-population diversity. Collectively, artificial propagation programs in the ESU provide a slight beneficial effect to ESU abundance and spatial structure, but neutral or uncertain effects to ESU productivity and diversity. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Puget Sound chinook ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Snake River Fall-run Chinook ESU

The abundance of natural-origin spawners in the Snake River fall-run chinook ESU for 2001 (2,652 adults) was in excess of 1,000 fish for the first time since counts began at the Lower Granite Dam in 1975. The recent 5-year mean abundance of 871 naturally produced spawners, however, generated concern that despite recent improvements, the abundance level is very low for an entire ESU. With the exception of the marked increase in 2001, the ESU has fluctuated between approximately 500 to 1,000 natural spawners since 1975, suggesting a higher degree of stability in growth rate at low population levels than is seen in other salmonid populations. Increasing returns reflect improved ocean conditions, improved management of the mainstem hydrosystem flow regime, decreased harvest, and an increasing contribution from the Lyons Ferry Hatchery supplementation program. However, due to the large fraction of naturally spawning hatchery fish, it is difficult to assess the productivity of the natural population. Depending upon the assumption made regarding the reproductive contribution of hatchery fish, long-term and short-term trends in productivity are at or above replacement. It is estimated that approximately 80 percent of historical spawning habitat was lost with the construction of a series of Snake River mainstem dams. The loss of spawning habitats and the restriction of the ESU to a single extant naturally spawning population increase the ESU's vulnerability to environmental variability and catastrophic events. The diversity associated with populations that once resided above the Snake River dams has been lost, and the impact of straying out-of-ESU fish has the potential to further compromise ESU diversity. Recent improvements in the marking of out-of-ESU hatchery fish and their removal at Lower Granite Dam have reduced the impact of these strays. However, introgression below Lower Granite Dam remains a concern. The BRT voiced concern that the practice of collecting fish below Lower Granite Dam for broodstock incorporates non-ESU strays into the Lyons Ferry Hatchery program, and poses additional risks to ESU diversity. Straying of out-of-ESU hatchery fall chinook salmon from outside the Snake River basin was identified as a major risk factor in the late 1980's to mid 1990's. Out-of-ESU hatchery strays have been much reduced due to the removal of hatchery strays at downstream dams, and a reduction in the number of fish released into the Umatilla River (where the majority of out-of-ESU strays originated).

The BRT found moderately high risk for all VSP categories. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Snake River fall-run chinook ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion assessed ESU extinction risk as ''in danger of extinction,'' although a slight minority fell in the ''not in danger of extinction or likely to become endangered within the foreseeable future'' category.

There are four artificial propagation programs producing Snake River fall chinook salmon in the Snake River basin, all based on the Lyons Ferry Hatchery stock and considered to be part of the Snake River fall-run chinook ESU (Table 2). When naturally spawning fall chinook declined to fewer than 100 fish in 1991, most of the genetic legacy of this ESU was preserved in the Lyons Ferry Hatchery broodstock (NMFS, 1991c). These four hatchery programs are managed to enhance listed Snake River fall chinook salmon and presently include the Lyons Ferry Hatchery, Fall Chinook Acclimation Ponds Program, Nez Perce Tribal Hatchery, and Oxbow Hatchery (an Idaho Power Company mitigation hatchery). These existing programs release fish into the mainstem Snake River and Clearwater River which represent the majority of the remaining habitat available to this ESU.

NMFS' assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). These hatchery programs have contributed to the recent substantial increases in total ESU abundance, including both natural-origin and hatchery-origin ESU components. Spawning escapement has increased to several thousand adults (from a few hundred in the early 1990's) due in large part to increased releases from these hatchery programs. These programs collectively have had a beneficial effect on ESU abundance in recent years. The BRT noted, however, that the large but uncertain fraction of naturally spawning hatchery fish complicates assessments of ESU productivity. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. As ESU abundance has increased in recent years, ESU spatial distribution has increased. The Snake River fall-run chinook hatchery programs contributed to this reduction in risk to ESU spatial distribution. The Lyons Ferry stock has preserved genetic diversity during critically low years of abundance. However, the ESU-wide use of a single hatchery broodstock may pose long-term genetic risks, and may limit adaptation to different habitat areas. Although the

ESU likely historically consisted of a single independent population, it was most likely composed of diverse production centers. Additionally, the broodstock collection practices employed pose risks to ESU spatial structure and diversity. Release strategies practiced by the ESU hatchery programs (*e.g.*, extended captivity for about 15 percent of the fish before release) is in conflict with the Snake River fall-run chinook life history, and may compromise ESU diversity. Collectively, artificial propagation programs in the ESU provide slight benefits to ESU abundance, spatial structure, and diversity, but have neutral or uncertain effects on ESU productivity. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Snake River fall-run chinook ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Snake River Spring/Summer Chinook ESU

The aggregate return (including hatchery and natural-origin fish) of Snake River spring/summer-run chinook in 2001 exhibited a large increase over recent abundances. Many, but not all, of the 29 natural production areas within the ESU experienced large abundance increases in 2001 as well, with two populations nearing the abundance levels specified in NMFS' 1995 Proposed Snake River Recovery Plan (NMFS, 1995b). However, approximately 79 percent of the 2001 return of spring-run chinook, was of hatchery origin. Short-term productivity trends were at or above replacement for the majority of natural production areas in the ESU, although long-term productivity trends remain below replacement for all natural production areas, reflecting the severe declines since the 1960s. Although the number of spawning aggregations lost in this ESU due to the establishment of the Snake River mainstem dams is unknown, this ESU has a wide spatial distribution in a variety of locations and habitat types. The BRT considered it a positive sign that the out-of-ESU Rapid River broodstock has been phased out of the Grande Ronde system. There is no evidence of wide-scale straying by hatchery stocks, thereby alleviating diversity concerns somewhat. Nonetheless, the high level of hatchery production in this ESU complicates the assessments of trends in natural abundance and productivity.

The BRT found moderately high risk for the abundance and productivity VSP criteria, and comparatively lower risk for spatial structure and diversity. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Snake River spring/summer-run chinook ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion assessed ESU extinction risk as ''in danger of extinction,'' although a slight minority concluded that the ESU is ''not in danger of extinction or likely to become endangered within the foreseeable future'' category.

There are fifteen artificial propagation programs producing spring/summer-run chinook salmon that are considered to be part of the Snake River spring/summer-run chinook ESU (Table 2). A portion of these programs are managed to enhance listed natural populations, including the use of captive broodstock hatcheries in the upper Salmon River, Lemhi River, East Fork Salmon River, and Yankee Fork populations. These enhancement programs all use broodstocks founded from the local native populations. Currently, the use of non-ESU broodstock sources is restricted to Little Salmon/Rapid River (lower Salmon River tributary), mainstem Snake River at Hells Canyon, and the Clearwater River. These non-ESU programs appear to be isolated from natural production areas and are thought to have little negative impact on this ESU.

NMFS' assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Overall, these hatchery programs have contributed to the increases in total ESU abundance and in the number of natural spawners observed in recent years. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. Some reintroduction and outplanting of hatchery fish above barriers and into vacant habitat has occurred, providing a slight benefit to ESU spatial structure. All of the within-ESU hatchery stocks are derived from local natural populations and employ management practices designed to preserve genetic diversity. The Grande Ronde Captive Broodstock programs likely have prevented the extirpation of the local natural populations. Additionally, hatchery releases are managed to maintain wild fish reserves in the ESU in an effort to preserve natural local adaptation and genetic variability. Collectively, artificial propagation programs in the ESU provide benefits to ESU abundance, spatial structure, and diversity, but have neutral or uncertain effects on ESU productivity. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Snake River spring/summer-run chinook ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Central California Coast Coho ESU

Information on the abundance and productivity trends for the naturally spawning component of the Central California Coast coho ESU is extremely limited. There are no long-term time series of spawner abundance for individual river systems. Analyses of juvenile coho presence-absence information, juvenile density surveys, and irregular adult counts for the South Fork Noyo River indicate low abundance and long-term downward trends for the naturally spawning populations throughout the ESU. Improved ocean conditions coupled with favorable stream flows and harvest restrictions have contributed to increased returns in 2001 in streams in the northern portion of the ESU, as indicated by an increase in the observed presence of fish in historically occupied streams. Data are particularly lacking for many river basins in the southern two-thirds of the ESU where naturally spawning populations are considered to be at the greatest risk. The extirpation or near extirpation of natural coho salmon populations in several major river basins, and across most of the southern historical range of the ESU, represents a significant risk to ESU spatial structure and diversity. Artificial propagation of coho salmon within the Central California Coast ESU has declined since the ESU was listed in 1996 though it continues at the Noyo River and Scott Creek facilities, and two captive broodstock populations have recently been established. Genetic diversity risk associated with out-of-basin transfers appears to be minimal, but diversity risk from domestication selection and low effective population sizes in the remaining hatchery programs remains a concern. An out-of-ESU artificial propagation program for coho was operated at the Don Clausen hatchery on the Russian River through the mid 1990's, but was terminated in 1996. Termination of this program was considered by the BRT a positive development for naturally produced coho in this ESU. For the naturally

spawning component of the ESU, the BRT found very high risk for the abundance, productivity, and spatial structure VSP parameters and comparatively moderate risk with respect to the diversity VSP parameter. The lack of direct estimates of the performance of the naturally spawned populations in this ESU, and the associated uncertainty this generates, was of specific concern to the BRT. Informed by the VSP risk assessment and the associated uncertainty, the strong majority opinion of the BRT was that the naturally spawned component of the Central California Coast coho ESU was ''in danger of extinction.'' The minority opinion was that this ESU is ''likely to become endangered within the foreseeable future.''

Four artificial propagation programs are considered to be part of the Central California Coast coho ESU (Table 2; NMFS, 2004b). The Noyo River program is an augmentation program located in the northern portion of the ESU which regularly incorporates local natural-origin fish into the broodstock and releases fish into the Noyo River watershed. The program has been in operation for over 50 years, but the program has recently been discontinued. The Monterey Bay Salmon and Trout Project is an artificial propagation program that is operated as a conservation program designed to supplement the local natural population, located in the southern portion of the ESU (south of San Francisco) where natural populations are at the highest risk of extinction. Relatively small numbers of fish are spawned and released from this program on Scott Creek, but natural-origin fish are routinely incorporated into the broodstock. Recently, captive broodstock programs have been established for the Russian River and Scott Creek populations in order to preserve the genetic resources of these two naturally spawning populations and for use in artificial programs. Artificially propagated fish from these two captive broodstock programs will be outplanted in the Russian River and Scott Creek watersheds to supplement local natural populations. The Russian River program is integrated with a habitat restoration program designed to improve habitat conditions and subsequent survival for outplanted coho juveniles.

An assessment of the effects of these four artificial propagation programs on the viability of the ESU in-total concluded that they decrease risk of extinction to some degree by contributing to increased ESU abundance and diversity, but have a neutral or uncertain effect on the productivity or spatial structure of the ESU (NMFS, 2004b). The three conservation programs are considered crucial to the recovery of this ESU, but it is unclear if they have had any beneficial effect on natural spawner abundance. The Noyo River program which had been operated for over 50 years is being terminated because it has not met CDFG's goal of increasing coho salmon abundance. Productivity of coho salmon in the Noyo River is thought to be reduced or unaffected by long term artificial propagation in that watershed. It is uncertain how effective the captive broodstock and rearing programs in the Russian River and Scott Creek will be in increasing productivity, but efforts in the Russian River are coupled with a major habitat restoration effort which may improve natural population productivity. The two captive broodstock programs will hopefully contribute to future abundance and improved spatial structure of the ESU, but outplanting has yet to be implemented so long term benefits are uncertain. The Monterey Bay Salmon and Trout Program is thought to be responsible for sustaining the presence of natural origin coho salmon in Scott Creek, which is at the southern extent of the ESU's range. Both of the captive broodstock programs, particularly the Scott Creek program, are genetic repositories which serve to preserve the genome of the ESU thereby reducing genetic diversity risks. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Central California Coast coho ESU in-total is ''in danger of extinction'' (NMFS, 2004c).

Southern Oregon/Northern California Coast Coho ESU

The only reliable time series of adult abundance for the naturally spawning component of the Southern Oregon/Northern California Coast coho ESU is for the Rogue River population in southern Oregon. The California portion of the ESU is characterized by a paucity of data, with only a few available spawner indices and presence-absence surveys. The recent 5-year mean abundance for the Rogue River is approximately 5,000 natural spawners and is the highest such abundance for the Rogue River data series (since 1980). Both long- and short-term productivity trends for Rogue River natural spawners are above replacement. The BRT concluded, based on an analysis of pre-harvest abundance, however, that these positive trends for the Rogue River population reflect the effects of reduced harvest rather than improved freshwater conditions and population productivity. Less reliable indices of spawner abundance in several California populations suggest flat or declining trends. Relatively low levels of observed presence in historically occupied coho streams (32–56 percent from 1986 to 2000) indicate continued low abundance in the California portion of this ESU. Indications of stronger 2001 returns in several California populations, presumably due to favorable freshwater and ocean conditions, is encouraging but must be evaluated in the context of more than a decade of generally poor performance. Nonetheless, the high occupancy rate of historical streams in 2001 suggests that much habitat remains accessible to coho salmon. Although extant populations reside in all major river basins within the ESU, the BRT was concerned about the loss of local populations in the Trinity, Klamath, and Rogue river systems. The high hatchery production in these systems may mask trends in ESU population structure and pose risks to ESU diversity. The recent termination of several out-of-ESU hatcheries in California is expected to result in decreased risks to ESU diversity. The BRT found moderately high risks for abundance and productivity VSP categories, with comparatively lower risk for spatial structure and diversity. Informed by this risk assessment, the strong majority opinion of the BRT was that the naturally spawned component of the Southern Oregon/Northern California Coast coho ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion assessed ESU extinction risk as ''in danger of extinction,'' although a slight minority concluded that the ESU is ''not in danger of extinction or likely to become endangered within the foreseeable future'' category.

There are three artificial propagation programs releasing hatchery coho salmon that are considered to be part of the Southern Oregon/Northern California Coast Coho ESU. The Rogue River hatchery in Oregon and the Trinity River and Iron Gate hatcheries (Klamath River) in California are all mitigation programs designed to produce fish for harvest, but they integrate naturally produced coho salmon into the broodstock in an attempt to minimize the genetic effects of returning hatchery adults that spawn naturally. All three programs have been in operation for several decades with smolt production goals ranging from 75,000 to 500,000 fish.

An assessment of the effects of these three artificial propagation programs on the viability of the ESU in-total concluded that they decrease risk of extinction by contributing to increased ESU abundance, but have a neutral or uncertain effect on the productivity, spatial structure and diversity of the ESU (NMFS, 2004b). Abundance of the ESU in-total has been increased as a result of these artificial propagation programs, particularly in the Rogue and Trinity Rivers. In the Rogue River, hatchery origin fish have averaged approximately half of the returning spawners over the past 20 years. In the Trinity River, most naturally spawning fish are thought to be of hatchery origin based on weir counts at Willow Creek. The effects of these artificial propagation programs on ESU productivity and spatial structure are limited. Only three rivers have hatchery populations and natural populations are depressed throughout the range of the ESU. The effects of these hatchery programs on ESU diversity are likely limited. Natural origin fish have been incorporated into the broodstock but the magnitude of natural fish use is unknown. Informed by the BRT's findings (NMFS, 2003b) and NMFS'' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Southern Oregon/Northern California Coast coho ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Oregon Coast Coho ESU

The abundance of natural spawners in the Oregon Coast coho ESU for 2001 and 2002 (163,000 and 264,000 spawners, respectively) far exceeded the abundance observed for the past several decades, and preliminary projections for 2003 (approximately 118,000 spawners) suggest that these substantial increases may be sustained. Furthermore, increases in natural spawner abundance have occurred in many populations in the northern portion of the ESU, populations that were the most depressed at the time of the last review (NMFS, 1997a). However, when the abundance data are evaluated by coho brood year, it is apparent the strong year-classes of the last three years were preceded by three years of recruitment failure. Recruitment failure (meaning that a given year class of natural spawners failed to replace itself when its offspring returned to the spawning grounds 3 years later) occurred for the 1994, 1995, and 1996 brood years returning in 1997, 1998, and 1999, respectively. These three years of recruitment failure are the only such instances that have been observed in the entire time series of data collected for Oregon Coast coho salmon. Although the recent dramatic increases in spawner abundance are encouraging, the long-term trends in ESU productivity are still negative due to the poor performance of the 1994–1996 brood years. The majority of the BRT felt that the recent increases in coho returns were most likely attributable to favorable ocean conditions and reduced harvest rates. The BRT was uncertain as to whether such favorable marine conditions would continue into the future. Despite the likely benefits to spawner abundance levels gained by the dramatic reduction of direct harvest of Oregon Coast coho populations (PFMC, 1998), harvest management can no longer compensate for declining productivity due to other factors. The BRT was concerned that if the long-term decline in productivity reflects deteriorating conditions in freshwater habitat, this ESU could face very serious risks of local extirpations if ocean conditions reverted back to poor productivity conditions. Approximately 30 percent of the ESU has suffered habitat fragmentation by culverts and thermal barriers, generating concerns about ESU spatial structure. Additionally, the lack of response to favorable ocean conditions for some populations in smaller streams, and the distinct patterns between north and south coast populations may indicate compromised connectivity among populations. The degradation of many lake habitats, and the resultant impacts on several lake populations in the Oregon Coast coho ESU, also poses risks to ESU diversity. The BRT noted that hatchery closures, reductions in the number of hatchery smolt releases, and improved marking rates of hatchery fish have reduced risks to diversity associated with artificial propagation.

The BRT found high risk in the productivity VSP category, and comparatively lower risk for the other VSP categories. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Oregon Coast coho ESU is ''likely to become endangered within the foreseeable future.'' However, a substantial minority of the BRT concluded that the ESU is ''not in danger of extinction or likely to become endangered within the foreseeable future.'' The minority felt that the large number of spawners in 2001–2002, and the high projected abundance for 2003, demonstrate that this ESU is not ''in danger of extinction'' or ''likely to become endangered within the foreseeable future.'' Furthermore, the minority felt that recent strong returns following 3 years of recruitment failure demonstrate that populations in this ESU exhibit considerable resilience.

At present, there are five coastal coho artificial propagation programs that are considered to be part of the Oregon Coast coho ESU (Table 2). All of these programs are operated by the State of Oregon to provide harvest opportunities. Substantial changes in coho salmon propagation have occurred over the previous 10 years to achieve a balance between obligations to help conserve coastal coho and to mitigate for habitat degradation, and maintain fishing opportunities. These changes include a dependence on local origin fish for broodstock, management actions to reduce straying (10 percent is the objective), and the cessation of stocking coho in five coastal rivers. Coastal coho stocking has decreased by 84 percent since 1993. These programs are not managed to contribute to ESU abundance, productivity, spatial structure, or diversity.

NMFS' assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Although these hatchery programs contribute to the increased total abundance for 4 of the 19 ESU populations, the effect on the abundance of the ESU in-total is slight. In an attempt to avoid potentially adverse effects of naturally spawning hatchery fish on ESU natural populations, the State of Oregon manages these hatchery populations to limit the numbers of hatchery fish on the spawning grounds. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain, however, given the low proportion of naturally spawning hatchery fish in the ESU, any contribution is likely negligible. There is little to no effect of the ESU hatchery programs on the spatial structure of the ESU in-total, as most populations are not affected by artificial propagation. The spatial distribution of some natural populations, however, is negatively affected by the operation of hatchery facilities and weirs. There is little to no benefit of the Oregon Coast coho hatchery programs to ESU diversity. Those programs that incorporate natural fish into the broodstock are contributing to reducing past risks to ESU diversity posed by artificial propagation. Two out-of-ESU hatchery programs (the Salmon River (ODFW stock # 33) and

Trask River (ODFW stock # 34) hatchery programs), however, do not incorporate natural fish into the broodstock and remain a threat to ESU diversity. Collectively, artificial propagation programs in the ESU provide a slight beneficial effect to ESU abundance, but have neutral or uncertain effects on ESU productivity, spatial structure, and diversity. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Oregon Coast coho ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Lower Columbia River Coho ESU

There are only two extant populations in the Lower Columbia River coho ESU with appreciable natural production (the Clackamas and Sandy River populations), from an estimated 23 historical populations in the ESU. Although adult returns in 2000 and 2001 for the Clackamas and Sandy River populations exhibited moderate increases, the recent 5-year mean of natural-origin spawners for both populations represents less than 1,500 adults. The Sandy River population has exhibited recruitment failure in 5 of the last 10 years, and has exhibited a poor response to reductions in harvest. During the 1980s and 1990s natural spawners were not observed in the lower tributaries in the ESU. Coincident with the 2000–2001 abundance increases in the Sandy and Clackamas populations, a small number of coho spawners of unknown origin have been surveyed in some lower tributaries. Short- and long-term trends in productivity are below replacement. Approximately 40 percent of historical habitat is currently inaccessible, which restricts the number of areas that might support natural production, and further increases the ESU's vulnerability to environmental variability and catastrophic events. The extreme loss of naturally spawning populations, the low abundance of extant populations, diminished diversity, and fragmentation and isolation of the remaining naturally produced fish confer considerable risks to the ESU. The paucity of naturally produced spawners in this ESU is contrasted by the very large number of hatchery produced adults. The abundance of hatchery coho returning to the Lower Columbia River in 2001 and 2002 exceeded one million and 600,000 fish, respectively. The BRT expressed concern that the magnitude of hatchery production continues to pose significant genetic and ecological threats to the extant natural populations in the ESU. However, these hatchery stocks at present collectively represent a significant portion of the ESU's remaining genetic resources. The twenty-one hatchery stocks considered to be part of the ESU (Table 2), if appropriately managed, may prove essential to the restoration of more widespread naturally spawning populations.

The BRT found extremely high risks for each of the VSP categories. Informed by this risk assessment, the strong majority opinion of the BRT was that the naturally spawned component of the Lower Columbia River coho ESU is ''in danger of extinction.'' The minority opinion was that the ESU is ''likely to become endangered within the foreseeable future.''

All of the 21 hatchery programs included in the Lower Columbia River coho ESU are designed to produce fish for harvest, with two small programs designed to also augment the natural spawning populations in the Lewis River Basin. Artificial propagation in this ESU continues to represent a threat to the genetic, ecological, and behavioral diversity of the ESU. Past artificial propagation efforts imported out-of-ESU fish for broodstock, generally did not mark hatchery fish, mixed broodstocks derived from different local populations, and transplanted stocks among basins throughout the ESU. The result is that the hatchery stocks considered to be part of the ESU represent a homogenization of populations. Several of these risks have recently begun to be addressed by improvements in hatchery practices. Out-of-ESU broodstock is no longer used, and near 100-percent marking of hatchery fish is employed to afford improved monitoring and evaluation of broodstock and (hatchery- and natural-origin) returns. However, many of the within-ESU hatchery programs do not adhere to best hatchery practices. Eggs are often transferred among basins in an effort to meet individual program goals, further compromising ESU spatial structure and diversity. Programs may use broodstock that does not reflect what was historically present in a given basin, limiting the potential for artificial propagation to establish locally adapted naturally spawning populations. Many programs lack Hatchery and Genetic Management Plans that establish escapement goals appropriate for the natural capacity of each basin, and that identify goals for the incorporation of natural-origin fish into the broodstock.

NMFS' assessment of the effects of artificial propagation on ESU extinction risk concluded that hatchery programs collectively mitigate the immediacy of extinction risk for the Lower Columbia River coho ESU in-total in the short term, but that these programs do not substantially reduce the extinction risk of the ESU in the foreseeable future (NMFS, 2004c). At present, within ESU hatchery programs significantly increase the abundance of the ESU in-total. Without adequate long-term monitoring, the contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. The hatchery programs are widely distributed throughout the Lower Columbia River, reducing the spatial distribution of risk to catastrophic events. Additionally, reintroduction programs in the Upper Cowlitz River may provide additional reduction of ESU spatial structure risks. As mentioned above, the majority of the ESU's genetic diversity exists in the hatchery programs. Although these programs have the potential of preserving historical local adaptation and behavioral and ecological diversity, the manner in which these potential genetic resources are presently being managed poses significant risks to the diversity of the ESU in-total. At present, the Lower Columbia River coho hatchery programs reduce risks to ESU abundance and spatial structure, provide uncertain benefits to ESU productivity, and pose risks to ESU diversity. Overall, artificial propagation mitigates the immediacy of ESU extinction risk in the short-term, but is of uncertain contribution in the long term.

Over the long term, reliance on the continued operation of these hatchery programs is risky (NMFS, 2004b). Several Lower Columbia River coho hatchery programs have been terminated, and there is the prospect of additional closures in the future. With each hatchery closure, any potential benefits to ESU abundance and spatial structure are reduced. Risks of operational failure, disease, and environmental catastrophes further complicate assessments of hatchery contributions over the long term. Additionally, the two extant naturally spawning populations in the ESU were described by the BRT as being ''in danger of extinction.'' Accordingly, it is likely that the Lower Columbia River coho ESU may exist in hatcheries only within the foreseeable future. It is uncertain whether these isolated hatchery programs can persist without the incorporation of natural-origin fish into the broodstock. Although there are

examples of salmonid hatchery programs having been in operation for relatively long periods of time, these programs have not existed in complete isolation. Long-lived hatchery programs historically required infusions of wild fish in order to meet broodstock goals. The long-term sustainability of such isolated hatchery programs is unknown. It is uncertain whether the Lower Columbia River coho isolated hatchery programs are capable of mitigating risks to ESU abundance and productivity into the foreseeable future. In isolation, these programs may also become more than moderately diverged from the evolutionary legacy of the ESU, and hence no longer merit inclusion in the ESU. Under either circumstance, the ability of artificial propagation to buffer the immediacy of extinction risk over the long-term is uncertain. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the short- and long-term effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Lower Columbia coho ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Columbia River Chum ESU

Approximately 90 percent of the historical populations in the Columbia River chum ESU are extirpated or nearly so. During the 1980s and 1990s, the combined abundance of natural spawners for the Lower and Upper Columbia River Gorge, Washougal, and Grays River populations was below 4,000 adults. In 2002, however, the abundance of natural spawners exhibited a substantial increase evident at several locations in the ESU. The preliminary estimate of natural spawners is approximately 20,000 adults. The cause of this dramatic increase in abundance is unknown. Improved ocean conditions, the initiation of a supplementation program in the Grays River, improved flow management at Bonneville Dam, favorable freshwater conditions, and increased survey sampling effort may all have contributed to the elevated 2002 abundance. However, long- and short-term productivity trends for ESU populations are at or below replacement. The loss of off-channel habitats and the extirpation of approximately 17 historical populations increase the ESU's vulnerability to environmental variability and catastrophic events. The populations that remain are low in abundance, and have limited distribution and poor connectivity.

The BRT found high risks for each of the VSP categories, particularly for ESU spatial structure and diversity. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Columbia River chum ESU is ''likely to become endangered within the foreseeable future,'' with a minority opinion that it is ''in danger of extinction.''

There are three artificial propagation programs producing chum salmon considered to be part of the Columbia River chum ESU. These are conservation programs designed to support natural production. The Washougal Hatchery artificial propagation program provides artificially propagated chum salmon for re-introduction into recently restored habitat in Duncan Creek, Washington. This program also provides a safety-net for the naturally spawning population in the mainstem Columbia River below Bonneville Dam, which can access only a portion of spawning habitat during low flow conditions. The other two programs are designed to augment natural production in the Grays River and the Chinook River in Washington. All these programs use naturally produced adults for broodstock. These programs were only recently established (1998–2002), with the first hatchery chum returning in 2002.

NMFS' assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). The Columbia River chum hatchery programs have only recently been initiated, and are beginning to provide benefits to ESU abundance. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. The Sea Resources and Washougal Hatchery programs have begun to provide benefits to ESU spatial structure through reintroductions of chum salmon into restored habitats in the Chinook River and Duncan Creek, respectively. These three programs have a neutral effect on ESU diversity. Collectively, artificial propagation programs in the ESU provide a slight beneficial effect to ESU abundance and spatial structure, but have neutral or uncertain effects on ESU productivity and diversity. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Columbia River chum ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Hood Canal Summer Chum ESU

Adult returns for some populations in the Hood Canal summer-run chum ESU showed modest improvements in 2000, with upward trends continuing in 2001 and 2002. The recent 5-year mean abundance is variable among populations in the ESU, ranging from one fish to nearly 4,500 fish. Hood Canal summer-run chum are the focus of an extensive rebuilding program developed and implemented since 1992 by the state and tribal co-managers. Two populations (the combined Quilcene and Union River populations) are above the conservation thresholds established by the rebuilding plan. However, most populations remain depressed. Estimates of the fraction of naturally spawning hatchery fish exceed 60 percent for some populations, indicating that reintroduction programs are supplementing the numbers of total fish spawning naturally in streams. Long-term trends in productivity are above replacement for only the Quilcene and Union River populations. Buoyed by recent increases, seven populations are exhibiting short-term productivity trends above replacement. Of an estimated 16 historical populations in the ESU, seven populations are believed to have been extirpated or nearly extirpated. Most of these extirpations have occurred in populations on the eastern side of Hood Canal, generating additional concern for ESU spatial structure. The widespread loss of estuary and lower floodplain habitat was noted by the BRT as a continuing threat to ESU spatial structure and connectivity. There is some concern that the Quilcene hatchery stock is exhibiting high rates of straying, and may represent a risk to historical population structure and diversity. However, with the extirpation of many local populations, much of this historical structure has been lost, and the use of Quilcene hatchery fish may represent one of a few remaining options for Hood Canal summer-run chum conservation.

The BRT found high risks for each of the VSP categories. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Hood Canal summer-run chum ESU is ''likely to become endangered within the foreseeable future,'' with a minority opinion that the ESU is ''in danger of extinction.''

There are currently eight programs releasing summer chum salmon that are considered to be part of the Hood Canal summer chum ESU (Table 2). Six of the

programs are supplementation programs implemented to preserve and increase the abundance of native populations in their natal watersheds. These supplementation programs propagate and release fish into the Salmon Creek, Jimmycomelately Creek, Big Quilcene River, Hamma Hamma River, Lilliwaup Creek, and Union River watersheds. The remaining two programs use transplanted summer-run chum salmon from adjacent watersheds to reintroduce populations into Big Beef Creek and Chimacum Creek, where the native populations have been extirpated. Each of the hatchery programs includes research, monitoring, and evaluation activities designed to determine success in recovering the propagated populations to viable levels, and to determine the demographic, ecological, and genetic effects of each program on target and non-target salmonid populations. All the Hood Canal summer-run chum hatchery programs will be terminated after 12 years of operation.

NMFS'' assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS 2004c). The hatchery programs are benefiting ESU abundance by increasing total ESU abundance as well as the number of naturally spawning summer-run chum salmon. Several of the programs have likely prevented further population extirpations in the ESU. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. The hatchery programs are benefiting ESU spatial structure by increasing the spawning area utilized in several watersheds and by increasing the geographic range of the ESU through reintroductions. These programs also provide benefits to ESU diversity. By bolstering total population sizes, the hatchery programs have likely stemmed adverse genetic effects for populations at critically low levels. Additionally, measures have been implemented to maintain current genetic diversity, including the use of native broodstock and the termination of the programs after 12 years of operation to guard against long-term domestication effects. Collectively, artificial propagation programs in the ESU presently provide a slight beneficial effect to ESU abundance, spatial structure, and diversity, but uncertain effects to ESU productivity. The long-term contribution of these programs after they are terminated is uncertain. Despite the current benefits provided by the comprehensive hatchery conservation efforts for Hood Canal summer-run chum, the ESU remains at low overall abundance with nearly half of historical populations extirpated. Informed by the BRT's findings (NMFS, 2003b) and NMFS'' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Hood Canal summer-run chum ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Southern California *O. mykiss* ESU

Assessing the extinction risk for the Southern California *O. mykiss* ESU is made difficult by the general lack of historical or recent data for this ESU, and the uncertainty generated by this paucity of information. The historical steelhead run for four of the major river systems in the ESU is estimated to have been between 32,000 and 46,000 adults. Recent run size for the same four systems, however, has been estimated to be fewer than 500 total adults. Run sizes in river systems within the ESU are believed to range between less than five anadromous adults per year, to less than 100 anadromous adults per year. However, the available data are insufficient to estimate abundance levels or trends in productivity. Of 65 river drainages where *O. mykiss* is known to have occurred historically, between 26 and 52 percent are still occupied (uncertainty in this estimate is the result of the inaccessibility of 17 basins to population surveys). Colonization events of *O. mykiss* were documented during 1996–2002 in Topanga and San Mateo Creeks. These colonization events were represented by few spawning adults or the observation of a single individual. Twenty-two basins are considered vacant, extirpated, or nearly extirpated due to dewatering or the establishment of impassable barriers below all spawning habitats. Except for the colonization of a small population in San Mateo Creek in northern San Diego County, the anadromous form of the Southern California *O. mykiss* ESU appears to have been completely extirpated from nearly all systems in the southern portion of the ESU from Malibu Creek to the Mexican border. Recently, the presence and spawning of anadromous *O. mykiss* has been observed in two streams south of Malibu Creek (in Topanga and San Mateo Creeks), prompting the extension of the ESU's boundaries to the U.S.-Mexico border in 2000 (67 FR 21586; May 1, 2002).

Historically, resident fish are believed to have occurred in all areas in the ESU used by steelhead, although the current distribution is more restricted. Little or no information is available regarding resident populations considered to be part of this ESU. Due to the extremely low numbers of anadromous fish in this ESU, resident populations may comprise a substantial proportion of fish in the ESU. For some BRT members, the presence of relatively numerous resident fish reduces risks to ESU abundance, but provides an uncertain contribution to ESU productivity, spatial structure, and diversity (NMFS, 2003b; 2004a).

The BRT found extremely high risks for each of the four VSP categories. Informed by this assessment, the strong majority opinion of the BRT was that the Southern California *O. mykiss* ESU is ''in danger of extinction.'' The minority opinion was that the ESU is ''likely to become endangered within the foreseeable future.'' There are no artificially propagated populations of *O. mykiss* in this ESU that mitigate the BRT's assessment that the ESU is ''in danger of extinction.''

South-Central California Coast O. mykiss ESU

There is a paucity of abundance information for the South-Central California Coast *O. mykiss* ESU. Data are not available for the two largest river systems in the ESU, the Pajaro and Salinas basins. These systems are much degraded and are expected to have steelhead runs reduced in size from historical levels. Data available for the Carmel River underscore the population's vulnerability to drought conditions, as well as its dependence on the intensive management of the river system. The most recent 5-year mean abundance of fish in the Carmel River is approximately 600 adults. Despite observed and inferred declines in abundance, the current spatial distribution of the anadromous life form in the ESU does not appear to be much reduced from what occurred historically. *O. mykiss* are present in approximately 86 to 95 percent of historically occupied streams (the uncertainty in the estimated occupancy is due to three streams that could not be accessed for population surveys). The BRT was concerned, however, that the larger Pajaro and Salinas basins are spatially and ecologically distinct from other ESU populations, such that further degradation of these areas will negatively impact ESU spatial structure and diversity. Historically, resident fish are believed to have occurred in all areas in the ESU used by steelhead, although current distribution is more restricted. For some BRT members,

presence of relatively numerous resident fish reduces risks to ESU abundance, but provides an uncertain contribution to ESU productivity, spatial structure, and diversity (NMFS, 2003b; 2004a). The BRT found high risks for each of the four VSP categories, particularly for spatial structure. Informed by this assessment, the strong majority opinion of the BRT was that the South-Central Coast *O. mykiss* ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion was that the ESU is ''in danger of extinction.'' There are no artificially propagated populations of *O. mykiss* in this ESU that mitigate the BRT's assessment that the ESU is ''likely to become endangered within the foreseeable future.''

Central California Coast *O. mykiss* ESU

There are no time series of population abundance data for the naturally spawning component of the Central California Coast *O. mykiss* ESU. The naturally spawning population in the largest river system in the ESU, the Russian River, is believed to have declined seven-fold since the mid-1960s. Juvenile density information is available for five ''representative'' populations, and each exhibits a downward decline over the last 8 years of available data. Predation by increasing numbers of California sea lions at river mouths and during the ocean phase was noted as a recent development also posing significant risk. Juvenile *O. mykiss* have been observed in approximately 82 percent of historically occupied streams, indicating that the ESU continues to be spatially well distributed. However, impassible dams have cut off substantial portions of spawning habitat in some basins, generating concern about the spatial structure of the naturally spawning component of the ESU. Historically, resident fish are believed to have occurred in all areas in the ESU used by steelhead, although current distribution is more restricted. For some BRT members, the presence of resident fish reduces risks to ESU natural abundance, but provides an uncertain contribution to ESU productivity, spatial structure, and diversity (NMFS, 2003b; 2004a). The BRT found moderately high risk for the abundance and productivity VSP risk categories for naturally spawning fish, and comparatively less risk for the spatial structure and diversity categories. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Central California Coast *O. mykiss* ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion was that the ESU is ''in danger of extinction.''

Two artificial propagation programs are considered to be part of the Central California Coast *O. mykiss* ESU (Table 2; NMFS, 2004b). One program is located in the northernmost river in the ESU (Don Clausen hatchery on the Russian River), while the other is located in the southern portion of the ESU (Monterey Bay Salmon and Trout Project on the Scott River) where the extinction risk for local populations is thought to be higher. The hatchery on the Russian River is a relatively large-scale mitigation program which is primarily intended to support recreational fisheries for steelhead in this watershed. This program was established primarily with local broodstock, but has not integrated natural-origin fish into the broodstock since 2000, and is, therefore, isolated from the natural spawning component of the ESU. Escapement to the hatchery is substantial, but there are no estimates of overall Russian River *O. mykiss* abundance, nor are there any estimates of the contribution of hatchery-origin fish to overall abundance. The artificial propagation program on Scott Creek is much smaller than the Russian River program. It incorporates natural-origin fish from Scott Creek and nearby San Lorenzo Creek for broodstock and is currently operated for the purpose of restoring the local natural population.

NMFS' assessment of the effects of these two artificial propagation programs on the viability of the ESU in-total concluded that they decrease risk to some degree by contributing to increased ESU fish abundance, but have neutral or uncertain effects on productivity, spatial structure or diversity of the ESU (NMFS, 2004b). Hatchery origin steelhead from the Don Clausen hatchery program on the Russian River have been increasing in abundance for the past several years, but many fish return to the hatchery or are harvested and there is no information documenting the extent to which hatchery origin fish spawn naturally. Though there is natural spawning of steelhead in the Russian River system, the abundance of spawners has not been documented. There is no information documenting whether the Monterey Bay Salmon and Trout Project program is increasing local abundance of natural steelhead, but the program was recently converted from one that supported a fishery to one that is attempting to restore the local natural population. Effects of these artificial propagation programs on productivity are uncertain, and no efforts are currently underway to assess the effects of productivity on the naturally spawning component of the ESU. The Don Clausen hatchery population has been increasing in abundance and has a relatively high level of productivity, but it is managed to support a fishery rather than to augment naturally spawning local populations. Hatchery origin steelhead from both programs generally occur in the same areas as natural origin fish, and there is no information indicating that either program has resulted in an expanded distribution of the ESU in-total, thus effects to ESU spatial structure are likely neutral. The Don Clausen program uses only hatchery-origin fish for broodstock, and this is likely to lead to divergence of the hatchery stock from the local natural population and pose a risk to local populations. The Monterey Bay Salmon and Trout Program uses wild broodstock to minimize domestication effects and is operated to assist in the restoration of local stocks. However, it is uncertain to what extent the program serves to preserve genetic diversity in the ESU. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Central California Coast *O. mykiss* ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

California Central Valley *O. mykiss* ESU

Little information is available regarding the viability of the naturally spawning component of the California Central Valley *O. mykiss* ESU. Anadromous *O. mykiss* spawning above the Red Bluff Diversion Dam (RBDD) have a small population size (the most recent 5-year mean is less than 2,000 adults) and exhibit strongly negative trends in abundance and population growth rate. However, there have not been any escapement estimates made for the area above RBDD since the mid 1990's. The only recent ESU-level estimate of abundance is a crude extrapolation from the incidental catch of out-migrating juvenile steelhead captured in a midwater-trawl sampling program for juvenile chinook salmon below the confluence of the Sacramento and San Joaquin Rivers. The extrapolated abundance of naturally spawning female steelhead involves broad assumptions about female fecundity (number of eggs produced per female) and egg-to-smolt survival rates. Based on this extrapolation, it is estimated that on average during 1998–2000, approximately 181,000 juvenile

steelhead were produced naturally each year in the Central Valley by approximately 3,600 spawning female steelhead. It is estimated that there were 1 to 2 million spawners in the Central Valley prior to 1850, and approximately 40,000 spawners in the 1960s. Although it appears that *O. mykiss* remain widely distributed in Sacramento River tributaries, the vast majority of historical spawning areas are currently above impassable dams. The BRT also expressed concern about the effects of significant production of out-of-ESU hatchery steelhead in the American (Nimbus Hatchery) and Mokelumne (Mokelumne River Hatchery) Rivers. Historically, resident fish are believed to have occurred in all areas in the ESU used by steelhead, although current distribution is more restricted. For some BRT members, the presence of resident fish reduces risks to ESU abundance somewhat, but provides an uncertain contribution to ESU productivity, spatial structure, and diversity (NMFS, 2003b; 2004a). The BRT found high risk for the abundance, productivity, and spatial structure VSP categories, and moderately high risk for the diversity category. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the California Central Valley *O. mykiss* ESU is ''in danger of extinction.'' The minority opinion was that the naturally spawned component of the ESU is ''likely to become endangered within the foreseeable future.''

There are two artificial propagation programs considered to be part of the Central Valley *O. mykiss* ESU (Table 2; NMFS, 2004b). Both programs are located in the Sacramento River Basin and are large-scale mitigation facilities intended to support recreational fisheries for steelhead rather than to supplement naturally spawning populations. The Coleman NFH is located on Battle Creek, a tributary in the upper Sacramento River. The program has been in operation for several decades and has a production goal of 600,000 smolts per year. Broodstock was originally derived from local or nearby Sacramento River stocks, and all hatchery production is marked to facilitate harvest management and minimize impacts on natural origin fish. The natural population of *O. mykiss* in Battle Creek is integrated with the hatchery population, though the hatchery bypasses natural origin fish into the upper portion of the watershed above the hatchery. The Feather River Hatchery is located on the Feather River, a major tributary in the upper Sacramento River basin. The program has also been operated for several decades and has a production goal of 400,000 smolts per year. Broodstock was originally derived from local or nearby stocks, and all hatchery production is marked to allow harvest and also minimize impacts on natural origin fish. The natural population in the Feather River is integrated with the hatchery population.

NMFS' assessment of the effects of these two artificial propagation programs on the viability of the ESU in-total concluded that they decrease risk to some degree by contributing to increased abundance of the ESU, but have a neutral or uncertain effect on productivity, spatial structure and diversity of the ESU (NMFS, 2004b). Both the Coleman NFH and Feather River hatchery programs have increased abundance of fish in the ESU in-total; however, both programs are operated to support recreational harvest rather than to supplement natural spawning populations. Thus, much of the production is targeted for harvest and for use as broodstock, and the contribution to naturally spawning populations is uncertain. In the future, Coleman NFH may use some hatchery fish as part of an effort to supplement steelhead production in Upper Battle Creek above the hatchery. Effects of these programs on ESU diversity are uncertain, but both programs incorporate natural origin fish into the broodstock to minimize divergence from naturally spawning local populations. The available genetic information suggests that both hatchery populations are genetically similar to natural origin fish in the upper Sacramento River basin. Effects on productivity are uncertain, but the Coleman NFH program is conducting a study to evaluate hatchery origin steelhead productivity relative to natural origin fish in Battle Creek. There is limited spawning habitat in both the Feather River and lower Battle Creek, so it is possible that high returns of hatchery fish to these watersheds will compete with local natural origin spawners for habitat, thereby reducing overall productivity. The Feather River hatchery program does not affect ESU spatial structure, however, the Coleman NFH program may have some limited beneficial effects in the future. The hatchery currently passes all natural origin fish into the upper Battle Creek watershed, but may supplement this with hatchery origin fish in coordination with ongoing restoration efforts in upper Battle Creek. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the California Central Valley *O. mykiss* ESU in-total is ''in danger of extinction'' (NMFS, 2004c).

Northern California *O. mykiss* ESU

There is little historical abundance information for the naturally spawning portion of the Northern California *O. mykiss* ESU. However, the available data (dam counts on the Eel and Mad Rivers) indicate a substantial decline from the abundance levels of the 1930s. The three available summer steelhead data sets exhibit recent 5-year mean abundance levels from three to 418 adults, and exhibit downward short- and long-term trends. The short- and long-term abundance trends for the one current winter steelhead data series show a slightly positive trend. However, the recent 5-year mean abundance level is extremely low (32 adults). The juvenile density data for six of ten (putative) independent populations exhibit declining trends. Despite low abundance and downward trends, *O. mykiss* appears to be still widely distributed throughout this ESU. The BRT expressed concern about ESU diversity due to the low effective population sizes in the ESU, and concern over interactions with the Mad River Hatchery stock that is not considered to be part of the ESU. This hatchery program is being terminated in 2004. Thus potential genetic risks associated with propagation of this non-ESU stock will decline in the future. Historically, resident fish are believed to have occurred in all areas in the ESU used by steelhead, although current distribution is more restricted. In this ESU, resident fish do not substantially increase the total ESU abundance. The BRT did not consider resident fish to reduce risks to ESU abundance, and their contribution to ESU productivity, spatial structure, and diversity is uncertain (NMFS, 2003b; 2004a). The BRT found high risk for the abundance VSP category, and moderately high risk for productivity. The ESU spatial structure and diversity categories were of comparatively lower concern. Informed by this assessment, the majority opinion of the BRT was that the naturally spawned component of the Northern California *O. mykiss* ESU is ''likely to become endangered within the foreseeable future.'' The minority BRT opinion was split between the ''in danger of extinction'' and ''not in danger of extinction or likely to become

endangered within the foreseeable future.''

There are two small artificial propagation programs producing steelhead considered to be part of the Northern California *O. mykiss* ESU (Table 2; NMFS, 2004b). These propagation programs (Yager Creek and N.F. Gualala River hatchery) are very small ventures aimed at augmenting local steelhead abundance, and both were in operation for over two decades. The Yager Creek hatchery has not been in operation for the past few years, and there are currently no plans to reopen it. The Gualala River Project has terminated the hatchbox portion of its operation but is continuing with a juvenile rescue and rearing program.

NMFS' assessment of the effects of these two artificial propagation programs on the viability of the ESU in-total concluded that they may decrease risk to some degree by contributing to increased abundance of the ESU, but have a neutral or uncertain effect on productivity, spatial structure and diversity of the ESU (NMFS, 2004b). Both programs may have increased local natural population abundance to a limited degree in the past, but with the termination of the artificial propagation activities in both programs' future, benefits to ESU abundance are unlikely to continue. Effects on ESU productivity are uncertain, but continuation of the rescue and rearing program by the Gualala River project may provide some limited benefits locally through the salvage of fish that would otherwise be lost from the population. There is no information to assess whether either program had any effect on ESU spatial structure, but because of their relatively small size it is unlikely to have had much effect. Past operations at both hatchery facilities used local stock and incorporated only local natural origin fish in the broodstock. Thus adverse effects on local population diversity were minimized. The juvenile rescue and rearing program operated by the Gualala River project rescues up to 15,000 fish of all year classes in some years. Thus it can serve to preserve local genetic diversity that would otherwise be lost due to adverse habitat conditions. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Northern California *O. mykiss* ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Upper Willamette River *O. mykiss* ESU

The BRT was encouraged by significant increases in adult returns (exceeding 10,000 total fish) in 2001 and 2002 for the Upper Willamette River *O. mykiss* ESU. The recent 5-year mean abundance, however, remains low for an entire ESU (5,819 adults), and individual populations remain at low abundance. Long-term trends in abundance are negative for all populations in the ESU, reflecting a decade of consistently low returns during the 1990s. Short-term trends, buoyed by recent strong returns, are positive. Approximately one-third of the ESU's historically accessible spawning habitat is now blocked. Notwithstanding the lost spawning habitat, the ESU continues to be spatially well distributed in the ESU, occupying each of the four major subbasins (the Mollala, North Santiam, South Santiam, and Calapooia Rivers). There is some uncertainty about the historical occurrence of *O. mykiss* in the Oregon Coastal Range drainages. Coastal cutthroat trout is a dominant species in the Willamette Basin, and thus *O. mykiss* is not expected to have been as widespread in this ESU as they are east of the Cascade Mountains. The BRT considered the cessation of the ''early'' winter-run hatchery program a positive sign for ESU diversity risk, but remained concerned that releases of non-native summer steelhead continue. Because coastal cutthroat trout is dominant in the basin, resident *O. mykiss* are not as abundant or widespread here as in the inland *O. mykiss* ESUs. The BRT did not consider resident fish to reduce risks to ESU abundance, and their contribution to ESU productivity, spatial structure, and diversity is uncertain (NMFS, 2003b; 2004a).

The BRT found moderate risks for each of the VSP categories. Based on this risk assessment, the majority opinion of the BRT was that the Upper Willamette River *O. mykiss* ESU is ''likely to become endangered within the foreseeable future.'' The minority BRT opinion was that the ESU is ''not in danger of extinction or likely to become endangered within the foreseeable future.''

Lower Columbia River *O. mykiss* ESU

Some anadromous populations in the Lower Columbia River *O. mykiss* ESU, particularly summer-run steelhead populations, have shown encouraging increases in abundance in the last 2 to 3 years. However, population abundance levels remain small (no population has a recent 5-year mean abundance greater than 750 spawners). The BRT could not conclusively identify a single population that is naturally viable. A number of populations have a substantial fraction of hatchery-origin spawners, and are hypothesized to be sustained largely by hatchery production. Long-term trends in spawner abundance are negative for seven of nine populations for which there are sufficient data, and short-term trends are negative for five of seven populations. It is estimated that four historical populations have been extirpated or nearly extirpated, and only one-half of 23 historical populations currently exhibit appreciable natural production. Although approximately 35 percent of historical habitat has been lost in this ESU due to the construction of dams or other impassible barriers, the ESU exhibits a broad spatial distribution in a variety of watersheds and habitat types. The BRT was particularly concerned about the impact on ESU diversity of the high proportion of hatchery-origin spawners in the ESU, the disproportionate declines in the summer steelhead life history, and the release of non-native hatchery summer steelhead in the Cowlitz, Toutle, Sandy, Lewis, Elochoman, Kalama, Wind, and Clackamas Rivers. Resident fish are not as abundant in this ESU as they are in the inland *O. mykiss* ESUs. The BRT did not consider resident fish to reduce risks to ESU abundance, and their contribution to ESU productivity, spatial structure, and diversity is uncertain (NMFS, 2003b; 2004a).

The BRT found moderate risks in each of the VSP categories. Informed by this assessment the majority opinion of the BRT was that the naturally spawned component of the Lower Columbia River *O. mykiss* ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion was that the ESU is ''not in danger of extinction or likely to become endangered within the foreseeable future.''

There are 10 artificial propagation programs releasing hatchery steelhead that are considered to be part of the Lower Columbia River *O. mykiss* ESU (Table 2). All of these programs are designed to produce fish for harvest, but several are also implemented to augment the natural spawning populations in the basins where the fish are released. Four of these programs are part of research activities to determine the effects of artificial propagation programs that use naturally produced steelhead for broodstock in an attempt to minimize the genetic effects of returning hatchery adults that spawn naturally. One of these programs, the Cowlitz River late-run winter steelhead

program, is also producing fish for release into the upper Cowlitz River Basin in an attempt to re-establish a natural spawning population above Cowlitz Falls Dam.

NMFS' assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). The hatchery programs have reduced risks to ESU abundance by increasing total ESU abundance and the abundance of fish spawning naturally in the ESU. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. It is also uncertain if reintroduced steelhead into the Upper Cowlitz River will be viable in the foreseeable future, as outmigrant survival appears to be quite low. As noted by the BRT, out-of-ESU hatchery programs have negatively impacted ESU productivity. The within-ESU hatchery programs provide a slight decrease in risks to ESU spatial structure, principally through the re-introduction of steelhead into the Upper Cowlitz River Basin. The eventual success of these reintroduction efforts, however, is uncertain. Harvest augmentation programs that have instituted locally-adapted natural broodstock protocols (*e.g.*, the Sandy, Clackamas, Kalama, and Hood River programs) have reduced adverse genetic effects and benefited ESU diversity. Non-ESU hatchery programs in the Lower Columbia River remain a threat to ESU diversity. Collectively, artificial propagation programs in the ESU provide a slight beneficial effect to ESU abundance, spatial structure, and diversity, but uncertain effects to ESU productivity. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Lower Columbia River *O. mykiss* ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Middle Columbia River *O. mykiss* ESU

The abundance of natural populations in the Middle Columbia River *O. mykiss* ESU has increased substantially over the past 5 years. The Deschutes and Upper John Day Rivers have recent 5-year mean abundance levels in excess of their respective interim recovery target abundance levels (NMFS, 2002). Due to an uncertain proportion of out-of-ESU strays in the Deschutes River, the recent increases in this population are difficult to interpret. (It is worth noting that these interim recovery targets articulate the geometric mean of natural-origin spawners to be sustained over a period of 8 years or approximately two salmonid generations, as well as a geometric mean natural replacement rate greater than one). The Umatilla River recent 5-year mean natural population abundance is approximately 72 percent of its interim recovery target abundance level. The natural populations in the Yakima River, Klickitat River, Touchet River, Walla Walla River, and Fifteenmile Creek, however, remain well below their interim recovery target abundance levels. Long-term trends for 11 of the 12 production areas in the ESU were negative, although it was observed that these downward trends are driven, at least in part, by a peak in returns in the middle to late 1980s, followed by relatively low escapement levels in the early 1990s. Short-term trends in the 12 production areas were mostly positive from 1990 to 2001. The continued low number of natural returns to the Yakima River (10 percent of the interim recovery target abundance level, historically a major production center for the ESU) generated concern among the BRT. However, anadromous and resident *O. mykiss* remain well distributed in the majority of subbasins in the Middle Columbia River ESU. The presence of substantial numbers of out-of-basin (and largely out-of-ESU) natural spawners in the Deschutes River, raised substantial concern regarding the genetic integrity and productivity of the native Deschutes population. The extent to which this straying is an historical natural phenomenon is unknown. The cool Deschutes River temperatures may attract fish migrating in the comparatively warmer Columbia River waters, thus inducing high stray rates. The BRT noted the particular difficulty in evaluating the contribution of resident fish to ESU-level extinction risk. Several sources indicate that resident fish are very common in the ESU and may greatly outnumber anadromous fish. The BRT concluded that the relatively abundant and widely distributed resident fish in the ESU reduce risks to overall ESU abundance, but provide an uncertain contribution to ESU productivity, spatial structure, and diversity (NMFS, 2003b; 2004a).

The BRT found moderate risk in each of the VSP categories, with the greatest relative risk being attributed to the ESU abundance category. Informed by this assessment, the opinion of the BRT was closely divided between the ''likely to become endangered within the foreseeable future'' and ''not in danger of extinction or likely to become endangered within the foreseeable future'' extinction risk categories.

There are seven hatchery steelhead programs considered to be part of the Middle Columbia River *O. mykiss* ESU. These programs propagate steelhead in three of 16 ESU populations, and improve kelt (post-spawned steelhead) survival in one population. There are no artificial programs producing the winter-run life history in the Klickitat River and Fifteenmile Creek populations. All of the ESU hatchery programs are designed to produce fish for harvest, although two are also implemented to augment the natural spawning populations in the basins where the fish are released. The artificial propagation programs that produce these latter two hatchery stocks in the Umatilla River (Oregon) and the Touchet River (Washington) use naturally produced adults for broodstock. The remaining programs do not incorporate natural adults into the broodstock.

NMFS' assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). ESU hatchery programs may provide a slight benefit to ESU abundance. Artificial propagation increases total ESU abundance, principally in the Umatilla and Deschutes Rivers. The kelt reconditioning efforts in the Yakima River do not augment natural abundance, but do benefit the survival of the natural populations. The Touchet River hatchery program has only recently been established, and its contribution to ESU viability is uncertain. The contribution of ESU hatchery programs to the productivity of the three target populations, and the ESU in-total, is uncertain. The hatchery programs affect a small proportion of the ESU, providing a negligible contribution to ESU spatial structure. Overall the impacts to ESU diversity are neutral. The Umatilla River program, through the incorporation of natural broodstock, likely limits adverse effects to population diversity. The Deschutes River hatchery program may be decreasing population diversity. The recently initiated Touchet River endemic program is attempting to reduce adverse effects to diversity through the elimination of out-of-ESU Lyons Ferry Hatchery steelhead stock. Collectively, artificial propagation programs in the ESU provide a slight beneficial effect to ESU abundance, but have neutral or uncertain effects on ESU productivity, spatial structure, and

diversity. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Middle Columbia River *O. mykiss* ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Upper Columbia River *O. mykiss* **ESU**

The last 2–3 years have seen an encouraging increase in the number of naturally produced fish in the Upper Columbia River *O. mykiss* ESU. The 1996–2001 average return through the Priest Rapids Dam fish ladder (just below the upper Columbia steelhead production areas) was approximately 12,900 total adults (including both hatchery and natural origin fish), compared to 7,800 adults for 1992–1996. However, the recent 5-year mean abundances for naturally spawned populations in this ESU are 14 to 30 percent of their interim recovery target abundance levels. Despite increases in total abundance in the last few years, the BRT was frustrated by the general lack of detailed information regarding the productivity of natural populations. The BRT did not find data to suggest that the extremely low replacement rate of naturally spawning fish (0.25–0.30 at the time of the last status review in 1998) has appreciably improved. The predominance of hatchery-origin natural spawners (approximately 70 to 90 percent of adult returns) is a significant source of concern for ESU diversity, and generates uncertainty in evaluating trends in natural abundance and productivity. However, the natural component of the anadromous run over Priest Rapids Dam has increased from an average of 1,040 (1992–1996) to 2,200 (1997–2001). This pattern however is not consistent for other production areas within the ESU. The mean proportion of natural-origin spawners declined by 10 percent from 1992–1996 to 1997–2001. For many BRT members, the presence of relatively numerous resident fish reduces risks to ESU abundance, but provides an uncertain contribution to ESU productivity, spatial structure, and diversity (NMFS, 2003b; 2004a).

The BRT found high risk for the productivity VSP category, with comparatively lower risk for the abundance, diversity, and spatial structure categories. Informed by this risk assessment, the slight majority BRT opinion concerning the naturally spawned component of the Upper Columbia River *O. mykiss* ESU was in the ''in danger of extinction'' category, and the minority opinion was that the ESU is ''likely to become endangered within the foreseeable future.''

Six artificial propagation programs that produce hatchery steelhead in the Upper Columbia River basin are considered to be part of the Upper Columbia River *O. mykiss* ESU. These programs are intended to contribute to the recovery of the ESU by increasing the abundance of natural spawners, increasing spatial distribution, and improving local adaptation and diversity (particularly with respect to the Wenatchee River steelhead). Research projects to investigate the spawner productivity of hatchery-reared fish are being developed. Some of the hatchery-reared steelhead adults that return to the basin may be in excess of spawning population needs in years of high survival conditions, potentially posing a risk to the naturally spawned populations in the ESU. The artificial propagation programs included in this ESU adhere to strict protocols for the collection, rearing, maintenance, and mating of the captive brood populations. The programs include extensive monitoring and evaluation efforts to continually evaluate the extent and implications of any genetic and behavioral differences that might emerge between the hatchery and natural stocks. Genetic evidence suggests that these programs remain closely related to the naturally-spawned populations and maintain local genetic distinctiveness of populations within the ESU. HCPs (with the Chelan and Douglas Public Utility Districts) and binding mitigation agreements ensure that these programs will have secure funding and will continue into the future. These hatchery programs have undergone ESA section 7 consultation to ensure that they do not jeopardize the recovery of the ESU, and they have received ESA section 10 permits for production though 2007. Annual reports and other specific information reporting requirements are used to ensure that the terms and conditions as specified by NMFS are followed. These programs, through adherence to best professional practices, have not experienced disease outbreaks or other catastrophic losses.

NMFS' assessment of the effects of artificial propagation on ESU extinction risk concluded that hatchery programs collectively mitigate the immediacy of extinction risk for the Upper Columbia River *O. mykiss* ESU in-total in the short term, but that the contribution of these programs in the foreseeable future is uncertain (NMFS, 2004c). The ESU hatchery programs substantially increase total ESU returns, particularly in the Methow Basin where hatchery-origin fish comprise on average 92 percent of all returns. The contribution of hatchery programs to the abundance of naturally spawning fish is uncertain. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. However, large numbers of hatchery-origin steelhead in excess of broodstock needs and what the available spawning habitat can support may decrease ESU productivity in-total. With increasing ESU abundance in recent years, naturally spawning hatchery-origin fish have expanded the spawning areas being utilized. Since 1996 efforts are being undertaken to establish the Wenatchee Basin programs separately from the Wells steelhead hatchery program. These efforts are expected to increase ESU diversity over time. There is concern that the high proportion of Wells hatchery steelhead spawning naturally in the Methow and Okanogan Basins may pose risks to ESU diversity by decreasing local adaptation. The Omak Creek program, although small in size, likely will increase population diversity over time. There has been concern that the early spawning components of the Methow and Wenatchee hatchery programs may represent a risk to ESU diversity. The recent transfer of these early-run components to the Ringold Hatchery on the mainstem Columbia River will benefit the diversity of the tributary populations, while establishing a genetic reserve on the mainstem Columbia River. Collectively, artificial propagation programs in the ESU benefit ESU abundance and spatial structure, but have neutral or uncertain effects on ESU productivity and diversity. Benefits of artificial propagation are more substantial in the Wenatchee Basin for abundance, spatial structure, and diversity. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Upper Columbia River *O. mykiss* ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Snake River Basin *O. mykiss* ESU

The paucity of information on adult spawning escapement for specific tributary production areas in the Snake River Basin *O. mykiss* ESU makes a quantitative assessment of viability difficult. Annual return estimates are limited to counts of the aggregate return over Lower Granite Dam, and spawner estimates for the Tucannon, Grande Ronde, and Imnaha Rivers. The 2001 Snake River steelhead return over Lower Granite Dam was substantially higher

relative to the low levels seen in the 1990s; the recent 5-year mean abundance (14,768 natural returns) is approximately 28 percent of the interim recovery target level. The abundance surveyed in sections of the Grande Ronde Imnaha and Tucannon Rivers was generally improved in 2001. However, the recent 5-year abundance and productivity trends were mixed. Five of the nine available data series exhibit positive long- and short-term trends in abundance. The majority of long-term population growth rate estimates for the nine available series were below replacement. The majority of short-term population growth rates were marginally above replacement, or well below replacement, depending upon the assumption made regarding the effectiveness of hatchery fish in contributing to natural production. The BRT noted that the ESU remains spatially well distributed in each of the 6 major geographic areas in the Snake River Basin. The BRT was concerned that the Snake River Basin steelhead ''B-run'' (steelhead with a 2-year ocean residence and larger body size that are believed to be produced only in the Clearwater, Middle Fork Salmon, and South Fork Salmon Rivers) was particularly depressed. The BRT was also concerned about the predominance of hatchery produced fish in this ESU, the inferred displacement of naturally produced fish by hatchery-origin fish, and the potential impacts on ESU diversity. High straying rates exhibited by some hatchery programs generated concern about the possible homogenization of population structure and diversity within the Snake River Basin ESU. Recent efforts to improve the use of local broodstock and release hatchery fish away from natural production areas, however, are encouraging. For many BRT members, the presence of relatively numerous resident fish reduces risks to ESU abundance, but provides an uncertain contribution to ESU productivity, spatial structure, and diversity (NMFS, 2003b; 2004a).

The BRT found moderate risk for the abundance, productivity, and diversity VSP categories, and comparatively lower risk in the spatial structure category. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Snake River Basin *O. mykiss* ESU is ''likely to become endangered within the foreseeable future.'' The minority BRT opinion was split between the ''in danger of extinction'' and ''not in danger of extinction or likely to become endangered within the foreseeable future'' extinction risk categories.

There are six artificial propagation programs producing steelhead in the Snake River Basin that are considered to be part of the Snake River Basin *O. mykiss* ESU (Table 2). Artificial propagation enhancement efforts occur in the Imnaha River (Oregon), Tucannon River (Washington), East Fork Salmon River (Idaho, in the initial stages of broodstock development), and South Fork Clearwater River (Idaho). In addition, Dworshak Hatchery acts as a gene bank to preserve the North Fork Clearwater River ''B''-run steelhead population, which no longer has access to historical habitat due to construction of Dworshak Dam.

NMFS' assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Snake River Basin hatchery programs may be providing some benefit to the local target, but only the Dworshak-based programs have appreciably benefited the number of total adult spawners. The Little Sheep hatchery program is contributing to total abundance in the Imnaha River, but has not contributed to increased natural production. The Tucannon and East Fork Salmon River programs have only recently been initiated, and have yet to produce appreciable adult returns. The overall contribution of the hatchery programs in reducing risks to ESU abundance is small. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. Most returning Snake River Basin hatchery steelhead are collected at hatchery weirs or have access to unproductive mainstem habitats, limiting potential contributions to the productivity of the entire ESU. The artificial propagation programs affect only a small portion of the ESU's spatial distribution and confer only slight benefits to ESU spatial structure. Large steelhead programs, not considered to be part of the ESU, occur in the mainstem Snake, Grande Ronde, and Salmon Rivers and may adversely affect ESU diversity. These out-of-ESU programs are currently undergoing review to determine the level of isolation between the natural and hatchery stocks and to define what reforms may be needed. Collectively, artificial propagation programs in the ESU provide a slight beneficial effect to ESU abundance and spatial structure, but have neutral or uncertain effects on ESU productivity and diversity. Informed by the BRT's findings (NMFS, 2003b) and NMFS' assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Snake River Basin *O. mykiss* ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce (Secretary) must determine, through the regulatory process, if a species is endangered or threatened because of any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence. NMFS has previously detailed the impacts of various factors contributing to the decline of Pacific salmon and *O. mykiss* (*e.g.*, citations for ESU listing determinations in Table 1; NMFS 1997c, ''Factors Contributing to the Decline of Chinook Salmon—An Addendum to the 1996 West Coast Steelhead Factors for Decline Report;'' NMFS 1996a, ''Factors for Decline—A Supplement to the Notice of Determination for West Coast Steelhead Under the Endangered Species Act''). These **Federal Register** notices and technical reports conclude that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of West Coast salmon and *O. mykiss* ESUs. The reader is referred to the above **Federal Register** notices and technical reports for a more detailed treatment of the relevant factors for decline for specific ESUs. The following discussion briefly summarizes findings regarding the principal factors for decline across the range of West Coast salmon and *O. mykiss*. While these factors are treated in general terms, it is important to underscore that impacts from certain factors are more acute for specific ESUs.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

West Coast salmon and *O. mykiss* have experienced declines in abundance over the past several decades as a result of loss, damage or change to their natural environment. Water diversions for agriculture, flood control, domestic,

and hydropower purposes (especially in the Columbia River and Sacramento-San Joaquin Basins) have greatly reduced or eliminated historically accessible habitat and degraded remaining habitat. Forestry, agriculture, mining, and urbanization have degraded, simplified, and fragmented habitat. Studies indicate that in most western states, about 80 to 90 percent of the historical riparian habitat has been eliminated (Botkin *et al.*, 1995; Norse, 1990; Kellogg, 1992; California State Lands Commission, 1993). The destruction or modification of estuarine areas has resulted in the loss of important rearing and migration habitats. Washington and Oregon wetlands are estimated to have diminished by one-third, while California has experienced a 91 percent loss of its wetland habitat. Losses of habitat complexity and habitat fragmentation have also contributed to the decline of West Coast salmonids. For example, in national forests in western and eastern Washington, there has been a 58 percent reduction in large, deep pools due to sedimentation and loss of pool forming structures such as boulders and large wood (FEMAT, 1993). Similarly, in Oregon, the abundance of large, deep pools on private coastal lands has decreased by as much as 80 percent (FEMAT, 1993). Sedimentation from extensive and intensive land use activities (*e.g.*, timber harvests, road building, livestock grazing, and urbanization) is recognized as a primary cause of habitat degradation throughout the range of West Coast salmon and *O. mykiss*.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Historically, salmon and *O. mykiss* were abundant in many western coastal and interior waters of the United States. These species have supported, and continue to support, important tribal, commercial and recreational fisheries throughout their range, contributing millions of dollars to numerous local economies, as well as providing important cultural and subsistence needs for Native Americans. Overfishing in the early days of European settlement led to the depletion of many stocks of salmonids, prior to extensive modifications and degradation of natural habitats. However, following the degradation of many west coast aquatic and riparian ecosystems, exploitation rates were higher than many populations could sustain. Therefore, harvest may have contributed to the further decline of some populations.

C. Disease or Predation

Introductions of non-native species and habitat modifications have resulted in increased predator populations in numerous rivers and lakes. Predation by marine mammals (principally seals and sea lions) is also of concern in areas experiencing dwindling run sizes of salmon and *O. mykiss*. However, although fishes form the principal food sources of many marine mammals, salmonids appear to be a minor component of their diet (Scheffer and Sperry, 1931; Jameson and Kenyon, 1977; Graybill, 1981; Brown and Mate, 1983; Roffe and Mate, 1984; Hanson, 1993). Predation by marine mammals may significantly influence salmonid abundance in some local populations when other prey species are absent and physical conditions lead to the concentration of salmonid adults and juveniles (Cooper and Johnson, 1992). Predation by seabirds can also influence the survival of juvenile salmon and *O. mykiss* in some locations. For example, it has been estimated that Caspian terns (*Sterna caspia*) in the lower Columbia River and estuary consume approximately 13 percent of the out-migrating smolts reaching the estuary in some years (Collis *et al.*, 2001).

Infectious disease is one of many factors that can influence adult and juvenile salmon and *O. mykiss* survival. Salmonids are exposed to numerous bacterial, protozoan, viral, and parasitic organisms in spawning and rearing areas, hatcheries, migratory routes, and the marine environment. Specific diseases such as bacterial kidney disease, ceratomyxosis, columnaris, furunculosis, infectious hematopoietic necrosis virus, redmouth and black spot disease, erythrocytic inclusion body syndrome, and whirling disease, among others, are present and are known to affect West Coast salmonids (Rucker *et al.*, 1953; Wood, 1979; Leek, 1987; Foott *et al.*, 1994; Gould and Wedemeyer, undated). In general, very little current or historical information exists to quantify changes in infection levels and mortality rates attributable to these diseases. However, studies have shown that naturally spawned fish tend to be less susceptible to pathogens than hatchery-reared fish (Buchanon *et al.*, 1983; Sanders *et al.*, 1992). Native salmon and *O. mykiss* populations have co-evolved with specific communities of these organisms, but the widespread use of artificial propagation has introduced exotic organisms not historically present in a particular watershed. Habitat conditions such as low water flows and high temperatures can exacerbate susceptibility to infectious diseases.

D. The Inadequacy of Existing Regulatory Mechanisms

A variety of Federal, state, tribal, and local laws, regulations, treaties and measures affect the abundance and survival of West Coast salmon and *O. mykiss*, and the quality of their habitats. The adequacy of existing regulatory mechanisms is treated below in the context of evaluating the likelihood of implementation and effectiveness of efforts being made to protect West Coast salmon and *O. mykiss*, including specific regulatory measures (see the ''Efforts Being Made to Protect West Coast Salmon and *O. mykiss*'' section).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Variability in ocean and freshwater conditions can have profound impacts on the productivity of salmon and *O. mykiss* populations. Natural climatic conditions have at different times exacerbated or mitigated the problems associated with degraded and altered riverine and estuarine habitats (see the ''Consideration of Recent Ocean Conditions in Listing Determinations'' section).

Extensive hatchery programs have been implemented throughout the range of West Coast salmon and *O. mykiss*. While some of these programs have succeeded in providing fishing opportunities and increasing the total number of fish on spawning grounds, the long-term impacts of these programs on native, naturally reproducing stocks are not well understood. Artificial propagation may play an important role in salmon and *O. mykiss* recovery. The state natural resource agencies (CDFG, Oregon Department of Fish and Wildlife, Idaho Department of Fish and Game, and the Washington Department of Fish and Wildlife) have adopted or are implementing natural salmonid policies designed to ensure that the use of artificial propagation is conducted in a manner consistent with the conservation and recovery of natural, indigenous salmon and *O. mykiss* stocks. While these efforts are encouraging, the careful monitoring and management of current programs, and the scrutiny of proposed programs is necessary to minimize impacts on listed species.

Efforts Being Made to Protect West Coast Salmon and O. mykiss

Section 4(b)(1)(A) of the ESA requires the Secretary to make listing determinations solely on the basis of the best scientific and commercial data available after taking into account efforts being made to protect a species.

Therefore, in making its listing determinations, NMFS first assesses ESU extinction risk and identifies factors that have led to its decline. NMFS then assesses existing efforts being made to protect the species to determine if those measures ameliorate the risks faced by the ESU.

In judging the efficacy of existing protective efforts, NMFS relies on the joint NMFS–FWS ''Policy for Evaluation of Conservation Efforts When Making Listing Decisions'' (''PECE;'' 68 FR 15100; March 28, 2003). PECE provides direction for the consideration of protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by federal agencies, State and local governments, Tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness. The policy articulates several criteria for evaluating the certainty of implementation and effectiveness of protective efforts to aid in determination of whether a species warrants listing as threatened or endangered. Evaluations of the certainty an effort will be implemented include whether: the necessary resources (*e.g.*, funding and staffing) are available; the requisite agreements have been formalized such that the necessary authority and regulatory mechanisms are in place; there is a schedule for completion and evaluation of the stated objectives; and (for voluntary efforts) the necessary incentives are in place to ensure adequate participation. The evaluation of the certainty of an effort's effectiveness is made on the basis of whether the effort or plan: establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; and is likely to improve the species' viability at the time of the listing determination.

The PECE also notes several important caveats. Satisfaction of the above mentioned criteria for implementation and effectiveness establishes a given protective effort as a candidate for consideration, but does not mean that an effort will ultimately change the risk assessment. The policy stresses that just as listing determinations must be based on the viability of the species at the time of review, so they must be based on the state of protective efforts at the time of the listing determination. The PECE does not provide explicit guidance on how protective efforts affecting only a portion of a species' range may affect a listing determination, other than to say that such efforts will be evaluated in the context of other efforts being made and the species' overall viability. There are circumstances where threats are so imminent, widespread, and/or complex that it may be impossible for any agreement or plan to include sufficient efforts to result in a determination that listing is not warranted.

Evaluation of Protective Efforts

As discussed above, NMFS assesses ESU viability on the basis of the four VSP criteria: abundance, productivity, spatial structure and diversity (McElhany *et al.*, 2000). These four parameters are universal indicators of species viability and individually and collectively function as reasonable predictors of extinction risk. NMFS evaluated protective efforts on the basis of these four VSP criteria. The efforts addressing habitat, harvest and fish passage issues are organized by regional protective efforts, followed by federal and non-federal protective efforts in the individual states. The collective contribution of all protective efforts in mitigating ESU-level extinction risk for each ESU is described in the ''Proposed Listing Determinations'' section that follows.

Regional Protective Efforts

Federal Efforts—NMFS conducts hundreds of ESA section 7 consultations concerning ongoing and proposed activities that may affect salmonid habitats within the range of listed West Coast salmon and *O. mykiss* ESUs. Biological assessments (BAs) and biological opinions cover a wide range of management activities, including forest and/or resource area-wide routine and non-routine road maintenance, hazardous tree removal, range allotment management, watershed and instream restoration, special use permits (*e.g.*, mining, ingress/egress), flood control, water supply/irrigation, and timber sale programs (*e.g.*, green tree, fuel reduction, thinning, regeneration, and salvage). These BAs and biological opinions include region-specific best management practices, necessary measures to minimize impacts for listed anadromous salmonids, monitoring, and environmental baseline checklists for each project. In addition to the numerous consultations involving Federal land management actions, NMFS has also consulted on a variety of activities involving private actions requiring Federal authorization or approval. Examples of these actions include significant instream projects such as building boat ramps and docks, water withdrawals, and dredging activities. NMFS' involvement in these consultations, and the resultant biological opinions, have resulted in a more consistent approach to management of public lands throughout the range of West Coast salmon and *O. mykiss* ESUs.

The 2000 Federal Columbia River Power System (FCRPS) biological opinion incorporates 199 alternative actions addressing operation of the FCRPS and 19 Bureau of Reclamation (BOR) projects. The alternative actions are aimed at protecting or improving the survival of listed salmon and *O. mykiss* stocks. The actions span a wide range of activities, including updating annual operations of the FCRPS, short- and long-term construction at FCRPS projects, early action offsite mitigation proposals, and research efforts aimed at gaining future improvements. The biological opinion outlines comprehensive monitoring and evaluation programs, as well as specific research actions. Additionally, discretionary conservation measures are suggested to minimize or avoid the potential adverse effects of a proposed action on listed species, to minimize or avoid adverse modification of critical habitat, to develop additional information, or to assist the Federal agencies in complying with the obligations under section 7(a)(1) of the ESA. These recommendations include: conduct research to identify and address factors for decline; conduct research on requirements for spill operation, intake screen, bypass system, and turbine operation to improve the survival of migrating salmonids through the Snake River/Lower Columbia hydropower system; improve water quality management of Columbia River total dissolved gas and temperature; improve management of mainstem Columbia River instream flows; institute predator controls; improve spawning and rearing habitats in the mainstem Columbia River and its tributaries; reduce habitat blockages in Columbia River tributaries; reduce the negative effects of hatchery practices on wild salmonid stocks; reduce the negative impacts of harvest on wild stocks; and improve estuary habitat and reduce deleterious Columbia River plume effects. These objectives, if achieved, would significantly increase downstream/upstream and migrant survival, increase spawning and rearing survival, provide access to currently blocked or degraded habitat, and allow for the expression of a wider range of life-history strategies and run timing. Recently in *National Wildlife Federation*

et al. v. *NMFS,* the U.S. District Court for the District of Oregon remanded the 2000 FCRPS biological opinion to NMFS. While NMFS reconsiders the biological opinion, it remains in place. It is worth noting that the conservation program under the FCRPS biological opinion has significant overlap with the Northwest Power and Conservation Council's Fish and Wildlife Program (NPCC–FWP, discussed further below) and should not be considered as an entirely independent effort.

The NPCC–FWP works to protect, mitigate, and enhance fish and wildlife of the Columbia River Basin. Locally developed subbasin plans, scheduled to be completed by May 2004, are being written in 62 subbasins in the Columbia River system. Once adopted by the Council, the plans are intended to guide Bonneville Power Administration funding of projects for the NPCC–FWP. The completed subbasin plans are intended to provide a resource for use by NMFS and FWS as part of threatened and endangered species recovery planning. The success of the subbasin planning process depends on adequate funding and on high quality plans in compliance with the Council's ''Technical Guide for Subbasin Planning.'' Implementation of these plans may contribute to improvements in fish passage at road crossing and irrigation diversion dams, and the further screening of irrigation withdrawals—two significant limiting factors for Columbia Basin ESUs. It is less clear if the plans, and the supporting Fish and Wildlife Program, will help resolve other limiting factors, particularly low stream flow and riparian habitat protection.

NMFS (and FWS) are also engaged in an ongoing effort to assist in the development of multiple species Habitat Conservation Plans (HCPs) for state and privately owned lands. While section 7 of the ESA addresses species protection associated with Federal actions and lands, Habitat Conservation Planning under section 10 of the ESA addresses species protection on non-Federal lands. HCPs are particularly important since much of the habitat in the range of West Coast salmon and *O. mykiss* ESUs is in non-Federal ownership. Within the range of currently-listed salmonids there are approximately 11 completed HCPs, and approximately 50 HCPs under development. Where HCPs are in place, NMFS expects that the activities they cover will be consistent with the recovery of salmon and *O. mykiss* ESUs.

Under the Northwest Forest Plan, the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) have established protective riparian reserves beside streams, implemented habitat restoration actions (*e.g.,* large wood placement, channel restoration, culvert replacements and removals), revised road construction guidelines, and adopted other best management practices. These efforts have been undertaken to reduce adverse effects to aquatic and riparian dependent species, including salmon and *O. mykiss,* and to mitigate for past adverse effects resulting from Federal land management activities (*e.g.,* timber harvest, roads, recreation). NMFS has consulted on the standards of the Northwest Forest Plan and concluded that where the standards are implemented, the resulting conditions will be consistent with the recovery of salmon and *O. mykiss* ESUs.

PACFISH is a cooperative effort between USFS and BLM to develop coordinated Management and Land Use Plans for the Federal lands they manage in eastern Oregon and Washington, Idaho, and portions of Northern California. PACFISH is intended to provide protection of anadromous fish aquatic and riparian habitat conditions while a longer term, basin scale aquatic conservation strategy is developed. PACFISH provides objective standards and guidelines that are applied to all Federal land management activities such as timber harvest, road construction, mining, grazing, and recreation.

Ocean fisheries are managed by the Pacific Fishery Management Council (PFMC). Since the listings of Pacific salmon and *O. mykiss* under the ESA, substantial harvest reform has been instituted to reduce impacts to listed stocks from ocean fisheries. Each year the PFMC develops fishing regulations that are within the guidelines established by NMFS in section 7 consultations for listed ESUs in California, Oregon, Washington, and Idaho. The ocean fisheries have been implemented consistent with NMFS' requirements and have been effective at reducing harvest impacts to listed salmon and *O. mykiss* ESUs.

The 1999 Agreement between Canada and the United States under the Pacific Salmon Treaty resulted in a major restructuring of the fishery management approach for ocean chinook fisheries off the west coast of Canada and in Southeast Alaska. Most notably, the ''fixed ceiling'' approach, which formerly resulted in higher harvest rates in years of lower overall abundance, was replaced with an abundance-driven approach. Harvest rates in major chinook fisheries in the ocean off Canada and Southeast Alaska now vary in response to annual fluctuations in abundance, resulting in a general lowering of harvest rates in years of reduced abundance. The new approach also includes additional measures that will further reduce fishery impacts if identified natural stocks fail to achieve escapement objectives. The 1999 Agreement prescribes a complementary regime for the ocean chinook fisheries off Washington and Oregon and in terminal areas. There, specific reductions in harvest rates must be implemented in chinook fisheries as necessary to meet established escapement goals for key indicator (natural) stocks. The 1999 Agreement also resulted in a major change in the management of coho fisheries, primarily those affecting Washington and British Columbia stocks, by prescribing an abundance-based approach driven by the annual abundance of natural coho salmon.

Protective Efforts in California

Federal Efforts—Since 2000 NMFS has conducted approximately 2,300 ESA section 7 consultations with over 20 Federal action agencies that fund, conduct, or authorize projects in California. Of this total, approximately 1,500 consultations involved projects in coastal watersheds occupied by listed coho, chinook, and *O. mykiss* ESUs. The remaining section 7 consultations addressed projects in California's Central Valley within the range of listed chinook and *O. mykiss* ESUs. NMFS has also provided technical assistance to Federal agencies on hundreds of additional projects throughout the State of California. The vast majority of consultations have been with the BOR, U.S. Army Corps of Engineers (USACE), Federal Highway Administration, FWS, USFS, BLM, and Bureau of Indian Affairs. These consultations have evaluated impacts to ESA-listed salmonid ESUs from a wide variety of Federal projects including: irrigation and water diversion, timber harvest, watershed restoration, fish passage, gravel mining, grazing, and transportation projects. In addition to consulting with other Federal agencies, NMFS has also consulted with itself regarding the effects of recreational and commercial ocean salmon fishing on listed salmonid ESUs. These consultations have improved, or minimized adverse impacts to, listed salmonid and their habitats throughout coastal and central valley watersheds in California.

Several significant consultations have been conducted on water projects in coastal watersheds and in the central valley. Among the most important have been consultations on the Klamath Project, Potter Valley Project (Eel and

Russian Rivers), Cachuma Project (Santa Ynez River), Robles Diversion Dam (Ventura River) and the Central Valley Project (Sacramento-San Joaquin Basin). Other important water projects related consultations are ongoing in the Russian River (USACE and Sonoma County Water Agency) and on the Santa Clara River (United Water Conservation District).

The Central Valley Project consultation, in particular, likely has contributed to recent improvements in the Sacramento River winter-run chinook ESU. In 1992 NMFS issued a jeopardy biological opinion to the BOR that addressed long-term operation of the Central Valley Project and its impacts on winter-run chinook salmon. Since that time, implementation of the reasonable and prudent alternative contained in the 1992 opinion has provided substantial benefits to winter-run chinook by improving habitat and fish passage conditions in the Sacramento River and Delta. The improved habitat conditions provided by the reasonable and prudent alternative have likely been a major factor contributing to substantial increases in population abundance and productivity over the past decade. Key elements of the reasonable and prudent alternative which have benefited winter run chinook include: (1) Allocation of water to contractors using a more conservative water supply forecast approach; (2) maintenance of higher end-of-year reservoir storage levels in Lake Shasta; (3) maintenance of minimum flows in the Sacramento during the fall and winter months; (4) implementation of specified ramp-down criteria when flows from Keswick Dam are reduced; (5) establishment of water temperature criteria to support spawning and rearing in the mainstem Sacramento River upstream of the Red Bluff Diversion Dam and water releases from Shasta Dam designed to meet the specified temperature criteria; (6) re-operation of the Red Bluff Diversion Dam gates to provide improved adult and juvenile passage; (7) closures of the Delta Cross Channel gates to divert juveniles from the Delta; and (8) constraints on Delta water exports to reduce impacts on juvenile outmigrants.

The Northwest Forest Plan was implemented in 1994 and represents a coordinated ecosystem management strategy for Federal lands administered by the USFS and the BLM within the range of the Northern spotted owl which overlaps considerably with the freshwater range of listed coho, chinook and *O. mykiss* ESUs in northern California. The most significant element of the Northwest Forest Plan for anadromous fish is its Aquatic Conservation Strategy, a regional-scale aquatic ecosystem conservation strategy that includes: (1) Special land allocations, such as key watersheds, riparian reserves, and late-successional reserves, to provide aquatic habitat refugia; (2) special requirements for project planning and design in the form of standards and guidelines; and (3) new watershed analysis, watershed restoration, and monitoring processes. These Strategy components collectively are designed to support Federal land management actions in achieving a set of nine Aquatic Conservation Strategy objectives, including salmon habitat conservation. The Aquatic Conservation Strategy strives to maintain and restore ecosystem health at watershed and landscape scales to protect habitat for fish and other riparian-dependent species and resources and to restore currently degraded habitats. The approach seeks to prevent further degradation and to restore habitat on Federal lands over broad landscapes. The Northwest Forest Plan region-wide management direction was either amended or was incorporated into the land and resource management plans (LRMPs) for the National Forests and BLM Resources Areas in northern California within the range of listed coho, chinook and *O. mykiss* ESUs. Through programmatic and site-specific ESA section 7 consultation efforts, NMFS has worked with the USFS and the BLM over the last several years to ensure the Northwest Forest Plan and its Aquatic Conservation Strategy is implemented in California. NMFS believes that continued implementation of the Northwest Forest Plan will result in substantially improved habitat conditions for listed coho, chinook and *O. mykiss* ESUs over the next few decades and into the future. Improved habitat conditions will result in increased survival of the freshwater life stages of these fish. The components of the Aquatic Conservation Strategy include watershed analysis, watershed restoration, reserve and refugia land allocations, and development of associated standards and guidelines. Implementation of actions consistent with the Aquatic Conservation Strategy objectives will provide high levels of aquatic ecosystem understanding, protection, and restoration for aquatic-habitat dependent species.

Under the authority of the 1984 Trinity River Fish and Wildlife Management Act, the Trinity River Task Force was convened to develop a plan to restore fish and wildlife populations on the Trinity River. The December 2000 plan includes flow allocations, direct in-channel actions, as well as continued watershed restoration activities, replacement of bridges and structures in the flood plain, monitoring and adaptive management. Implementation of the plan has been delayed pending further analysis of effects of alternatives on California's energy supply and Central Valley water users.

The Klamath River Basin Fisheries Task Force was established by the Klamath River Basin Fishery Resources Restoration Act of 1986 to provide recommendations to the Secretary of Interior on the formulation, establishment, and implementation of a 20-year program to restore anadromous fish populations in Klamath Basin to optimal levels. NMFS participates as a member of the Task Force as well as of the Technical Work Group which provides technical and scientific input to the Task Force. In 1991, the Task Force developed the Long Range Plan for the Klamath River Basin Conservation Area Fishery Restoration Program to help direct fishery restoration programs and projects throughout the Klamath River. Several sub-basin watershed restoration plans have been developed since the inception of the Klamath Act, including the Lower Klamath River Sub-Basin Watershed Restoration Plan developed by the Yurok Tribe in 2000 and the Mid-Klamath Sub-Basin Fisheries Resource Recovery Plan in 2001.

The Redwood National and State Parks have developed several plans that will help to protect and enhance anadromous salmonid habitats, including the Redwood National and State Park General Management Plan (1999) and the Redwood National Park Final Management Plan (1999). These plans identify actions that the National and State Parks will undertake to restore aquatic and terrestrial ecological functions within Park(s) boundaries. Recently, the state parks, in conjunction with several environmental organizations, raised funds to purchase Mill Creek, a lower tributary to the Smith River, from Rellim Redwood Company. A management plan has also been developed for the Mill Creek Watershed, which is the largest tributary producing coho salmon in the Smith River Basin. Humboldt Redwoods State Park has also developed a State Park General Plan (2001) which will provide the vision and management direction for the next 20 or more years. One of the many goals for the state park plan is to restore and protect terrestrial and aquatic habitats and species in accordance with Federal and state laws.

Two dam removal projects in southern California will provide benefits to the Southern California *O. mykiss* ESU (the Matilija Dam and Rindge Dam projects). The Matilija Dam Ecosystem Restoration project is being undertaken by a consortium of Federal, state and local agencies with the goal of removing the dam, restoring instream habitat above and below the dam site, and restoring natural sediment transport to the mainstem Ventura River below the dam. The Rindge Dam Ecosystem Restoration project is being undertaken by the USACE and the California Department of Parks and Recreation. There are no current projections for completing a Feasibility Study or commencement of the project, though there remains strong support for the project by the local/non-federal sponsor. If implemented, the project would include removal of Rindge Dam, restoration of the instream habitats above and below the dam, and restoration of steelhead access to approximately 12 miles (19.3 km) of suitable spawning and rearing habitat in Malibu Creek.

In the Central Valley of California, there are two large, comprehensive conservation programs that provide a wide range of ecosystem and species-specific protective efforts that provide benefits to listed chinook (winter run and spring run) and *O. mykiss* ESUs. These include the California Bay-Delta Authority Program (or CALFED) and the Central Valley Project Improvement Act (Central Valley PIA).

CALFED is a cooperative effort of more than 20 state and Federal agencies that work with local communities to improve water quality and reliability of California's water supplies, while reviving the San Francisco Bay-Delta ecosystem. This partnership was formed in 1994 and provides policy direction and process oversight for: water quality standards formulation; coordination of the State Water Project and the Central Valley Project operations; and long-term solutions to Bay-Delta estuary problems. Full implementation of the CALFED program is anticipated to take 30 years, but much progress has already been made through close collaboration with local agencies, stakeholders, and special interest groups. There are four key program objectives: water quality, ecosystem quality, water supply and levee system integrity. The main components that make up the four objectives are: (1) Improve and increase aquatic and terrestrial habitats and improve ecological functions in support of sustainable populations of diverse and valuable plant and animal species; (2) reduce the mismatch between Bay-Delta water supplies and current and projected beneficial uses dependent on the Bay-Delta system; and (3) reduce the risk to land use and associated economic activities, water supply, infrastructure to protect the ecosystem from catastrophic breaching of Delta levees. The ecosystem restoration element of CALFED is being achieved through the Ecosystem Restoration Program. The Program has funded projects involving: habitat restoration; flood plain restoration and/or protection; instream habitat restoration; riparian habitat restoration/protection; fish screening and passage projects; research on and eradication of non-native species; research on and management of contaminants; research on and monitoring of fishery resources; and watershed stewardship and education outreach efforts. In addition to implementation of restoration actions as part of the Ecosystem Restoration Program, the CALFED program established the Environmental Water Account that is used to offset losses of juvenile fish at the Delta pumps, and to provide higher instream flows for salmon and steelhead in the Yuba River, Stanislaus River, American River, and Merced River.

The Central Valley PIA attempts to balance the priorities of fish and wildlife protection, restoration, and mitigation with irrigation, domestic water use, fish and wildlife enhancement, and power generation. Since passage of the Central Valley PIA, the BOR and the FWS, with the assistance of many partners, have conducted numerous studies and investigations, implemented hundreds of actions representing significant progress towards achieving the Central Valley PIA's goals and objectives. These actions include: modification of Central Valley Project operations; management and acquisition of water for fish and wildlife needs; mitigation for water export pumping plant operations; resolution of fish passage problems; improvement in flow management for fish migration and passage (*e.g.,* pulse flows, increased flows, and seasonal fish barriers); replenishment of spawning gravels; restoration of riparian habitats; and diversion screening.

The Central Valley PIA is the cornerstone of many actions aimed at restoring natural production of anadromous fish in the Central Valley. Emphasis in the Delta has been on offsetting effects of Central Valley Project and State Water Project operations (entrainment, impingement, diversion, and increased predation) on all anadromous species. In the Sacramento River tributaries, actions have focused on riparian and shaded riverine aquatic habitat restoration, improved access to available upstream habitat, improvement of instream flows, and reductions in loss of juveniles at diversions, particularly for spring chinook and *O. mykiss*. In the mainstem Sacramento River, actions have focused on flow and temperature control, restoration of spawning habitat, reduction of juvenile losses at diversions, and acquisition of riparian lands to improve spawning and rearing habitat, especially for winter-run chinook salmon. In the San Joaquin River and its tributaries, actions have focused on improvement in instream flows, restoration of river channels, spawning gravels, and riparian cover, and elimination of predator habitat. Most of these actions have been on the tributaries to the San Joaquin River.

Habitat restoration efforts under the Central Valley PIA are generally divided into two categories: anadromous fish habitat restoration measures, and anadromous fish structural measures. Habitat restoration efforts that have been implemented include the acquisition of water for instream flows, channel restoration and enhancement, removal of dams and blockages that interfere with migration, gravel replenishment, acquisition and restoration of riparian habitat, and erosion control to protect spawning gravels. Anadromous fish structural measures include construction or modification of devices to: improve instream habitat (such as the Shasta Dam temperature control device); improve access or reduce mortality during fish migrations (such as fish ladders on dams and screening of diversions); and to supplement fish populations (such as the improvements to Coleman National Fish Hatchery and construction of the Livingston Stone National Fish Hatchery for winter-run chinook salmon). A large number of structural projects have been completed and others are in progress.

Another protective effort in the central valley is the Delta Pumping Plant Fish Protection Agreement (known as the Four Pump Agreement) which was adopted as part of the mitigation package for the State Water Project in 1986. Projects that have been completed or that will be implemented include: screening of unscreened diversions in Suisun Marsh, Butte Creek, and tributaries to the San Joaquin River; enhanced law enforcement efforts to reduce illegal fish harvest; installation of seasonal barriers to guide fish away from undesirable spawning habitat or migration corridors; water exchange projects on Mill and Deer Creek to provide passage flows for adult

and juvenile chinook and steelhead; the design and construction of fish ladders for improved passage on Butte Creek; spawning gravel replacement and maintenance on the Sacramento River and tributaries to the San Joaquin River; and a wide range of other salmonid habitat restoration projects to improve spawning and rearing habitat, eliminate predator habitat, and improve riparian habitat. About a third of the approved funding for salmonid projects specifically target spring run chinook in the upper Sacramento River tributaries; however, many of these projects also provide benefits to *O. mykiss* and other chinook runs.

The Tracy Fish Collection Mitigation Agreement is also a source of funding for habitat restoration and other projects which provide benefits to salmon and *O. mykiss* in the central valley. In 2000, the BOR and the State of California revised this agreement to reduce and offset direct losses of chinook salmon associated with operation of the Tracy Pumping Plant and fish collection facility (part of the Central Valley Project). The agreement provides for improving operations at the fish collection facility, making necessary structural modifications, and annual funding to the State for various mitigation projects. Among the projects funded from this program were the design and permitting phases of the Western Canal Siphon Project on Butte Creek which resulted in the removal of four dams and improved fish passage for chinook and steelhead. The agreement also funded several other engineering and design efforts on tributaries that support spring chinook including Battle Creek, Clear Creek, Butte Creek, and the Yuba River. Additional funding has been recommended to implement further habitat restoration that would benefit spring chinook and/or *O. mykiss* in Butte Creek, the Yuba River, Suisun Marsh, and tributaries on the San Joaquin River.

The Battle Creek Restoration project is a cooperative approach to solving environmental problems through the CALFED ecosystem restoration process. Stream reaches being restored are located in upper Battle Creek where Pacific Gas and Electric operates a series of nine hydroelectric dams and canals affecting 42 miles (67.6 km) of habitat suitable for chinook salmon (winter, spring and fall) and *O. mykiss*. This 42-mile (67.6 km) reach of upper Battle Creek will be fully restored under an agreement between the power company and resource agencies. Of the nine diversion dams, five will be removed and their water rights dedicated to the environment. The remaining dams will have the required minimum instream flows increased to levels substantially above current legal minimums yielding habitat increases of 500 to 800 percent. The structures on the remaining dams will be modified to include optimally designed fish ladders and fish screens. Other activities include a project to restore the meander belt and riparian forest on the lowest 5 miles of the creek and a re-evaluation of Coleman National Fish Hatchery to ensure its operation is integrated with the Battle Creek restoration program.

NMFS is responsible for management of ocean salmon fisheries under the Pacific Coast Ocean Salmon Fishery Management Plan (FMP) and the Magnuson-Stevens Act. As a result of the many salmon and *O. mykiss* ESU listings on the west coast, NMFS has initiated formal ESA section 7 consultations and issued numerous biological opinions which consider the impacts of ocean fishing. In some cases, consultation has determined that existing protections in the FMP will not jeopardize listed ESUs, whereas in other instances reasonable and prudent alternatives have been developed which avoid jeopardizing the listed ESUs. The conservation objectives that NMFS implements for each listed salmon ESU is either contained in the FMP or specified in a biological opinion.

Under the Pacific Coastal Salmon Recovery Program, NMFS provides annual grants to the State of California to assist salmon recovery efforts in coastal watersheds from the Oregon border to southern California. The State integrates these funds with its state salmon restoration funds and issues grants for habitat restoration, watershed planning, salmon enhancement, research and monitoring, and outreach and education in coastal watersheds that support listed salmonids. Funded projects include fish passage barrier removals, stream bank stabilization, fish habitat improvements that increase the frequency of pools, removal of and/or storm-proofing of roads that contribute sediment to streams, stabilizing eroding hill slope area adjacent to stream channels, revegetation of upslope areas and riparian areas, monitoring programs to provide baseline and/or population trend data, and support of local watershed organizations and education projects. The Federal funds provided to the state and California Tribes (*e.g.,* the Yurok, Karuk, and Hoopa Valley Tribes) have been instrumental in furthering conservation efforts in coastal watersheds, especially north of San Francisco and in the Klamath River Basin. These funds have been successfully used to leverage additional State and local salmon recovery funding sources, and have precipitated a substantial increase in overall funding state wide.

Non-Federal Efforts—Several management efforts are currently being implemented to protect listed salmonid ESUs in California. These include: Restrictions on the Klamath River fall chinook harvest rate to protect coastal chinook; restricted exploitation rates on Rogue River/Klamath River hatchery stocks to protect SONCC and central California coho; no retention take prohibitions for coho off California; and seasonal constraints on sport and commercial fisheries south of Point Arena, California, for Central Valley winter run chinook salmon. The fishery constraints designed to protect winter run chinook are thought to also provide protection to central valley spring chinook. NMFS believes that these harvest protective measures being implemented to protect listed salmonid ESUs in California will contribute to achieving long-term recovery of these populations.

The State of California has also listed the Sacramento River winter-run and Central Valley spring-run chinook under the State's California Endangered Species Act, and, therefore, has established specific in-river fishing regulations and no retention prohibitions which are designed to protect these stocks, and also to allow harvest of unlisted fall run chinook. In the case of Sacramento River winter-run chinook, the management measures consist of time and area closures, gear restrictions, and zero bag limits in the Sacramento River. These measures have been in place since 1990 when the winter run chinook ESU was listed by NMFS. For Central Valley spring run chinook, the state has also implemented protective measures, including fishing method and gear restrictions, bait limitations, seasonal closures, and zero bag limits, particularly in several primary tributaries such as Deer Creek, Big Chico Creek, Mill Creek, and Butte Creek which support spring chinook. In addition, CDFG has implemented enhanced enforcement efforts in spring-run chinook tributaries and adult holding areas which have significantly reduced illegal harvest.

Measures to protect listed *O. mykiss* throughout the State of California have been in place since 1998. A wide range of measures have been implemented including 100 percent marking of all hatchery steelhead, zero bag limits for unmarked steelhead, gear restrictions, closures, and size limits designed to protect smolts. NMFS has worked continuously with the State to review

and improve inland fishing regulations through its biennial planning cycle to better protect both anadromous and resident *O. mykiss* populations throughout the State.

A major concern in risk assessments for salmonid ESUs in California has been the lack of comprehensive abundance and trend data for coastal salmonids and for steelhead in the Central Valley. In the past year, the state's habitat restoration grant program funded a major coastal salmonid monitoring program development effort that is being carried out by the CDFG and NMFS. The development of a statewide, coastal monitoring program plan is critical to assessing the viability of listed ESUs and their response to extensive habitat restoration efforts and other conservation efforts. The program is expected to be developed within the next year; however, long-term funding for implementation is uncertain. Recently, the CALFED program funded a similar effort for steelhead in the Central Valley. As with coastal salmonids, the development and implementation of a monitoring and assessment program for Central Valley steelhead is critically important in order to assess population viability and responses to extensive habitat restoration efforts being funded by CALFED and the Central Valley PIA.

An extensive network of Resource Conservation Districts exists within the range of ESA-listed salmonid ESUs along the northern California coast. These Districts represent an important vehicle through which the agricultural community can voluntarily address and correct management practices that impact ESA-listed salmonids and their habitats. Working with individual landowners or through organizations such as the California Farm Bureau, these Resource Conservation Districts can assist landowners in developing and implementing best management practices that are protective of salmonids. Such active participation of the agriculture community is critical to the conservation and recovery of ESA-listed ESUs in California.

In response to a proposed state listing of coho in January 2003 under the California ESA, the State of California convened two recovery teams and tasked them with developing a recovery plan that would identify and address the recovery needs of coho salmon and habitats throughout the State. A draft recovery plan was prepared and released for public review in August 2003. The comprehensive plan includes a broad range of coho range-wide recommendations addressing stream flow, water rights, fish passage, water temperatures, recruitment of large woody debris, riparian vegetation, watershed planning, and gravel mining. In addition, specific watershed recommendations were identified for all watershed units supporting coho throughout the state from the Smith River south to the San Lorenzo River. Because of special water use issues in the Shasta and Scott River watershed and the importance of these watersheds in the Klamath River system, the plan includes a pilot program that has specific recommendations for water management, water augmentation, water use efficiency, and habitat management (*e.g.* fish passage barriers, spawning gravel, riparian vegetation, water temperature, etc.). The final recovery plan was formally approved and adopted by the California Fish and Game Commission on February 5, 2004, and a decision was made to formally list coho salmon under the California ESA. A final decision to move forward with the administrative process leading to a listing of coho under the California ESA is expected in June 2004. The state is in the process of developing an implementation plan that will prioritize recovery actions contained in the plan and estimate implementation costs. The implementation plan will be presented to the Commission at its meeting in June 2004. In the short term, the state is using existing staff and financial resources to implement the plan, but is expected to pursue additional financial resources after the implementation plan is completed. To facilitate implementation, the CDFG has integrated the coho recovery plan with its coastal salmonid habitat restoration grant program by ensuring that high priority recovery plan actions in high priority watersheds receive a greater likelihood of funding. If it is successfully implemented, the State recovery plan will provide substantial benefits to both the Central California Coast and Southern Oregon/Northern California Coast coho ESUs. However, the long-term prospects for plan funding and implementation are uncertain.

The North Coast Regional Water Quality Control Board is in the process of updating its north coast basin plan which will establish water quality standards for all of the northern California rivers and streams. These plans will also incorporate newly developed Total Maximum Daily Load (TMDL) standards that are being developed for those water bodies that are listed as 303d impaired under section 303(d) of the Clean Water Act. Most of the major rivers in northern California are listed as TMDL impaired, primarily for sediment and temperature. It is anticipated that by 2008, all TMDL-listed streams in northern California will have TMDL plans, which likely will help to reduce human impacts to the aquatic environments and thus protect ESA listed salmonids.

The Rangeland Management Advisory Committee has developed a management plan for inclusion in the state's Non-point Source Management Plan. Its purpose is to maintain and improve the quality and associated beneficial uses of surface water as it passes through and out of rangeland resources in the state. The programmatic emphasis is on a voluntary, cooperative approach to water quality management. This includes appropriate technical assistance, planning mechanisms, program incentives, and regulatory authorities. This Plan has been favorably received by the State Water Resources Control Board, the Environmental Protection Agency, and the California State Board of Forestry.

Long-term sustained gravel mining plans have been, or are being, developed by three northern California counties (Del Norte, Humboldt, and Mendocino), which comprise a substantial portion of the range of several listed ESUs. The intent is for the impacts of all gravel extraction projects to be evaluated at the watershed scale. Approved projects (by the USACE) will require annual monitoring reports on gravel recruitment, river geomorphology, and fisheries impacts. Humboldt County currently has an approved plan in place, and Del Norte and Mendocino Counties are in the process of obtaining plan approval. NMFS will be working with the counties and the USACE to ensure that any approved plans for gravel mining are sufficiently protective of coho salmon.

NMFS has developed a Memorandum of Understanding with five northern California counties (Siskiyou, Trinity, Del Norte, Humboldt, and Mendocino) to develop a standardized county routine road maintenance manual to assist in the protection of ESA listed species and their habitat. This manual includes best management practices for reducing impacts to listed species and the aquatic environment, a five-county inventorying and prioritization of all fish passage barriers associated with county roads, annual training of road crews and county planners, and a monitoring framework for adaptive management. NOAA has also provided nearly $750,000 in grants to support this program over the past 3 years and has worked with the counties in developing a prioritization process for inventorying and ranking all fish barriers in

anadromous waters associated with county roads. NMFS is working with the counties to make their routine road maintenance manuals approvable under the limits described in NMFS' ESA 4(d) protective regulations (67 FR 1116, January 9, 2002; 50 CFR 223.203(b)(14) through (b)(22)).

A voluntary certification program has been developed by the Sotoyome Resource Conservation District for grape growers in Sonoma and Mendocino counties who implement land management practices that decrease soil erosion and sediment delivery to streams. The development of the Fish Friendly Farming Program was a 2-year effort which involved grape growers, representatives from government agencies, and environmental groups. The result of this effort was the creation of a workbook of Beneficial Management Practices with a farm plan template. The workbook is designed to assist grape growers to inventory and assess the natural features of their farms, as well as their current management practices and implement improved practices. The growers participate in a series of workshops to develop and finalize a farm plan that is presented to a certification team comprised of NMFS, CDFG, and the Regional Water Quality Control Board.

FishNet 4C is a regional, multi-county group comprised of representatives from Mendocino, Sonoma, Marin, San Mateo and Santa Cruz counties, in addition to individuals from planning and public works staff, local, state and federal agencies, and other key entities such as water agencies, Resource Conservation Districts, and watershed groups. The program has been active for 5 years, coordinating county efforts such as road maintenance, fish barrier assessment and removal, riparian and grading ordinances, erosion control, implementation of bioengineering projects and the development of guidelines that enhance or protect salmonid habitat for public works departments. FishNet 4C is developing Road Maintenance Guidelines similar to that of the Five County Roads Program (above).

The Sonoma County Water Agency is currently constructing vortex weirs on the West Branch Russian River. This passage project provides passage at a flashboard dam site that has been down-cut over the last 40 years, creating a barrier to anadromous salmonids. This project will provide passage for chinook salmon and steelhead to an additional 15 to 20 miles (24.1–32.2 km) of spawning and rearing habitat in the upper Russian River watershed.

Local watershed councils and other groups throughout the state have successfully developed restoration plans and have worked to implement habitat restoration projects that are expected to contribute to the conservation of listed salmonid ESUs. In northern California, these groups include: The Scott River Watershed Committee and French Creek Watershed Advisory Group in the Scott River watershed; the Shasta River CRMP Project (Shasta River watershed); the South Fork Trinity River Restoration council (South Fork Trinity River); Salmon River Learning and Understanding Group; the Humboldt Bay Watershed Advisory Committee for Humboldt Bay watersheds; the Eel River Watershed Improvement Group that focuses on the lower Eel River; the Van Duzen River and South Fork Eel River; the Mainstem Eel River Group; the Yager/Van Duzen Environmental Stewards; the Eel River Salmon Restoration Project; and the Mattole Restoration Council and Group (Mattole River). In the central coast area there are additional watershed groups addressing Tomales Bay, Lagunitas Creek and the Russian River.

In 2003, the Santa Clara Valley Water District initiated the Fisheries Aquatic Habitat Collaborative Effort for Coyote Creek, Stevens Creek, and the Guadalupe River in Santa Clara County. The program will provide for improved stream flows and temperatures below District reservoirs, remediation of fish passage barriers, and habitat restoration. The program is among the most comprehensive, well funded, long-term protective efforts in California.

In cooperation with the CDFG and the Alameda Creek Fisheries Restoration Workgroup, NMFS is working towards re-establishing steelhead in Alameda Creek on the eastern side of south San Francisco Bay. Alameda Creek is the largest drainage in south San Francisco Bay and provides water supplies to several municipalities. San Francisco has also begun discussions with NMFS regarding the development of an HCP that will address water operations at their two reservoirs in the watershed. High quality spawning and rearing habitat for steelhead exists in upper Alameda Creek, Niles Canyon and its tributaries, and the Arroyo Mocho. Genetic testing strongly suggests that viable resident trout populations in these creeks are descended from native steelhead.

Many other sub-watershed groups, landowners, environmental groups and non-profit organizations are conducting habitat restoration and planning efforts in several watersheds that may also contribute to the conservation of listed salmonids. These efforts include, but are not limited to, Trout Unlimited, landowners such as Mendocino Redwood Company and Hawthorne Campbell Timberlands, Ten Mile Forest Landowners Association, Noyo Watershed Alliance, Garcia Watershed Council, Redwood Creek Landowners Association, Sonoma Ecology Center, Occidental Arts and Ecology Center, West Sonoma County Watershed Group, Salmon River Restoration Council, Mill Valley Streamkeepers, Friends of Corte Madera Creek, Coastal Watershed Council in Gazos Creek, Pescadero Conservation Alliance, Peninsula Open Space District, Committee for Green Foothills in San Mateo County, and the Coastal Watershed Council. Several watershed groups are actively working to improve habitat conditions for chinook and *O. mykiss* in tributary streams to the Sacramento River, including the Deer Creek Watershed Conservancy, Big Chico Creek Watershed Alliance, Butte Creek Watershed Conservancy, and Mill Creek Watershed Conservancy. Activities conducted by the various watershed groups include development and implementation of watershed assessments and management plans, support for and implementation of fish passage projects and water diversion screening projects, acquisition of habitat work to improve fish passage, various types of outreach efforts, and coordination with state and Federal resource agencies.

The Pacific Lumber Company HCP contributes to the conservation of listed salmonid ESUs, including Northern California *O. mykiss,* Southern Oregon/ Northern California Coast coho, and California Coastal chinook. This multi-species HCP covers approximately 210,000 acres of industrial timberlands in northern California and includes activities related to timber management, forest road development and maintenance and commercial rock quarrying. The Pacific Lumber HCP is habitat-based with a defined goal of achieving or trending towards properly functioning aquatic habitat conditions, relying heavily on watershed-scale analysis, monitoring, and adaptive management.

NMFS and FWS have held technical and policy discussions with Green Diamond Resource Company (formerly the Simpson Resource Company) regarding the development of an HCP for much of its industrial timber operations in northern California. Currently, NMFS and FWS are considering approval of an ESA section 10(a)(1)(B) permit to authorize incidental take pursuant to the plan.

The Services expect issuance of the Permits by summer 2004.

The Humboldt Bay Municipal Water District (which supplies water to both domestic and industrial users in the greater Humboldt Bay area) HCP provides for maintenance of river flows that exceed historical summer low-flows. In no case will the District allow the river to dry up due to their operations.

Protective Efforts in Oregon

Federal Efforts—In the last 2 years, NMFS has completed hundreds of ESA section 7 consultations with Federal agencies on proposed projects within the range of listed ESUs in the state of Oregon. These consultations have improved or successfully minimized impacts to salmonids and their habitats. Specifically, NMFS' interim biological opinion and Federal Energy Regulatory Commission (FERC) relicensing biological opinion for several Clackamas River hydroelectric projects under the authority of FERC and Portland General Electric will provide protective benefits to the Lower Columbia River chinook and coho, and Upper Willamette River chinook and *O. mykiss* ESUs. The biological opinion establishes improvements for upstream passage of adults, downstream passage of juveniles, temperature management, spawning habitats, and the maintenance of in-stream flows. NMFS will continue to work with these and other agencies to facilitate projects that promote the conservation of listed ESUs.

Although not existing protective efforts, the removal of the Marmot and Little Sandy dams, scheduled for 2007, will restore free fish passage in the Sandy River and open currently inaccessible spawning and rearing habitats for the Lower Columbia River chinook, *O. mykiss,* and coho ESUs. The removal of the Powerdale dam on the Hood River by 2010, including interim measures to improve passage and in-stream flows, will provide survival benefits to the Lower Columbia River chinook and *O. mykiss* ESUs in the short term, and will allow improved access to spawning and rearing habitats in the longer term.

The USACE has undertaken feasibility studies and constructed over 25 projects within the Willamette Basin and lower Columbia River to improve habitat for salmonids. Over the last 2 years the USFS has completed eight aquatic habitat restoration projects to improve salmonid habitat within the range of the Upper Willamette River ESUs and 17 projects within the range of the Lower Columbia River ESUs. The FWS, through their Partners for Fish and Wildlife Program, over the last two years has funded eight restoration projects that have restored many acres of stream habitats, adjacent wetlands, and riparian habitats in the Upper Willamette and Lower Columbia River chinook and *O. mykiss* ESUs.

The FWS, through their Greenspaces Program, is funding various habitat enhancement programs. The City of Portland's Watershed Revegetation Program, the City of Gresham, and the community are using these funds to enhance at least 20 contiguous riparian and upland acres of the site by removing and reducing invasive non-native species including Himalayan blackberry (*Rubus discolor*), reed canarygrass (*Phalaris arundinaceae*), and non-native pasture grasses. The Three Rivers Land Conservancy is using these funds to create a strategy to identify how, why and where they should protect land, with a focus on fish and wildlife habitat priorities that will supplement and complement regional and local acquisition and natural resource protection efforts. The City of Sherwood and local partners are using these funds to continue the Raindrops to Refuge Program to ensure the preservation of natural areas within the City of Sherwood and surrounding areas for the benefit of fish, wildlife and the community by developing an overall strategy to guide and coordinate natural resource conservation, habitat restoration, environmental education and community outreach efforts. The John Inskeep Environmental Learning Center is using these funds to coordinate activities of students and professors from three universities in their efforts to conduct a watershed assessment, and develop a management and restoration strategy for the Newell Creek watershed. The Nature Conservancy with these funds is continuing a multi-year project involving the removal of invasive, non-native species in Multnomah and Clackamas counties in the Sandy River Gorge and its tributaries, and in the Willamette Narrows (including Little Rock Island in the Willamette River and Camassia preserve). Portland Metro will use these funds to conduct upland and riparian habitat assessments along 50 stream sites and aquatic macroinvertebrate sampling on properties primarily owned and managed by local park providers in Clackamas, Multnomah and Washington Counties in Oregon to establish a Benthic Index of Biological Integrity (B-IBI). The City of Wilsonville is using these funds to implement a project to enhance 4.5 acres (1.8 ha) of upland and riparian areas on a parcel of public property adjacent to Boeckman Creek, a tributary to the Willamette River. Clackamas County Water Environment Services and ODFW will use these funds to: (1) Evaluate the abundance and distribution of fish species in urban streams within two Clackamas County special districts; (2) conduct surveys to evaluate the effects of several previous habitat restoration projects; and (3) conduct aquatic habitat surveys within Clackamas County tributaries of the Tualatin River. Clackamas County Water Environment Services is conducting a macroinvertebrate survey and analysis to supplement water chemistry data that have been collected since 1993. The biological data will provide more insight about the biological conditions of the streams under their jurisdiction. The Tualatin Riverkeepers is coordinating a salmon carcass placement project to restore marine-derived nutrients to 3 to 6 miles (4.8–9.6 km) of salmonid spawning reaches on the main stem of the Tualatin River and two of its tributaries, Dairy Creek and Gales Creek. Nutrient enrichment is also expected to enhance the overall ecology of the upper Tualatin by increasing fish and wildlife productivity. Funds will be used by aquatic science students of Portland's Central Catholic High School to support habitat restoration work along Johnson Creek near Powell Butte in southeast Portland, collecting water, vegetation and soil condition data to monitor the effects of habitat enhancement activities. Gresham's Alpha High School students will use funds to engage in a comprehensive habitat restoration effort on a 3-acre (1.2 ha) section along Johnson Creek known as Gresham Woods.

Within the range of the Lower Columbia and Upper Willamette River ESUs, FWS funded 8 projects during FY 2001–2002 through the Jobs in the Woods Program. These projects will accomplish the following: 48 fish passage barriers will be removed to allow fish access to over 70 miles (112.6 km) on habitat; 2.5 miles (4.0 km) of instream habitat will be restored; 23 acres (9.3 ha) of riparian habitat will be restored; and 33 miles (53.1 km) of forest roads will be decommissioned and improved to reduce erosion and sedimentation. During FY 2003, projects were funded through the program that will remove six fish passage barriers to allow fish access to over 30 miles of habitat.

FWS manages three estuarine national wildlife refuges (Siletz Bay, Nestucca Bay, Bandon Marsh) within the range of the Oregon Coast coho ESU. With

coastal wetland loss in the U.S. exceeding 20,000 acres (8,093 ha) per year, these refuges preserve estuarine habitat important to a variety of species, including Oregon Coast coho salmon. Though largely limited to stocks inhabiting the local watersheds, benefits to coho salmon include preservation of important migratory and rearing habitat.

The EPA has funded a restoration project in Portland to restore vegetation to the Smith and Bybee Lakes complex, that will provide flood refugia to anadromous salmonids. The EPA has also funded three habitat projects in the Lower Columbia River (Scappoose Bay watershed, Roster Rock State Park wetlands and Deep River in Washington) to improve salmonid habitat.

The USACE has undertaken the Tillamook Bay & Estuary Feasibility Study to identify and evaluate the problems and opportunities associated with flood damage reduction and ecosystem restoration in Tillamook Bay. Implementation of ecosystem restoration based on this study is not assured and is highly reliant on the allocation of adequate funding and the cooperation of private land owners.

The USACE's regulatory program strives to provide protection of the aquatic environment, including wetlands. This program issues permits under the Clean Water Act and the Rivers and Harbors Act for projects within its jurisdiction, including many beneficial restoration actions. The USACE's jurisdiction has recently been redefined to exclude isolated wetlands. This change may have deleterious effects on water quality and quantity in area streams and rivers with hyporheic flow.

Since 1997, the PFMC has developed and implemented a management plan for listed Oregon Coast coho salmon, and the plan has been approved by NMFS through a section 7 consultation with itself. Under this management plan harvest rates have decreased from 60 to 80 percent during the 1970s and 1980s to less than 15 percent at present. Fisheries are reviewed annually to ensure that harvest impacts are within the specified limits. A comprehensive review of the harvest management plan occurred in 2000, which included some important refinements to the plan based on new information and analyses.

Non-Federal Efforts—The Conservation Reserve Enhancement Program (CREP) is an effort, jointly funded by the U.S. Department of Agriculture and the State of Oregon, designed to improve riparian conditions on agricultural lands. Under the CREP, agricultural landowners can enroll eligible riparian lands into a 10–15-year CREP contract and receive annual conservation payments for the contract period, for up to 75 percent of the eligible costs of restoration practices, in addition to other financial incentives. Initiated in 1998, the Oregon CREP program continues to encourage greater participation.

The City of Portland has undertaken an effort to delineate fish habitat within the lower Willamette River to determine usage by salmonids, in an effort to better assess potential impacts to salmonids from City activities and to identify important areas to protect and restore. The City has also been working to develop an HCP for the City's water supply in the Bull Run River. The emphasis of the HCP is on adequate flows in the Bull Run River and restoring salmonid habitat in the Sandy River Basin, to mitigate for lost habitat resulting from installation in the early 1900's of the two dams that currently supply the City of Portland with potable water.

The Oregon Department of Transportation over the last 2 years has undertaken several projects to restore fish passage above barriers. The projects have opened over 11 miles (17.7 km) of salmonid habitat, and improved passage for over 25 miles (40.2 km) within the range of the Upper Willamette and Lower Columbia River chinook and *O. mykiss* ESUs.

The City of Portland Office of Transportation submitted its Routine Road Maintenance Program (RMP) to NMFS for approval under 4(d) Limit 10 on March 21, 2003. A 30-day public notice of availability of the program for comments was published on May 5, 2003 (68 FR 23696). Marion County, Department of Public Works, submitted its RMP to NMFS for approval under Limit 10 of the 4(d) protective regulations (65 FR 42422, July 10, 2000; 50 CFR 223.203(b)(1) through (b)(13)) on November 6, 2003. A 30-day public notice of availability of the program for comments was published on March 28, 2003 (68 FR 15153). Prior to final approval or disapproval of the program, NMFS must complete the NEPA review of the program and the ESA section 7 consultation. The RMP guides routine road activities that might affect ESUs of threatened salmon and *O. mykiss*. The RMP is designed to be protective of salmonids and their habitat through the implementation of Best Management Practices (BMPs) developed to protect water quality and habitat. For example, BMPs minimize the movement of soil into streams and restrict other activities based on their proximity to streams and wetlands. The program is already being implemented and improved. The RMP provides a small contribution toward salmon conservation; the activities are limited to the City of Portland transportation and Marion County jurisdiction. The program will contribute to overall conservation but, as with many protective efforts under consideration, it cannot be evaluated how much the program will contribute to salmon abundance, productivity, spatial structure or diversity.

South Slough National Estuarine Research Reserve in Charleston, OR is the only designated marine protected area (MPA) within the range of the Oregon Coast coho ESU. Managed by a commission appointed by the governor, with the administrative support of the Division of State Lands (DSL), activities in the reserve are regulated, including the prohibition of commercial bait gathering, discharge of chemicals or other pollutants, road-building, dredging or filling, and commercial timber harvest. Commercial oystering is the only commercial activity permitted within the reserve. The reserve provides protection of valuable estuarine habitat to coho salmon during migration, as well as rearing. Research in South Slough has documented juvenile salmon presence during periods commonly considered outside the migration period.

The City of Cannon Beach (City) has been working for more than a year to develop a plan under Limit 12 of the ESA 4(d) protective regulations (municipal, residential, commercial, industrial). So far, they have described their environmental baseline and examined the ways that City practices and City land use have affected and/or continue to affect fish and aquatic habitat. Protection of riparian habitat, water quality (water treatment issues) and water supply issues have been identified as areas that need the most work. The City is currently working with a consultant and its residents to develop and implement solutions to these problems.

The Oregon Plan—The Oregon Plan for Salmon and Watersheds (Oregon Plan or Plan, below) is a ''framework of state laws, rules, and executive orders designed to enhance and protect watershed health, at-risk species, and water quality by governing forest and agricultural practices, water diversions, wetlands, water quality, and fish and wildlife protections'' (Oregon Watershed Enhancement Board, OWEB, 2002). The mission of the Plan is ''to restore the watersheds of Oregon and recover the fish and wildlife populations of those watersheds to productive and sustainable levels in a

manner that provides substantial environmental, cultural, and economic benefits'' (IMST, 2002). The Oregon Plan seeks to address factors for decline related to habitat loss and degradation by focusing on human infrastructure and activities that can adversely affect watersheds and salmonid fishes, *e.g.*, fisheries management, hatchery practices, fish passage barriers, forestry, agriculture, livestock grazing, water diversions and effectiveness of fish screens, urbanization, permitted pollutant discharges, removal and fill permits.

The Oregon Plan encourages efforts to improve habitat conditions for salmon through non-regulatory means, including significant efforts by local watershed councils and private landowners. Since the Oregon Coast coho ESU was listed in 1998, OWEB has implemented over 1000 habitat improvement projects to increase and improve habitat for anadromous fish in Oregon rivers and tributaries. State regulatory agencies also actively contribute to the Oregon Plan and its implementation. For example, ODFW has revised fisheries management and hatchery practices, and implemented a comprehensive monitoring program for salmon and *O. mykiss* populations in Oregon.

The Oregon Plan includes several pre-existing activities and programs, as well as additional coordination, compliance, investment, monitoring, and voluntary involvement that are provided under the umbrella of the Plan. Included under this umbrella is the Oregon Agricultural Water Quality Management Act, passed as Senate Bill 1010 in 1993 by the Oregon State Legislature. Under this Act the Oregon Department of Agriculture provides landowners technical assistance to develop watershed-based plans to prevent and control water pollution resulting from agricultural activities. The Agricultural Water Quality Management Act promotes coordinated watershed planning, while maintaining needed flexibility for landowners to address site-specific water quality issues.

The IMST, the entity that provides scientific oversight for the Oregon Plan, has reviewed the adequacy of various elements of the Plan in conserving salmon and *O. mykiss* populations at the state-wide scale (*e.g.*, IMST 1998; 1999; 2002a; 2002b). A comprehensive ESU-scale analysis of the effectiveness of actions and measures under the Oregon Plan, specifically in conserving the Oregon Coast Coho ESU, is being conducted, but is not yet complete. In a coordinated effort through the Oregon Governor's Office, including all state natural resource agencies and several Federal partners, the State of Oregon has undertaken a comprehensive analysis of the adequacy of actions under the Plan, specifically in the context of conserving and recovering the Oregon Coast coho ESU. As this substantial effort is currently underway and not scheduled to be completed until later in 2004, the proposed listing determination for the Oregon Coast coho ESU described in this notice has not been informed by this ESU-scale analysis. If information is made available to NMFS suggesting that the Oregon Plan and/or other conservation efforts substantially mitigate ESU extinction risk, NMFS will take such opportunity to re-initiate a status review for the Oregon Coast coho ESU to consider the best and most recent scientific and commercial information available.

The ODFW has developed several fishery management plans that have been approved by NMFS for listed salmon and *O. mykiss* ESUs in Oregon. ODFW has developed a comprehensive harvest plan for the Oregon Coast coho ESU that was included in the Oregon Plan. This fishery management plan was subsequently adopted by the PFMC (described above). A Fisheries Management Evaluation Plan (FMEP) was developed by ODFW for a coho salmon fishery in Siltcoos and Tahkenitch Lakes on the Oregon Coast. This FMEP was approved by NMFS in 2001 under Limit 4 of the ESA 4(d) rule (65 FR 42422; July 10, 2000) and remains in effect. ODFW has developed two FMEPs under limit 4 of the 4(d) rule for listed spring chinook and winter steelhead in the Willamette River Basin, as well as an additional 4 FMEPs for listed chinook, *O. mykiss*, coho and chum in the Lower Columbia River. Under these FMEPs, only adipose-fin clipped fish can be harvested, and all wild fish must be released unharmed. This management change has resulted in a 75-percent decrease in harvest impacts to spring chinook returning to the Willamette Basin. For listed Willamette River winter *O. mykiss*, harvest rates have been reduced to 1–2 percent. Although these six FMEPs have yet to be approved by NMFS, they have resulted in a reduction of overall fisheries impacts in the Lower Columbia River of over 50 percent.

Protective Efforts in Washington State

Federal Efforts—Since 2000, NMFS has consulted on over 1,000 Federal actions, and private actions requiring Federal authorization, that potentially affected listed ESUs in Washington State. These consultations covered a broad range of activities including water withdrawals, dock construction, road construction, the full suite of forest management activities, and stream channel restoration. Federal agencies were able to effectively minimize the potential adverse impacts of activities through the consultation process. For example, consultations have led to substantial improvements to stream flows in three streams occupied by the Upper Columbia River ESUs, and to improved design standards for new docks in the Columbia River. Another significant outcome of the consultation process has been the marked improvement in the quality of the proposals submitted for consultation. Federal agencies are including more effective minimization measures in their proposed actions before requesting consultation. The installation of spill deflectors as part of the Chief Joseph Dam gas abatement project will likely increase juvenile survival for the Upper Columbia River chinook and *O. mykiss* ESUs, and to a lesser extent the Middle Columbia River *O. mykiss* ESU. A settlement agreement with the FERC will restore fish passage above Pacificorp's Cowlitz Dam and improve in-stream flows. Pacificorp has also committed to the removal of Condit Dam on the White Salmon River, or to otherwise establish fish passage to currently blocked spawning and rearing habitat for Lower Columbia River chinook and Middle Columbia *O. mykiss* ESUs.

Over the past 2½ years, the majority of NMFS' ESA section 7 consultations have concerned ongoing and proposed activities in Puget Sound. Completed section 7(a)(2) consultations cover a wide range of management activities with 26 Federal action agencies, including Federal land management, USACE permits for shoreline modifications, and habitat restoration projects. Each action that NMFS found would not jeopardize Puget Sound chinook included sufficient conservation measures to avoid or minimize substantial adverse effects, and many actions included restorative elements. For example, as integral parts of several major infrastructure projects, over the past decade or so and with greater emphasis since chinook were ESA-listed in Puget Sound, the Port of Seattle has constructed 3.7 acres of aquatic habitat restoration and enhancement areas and made other environmental improvements. The Port also improved light penetration in shallow water areas, removed barriers to migrating juvenile fish, reshaped shoreline to improve aquatic habitat, replaced several thousand creosote-

treated wooden pilings that had contaminated fish habitats with fewer concrete and steel pilings, restored and enhanced habitat, and cleaned up contaminated sediments.

Over the past 2½ years, NMFS has consulted on hundreds of ongoing and proposed activities that may affect salmonid habitats within the Washington area of the Lower Columbia River domain. Completed ESA section 7(a)(2) consultations cover a wide range of management activities with at least 11 Federal action agencies, including Federal land management, USACE permits for shoreline modifications, and habitat restoration projects. Each action that NMFS found would not jeopardize the listed Lower Columbia ESUs included sufficient conservation measures to avoid or minimize substantial adverse effects, and many actions included restorative elements. For example, separate, state-wide Programmatic Consultations with the USACE and FWS provide technical guidance for restoring fish passage and other habitat restoration projects that receive a variety of Federal funds.

As previously mentioned, the NPCC–FWP has invested BPA funds in passage and flow improvements within Columbia River Basin. More recently, the BOR, as part of its responsibilities under the FCRPS Biological Opinion, has deployed staff within the Basin to begin addressing passage and flow problems. Presently, the BOR lacks authority to fund projects, and has instead been providing technical assistance and engineering support to irrigators. The BOR anticipates soon having authority to fund construction and purchase water. In spite of present limitations, the BOR is involved in designing two projects that could meaningfully resolve instream flow problems in two significant tributaries.

BPA, Mitchell Act, and Pacific Coastal Salmon Recovery Funds have also been used to screen irrigation withdrawals throughout the Columbia Basin. The vast majority (in terms of the volume of water diverted) of water withdrawals in the Basin are screened. However, a number of these screens do not meet current criteria. All screens require periodic inspection and maintenance. ESA-compliant screens of gravity water diversions are in place on two of the six sites routinely inspected by the WDFW. There are an unknown number of other screens on gravity diversions that are not inspected by WDFW.

Over 80 percent of the land within the Methow, Entiat, and Wenatchee Subbasins is publicly owned, but private ownership is concentrated along the valley bottoms and represents a disproportionate share of the habitats occupied by the Upper Columbia River *O. mykiss* and spring chinook ESUs. In the Okanogan Basin, nearly all of the habitat currently available to *O. mykiss* is in private or Tribal ownership. Several lesser independent Columbia River tributaries drain lands managed by the Department of the Army or the BOR.

The Department of the Army has significantly improved range management conditions on its lands, to the betterment of fish habitat. Serious water quality problems persist in streams receiving agricultural return flows from BOR facilities. National Forest lands within the range of the Upper Columbia ESUs are managed according to Northwest Forest Plan or PACFISH standards. Continued adherence to these standards is expected to result in conditions on Federal land consistent with salmon and *O. mykiss* recovery. An ongoing concern is that most of the National Forest lands outside of designated wilderness areas contain very high road densities. These roads are a major source of sediment to chinook and *O. mykiss* spawning streams, and many road crossings impede fish passage. The USFS improves roads and stream crossings as it can, but present budgets are inadequate to remedy these problems in the near term.

The upper reaches of several major streams lie in wilderness, but wilderness areas are generally upstream of Upper Columbia *O. mykiss* and spring chinook production areas. Wilderness areas and the non-wilderness portions of the National Forest attract substantial recreational activity. Most of the Forest Lands within the ranges of the Upper Columbia River ESUs are within a few hours' drive of the major population centers of western Washington. Throughout the summer, thousands of recreational users crowd the banks of major *O. mykiss* and chinook production areas, destroying riparian vegetation and harassing listed fish during summer low flows. Again, the USFS has endeavored to minimize these impacts by relocating and closing some camping areas, but budgets have been inadequate to control the problem. The recently enacted program of charging fees for using many sites in the Forest and using those receipts to improve recreational facilities will likely help to lessen recreational impacts. Many of the National Forest lands within the ranges of the Upper Columbia River ESUs are grazed. Although NMFS consults on grazing leases, there is ongoing concern about compliance with lease requirements.

Non-Federal Efforts—NMFS has recently approved a Routine Road Maintenance under Limit 10 of the ESA 4(d) rule for approximately thirty cities and counties across the State. This approval will ensure that routine road maintenance activities, done according to specified conditions, will avoid and minimize possible ''take'' of threatened salmon and *O. mykiss*.

The Lower Columbia Fish Recovery Board has identified over 260 salmonid habitat improvement projects in the last 12 years that were completed by various private and local government entities within the range of the Lower Columbia River ESUs.

HCPs with the Chelan and Douglas County public utility districts for the Wells, Rocky Reach, and Rock Island dams will: increase the survival of juveniles migrating through the projects; improve spawning and rearing habitat in the Okanogan, Methow, and Entiat basins; and ensure that related hatchery programs are operated in a manner consistent with the overall objective of rebuilding natural populations. NMFS is working with two agricultural irrigation districts in the Methow Basin to develop HCPs. The HCPs are likely to be narrowly focused on water use and the maintenance of minimum instream flows. Another large irrigation district has also expressed interest in developing an HCP to cover the full suite of its management activities. A county government within the range of the Upper Columbia River ESUs has also expressed an interest in an HCP that would enable any county resident willing to comply with the terms of the HCP to thereby achieve compliance with the ESA under a section 10 permit held by the county. An Upper Columbia River watershed group has expressed a similar interest, but has not been able to identify a suitable permit holder. At present, it is uncertain whether any of these efforts will lead to the issuance of a section 10 permit.

Approximately 1.1 million acres (445,146 ha) of forest lands and two municipal watersheds are covered by HCPs within the Puget Sound domain (ESUs include Puget Sound chinook, Hood Canal summer-run chum, and Ozette Lake sockeye); NMFS has determined that these HCPs comply with ESA section 10(a)(2)(B). The HCPs are West Fork Timber, Plum Creek Timber (Central Cascades), Port Blakely Tree Farms, WA Department of Natural Resources (WA DNR, discussed in more detail below), Green Diamond Resource Company (formerly, Simpson Timber)—Shelton Timberlands, City of Seattle Cedar River Watershed, and City of Tacoma Green River Water Supply. All

of the forestry HCPs address long-term salmonid survival on industrial forest lands and are designed to provide properly functioning habitat conditions—thereby ensuring healthy watersheds and riparian areas. They also give landowners long-term management clarity and certainty. Specific HCP conservation measures focus on attaining mature forest conditions in riparian areas, minimizing sediment input to streams, protecting and recovering floodplain functions, and protecting water quality during timber management and associated road operations. Of the seven HCPs in Western Washington State, two include protection of instream flows for anadromous salmonids (Cedar and Green rivers). Instream flows are also provided, through agreements negotiated with the FERC, on the Skagit, Sultan, Snoqualmie (ramping rates only) and Nisqually rivers. Recently installed screens on gravity water diversions at five sites on the Dungeness River are consistent with current standards for fish passage. The number of additional gravity water diversions in other sub-basins, and whether any are compliant with fish passage, are unknown. Two long-standing hydroelectric dams on the Elwha River are slated for removal starting in 2007. Congress has authorized funds for current phases of the complex effort that requires construction of several new water supplies. Dam removal will restore about 70 miles (112.6 km) of mainstem and tributary habitat. Fish passage is also being restored to 17 miles (27.4 km) of mainstem and tributary habitats on the Cedar River as part of the City of Seattle's HCP, 7 miles (11.2 km) on Goldsborough Creek, as well as many other small streams.

The WA DNR HCP is the largest of the HCPs, providing conservation benefits to multiple species including ESA-listed and currently unlisted anadromous salmonids. The WA DNR will use riparian management zone (RMZ) buffers on both sides of fish bearing streams to address riparian functions that influence the quality of salmonid freshwater habitat. The RMZ consists of an inner riparian buffer (minimum 100 ft (30.5 m), or on-site tree height, whichever is greater), and an outer wind buffer (between 50–100 ft (15.2–30.5 m), depending on stream size) where needed to protect the inner buffer. No harvest will be allowed in the first 25 ft (7.6 m) of buffer, ''minimal harvest'' will be allowed in the next 75 ft (22.9 m), and ''low harvest'' will be allowed in the remaining buffer more than 100 ft (30.5 m) from the active channel margin. It has been demonstrated that errors in stream classifications are quite common, and that incorrectly classifying streams as non-fish-bearing waters could have significant adverse effects on salmonid habitat. In order to avoid such effects, a 100-ft (30.5 m) wide riparian buffer was applied on both sides of perennial streams believed to be non-fish-bearing. Additionally, stream typing will be examined or verified in the field before harvest.

The WA DNR's Road Management Strategy will be implemented to: (1) Minimize further road-related degradation of riparian, aquatic, and identified species habitat; (2) plan, design, construct, use, and maintain a road system that serves the DNR's management needs; and (3) remove unnecessary road segments from the road network. Comprehensive road maintenance plans will include annual inventories of road conditions; aggressive maintenance, stabilization, and access control to minimize management and environmental problems; and limits on road network expansion. The standards for new road construction and appropriate placement will be consistently applied and updated. The DNR will initially focus on improving roads in the more sensitive areas of a landscape giving priority to locations on steep slopes with unstable soils and high precipitation, and locations within 100 feet of fish-bearing streams and wetlands. In order to keep new roads to a minimum, log yarding will be allowed through the harvest zone in the RMZ. Specific measures for this yarding (and any other management in the RMZs) will be developed by DNR and reviewed by NMFS/FWS. Such management would be based on detailed, site-specific conservation objectives, and sufficient monitoring would be included to ensure that the RMZs will continue to adequately provide the desired riparian functions.

Protections of seasonal non-fish-bearing streams include: (1) Those streams crossing unstable slopes will be protected (no timber harvest) to minimize potential for landslides and other mass-wasting activities; (2) those streams crossing stable ground will be protected where necessary to maintain important elements of the aquatic ecosystem; and (3) an aggressive, 10-year research program will study the effects on aquatic resources of forest management along such streams. At the end of 10 years, a long-term conservation strategy for forest management along seasonal non-fish-bearing streams will be developed and incorporated into the HCP. Potential sediment introductions to streams will be minimized by placing harvest restrictions near those streams flowing on unstable slopes and in areas with a high risk of mass wasting. Also, a comprehensive landscape-based road network will be developed to identify fish blockages caused by stream crossings and prioritize their retrofitting or removal. Adverse effects on salmonid habitat caused by rain-on-snow floods will be minimized by maintaining two-thirds of DNR-managed forest lands within each sub-basin in a forest condition that is hydrologically mature with respect to rain-on-snow events. In addition, improved road management will decrease adverse effects on natural hydrologic function.

The DNR will monitor the WA DNR HCP to determine whether its conservation strategies are implemented as written and whether that implementation results in anticipated habitat conditions. Implementation monitoring will document the types, amounts, and locations of forest management activities carried out on DNR-managed lands in the five westside and Olympic area planning units. Research monitoring in riparian habitats will focus on determining how to design wind buffers, evaluating forest practices along seasonal non-fish-bearing waters not associated with unstable slopes, designing timber harvest in riparian buffers and mass wasting areas, and developing basic information on the relationship among forest practices, riparian ecosystems, and basin hydrology. Implementation of these measures will likely lead to properly functioning conditions on commercial state-owned timberlands.

The CREP is an effort, jointly funded by the U.S. Department of Agriculture and Washington State, designed to improve riparian conditions on agricultural lands. Under the program, farmers are paid to plant and maintain, for a period of up to 15 years, streamside buffers. In spite of the availability of more than $200 million, participation in CREP within Washington State has been very low. The State and the Department of Agriculture are in the process of modifying the Washington State program to allow smaller buffers, to encourage greater participation. The current program requires that buffer widths vary according to local geomorphic features, while the proposed changes would allow the application of fairly narrow static-width buffers, independent of a site's geomorphic context. It is unclear whether lowering the minimum standards will encourage greater

participation, and in turn lead to improved riparian conditions.

The Washington State Salmon Recovery Funding Board (SRFB) is intended to fund efforts to protect and restore salmonid habitat. The SRFB is supported by a combination of state general fund and Federal Coastal Salmon Recovery dollars. The scope of SRFB projects is essentially the same as NPCC habitat projects, and often, funds from both sources are pooled on individual projects. In the Columbia Basin, the state is attempting to harmonize SRFB efforts with the NPCC program and has granted funding to local groups in support of subbasin planning. Working in concert, these two programs will form a powerful vehicle for habitat protection and restoration within the range of the ESU.

State and private forest practices are subject to new Washington State Forest and Fish Report regulations, which will reduce forest practices impacts relative to those rules in effect when the species in Washington were listed. These regulations are among the most restrictive in the country and require the retention of substantial riparian zones and the remediation of forest road problems.

Although forest practices on private lands are not now compliant with ESA regulations, the Washington State Forest Practice Rules were changed in 2000. Those rules are now being developed into an HCP (68 FR 12676; March 17, 2003). Effective July 2001, these new rules covered a wide variety of forest practices and include: a new, more functional classification of rivers and streams on non-Federal forest land; improved plans for properly designing, maintaining, and upgrading existing and new forest roads; additional protections for unstable slopes; greater protections for riparian areas intended to maintain properly functioning conditions; and a process for adaptive management.

The State of Washington has established a water rights acquisition program intended to secure water rights for the purpose of improving stream flows for fish. The program is endowed with $5.5 million in State and Federal funds, which are to be used only in 16 priority subbasins. Two of these subbasins are within the range of the Upper Columbia River ESUs. Unlike the BOR program under FCRPS Biological Opinion's Action 149, the state's effort has established guidelines for prioritizing how the funds are spent. Portions of the program's funds have been used to lease water in the Okanogan River Basin as part of a cooperative effort between a local irrigation district, the Colville Tribes, and non-profit organization. That effort put flows in lower Salmon Creek in early 2003, allowing anadromous *O. mykiss* to spawn there for the first time in nearly a century.

WDFW's Yakima Screen shop has installed and maintained numerous screens within the ranges of salmon and *O. mykiss* ESUs, using a combination of BPA, Mitchell Act, and state funds. Their progress in fabricating and installing screens has been impeded by insufficient funding and staff. The status of the state's budget is such that it is uncertain if the State will continue to fund screen construction in the future.

The Washington State Department of Ecology (DOE) is responsible for ensuring that water quality meets the standards required by the Clean Water Act (CWA). However, every subbasin within the ranges of the Upper Columbia River ESUs contains streams or stream reaches that do not meet CWA standards, and water quality remains a significant limiting factor. There are 109 streams or stream segments listed under CWA 303(d) as impaired with respect to water quality. Nineteen of these are listed as impaired for lack of instream flows, and a number of others are listed for temperature problems that occur as indirect effect of water withdrawals. Water withdrawals for irrigated agriculture are the most significant sources of water quality degradation within the Upper Columbia River. TMDLs are the most effective tools for addressing these non-point source pollution problems. Presently, the only TMDL effort underway in the Upper Columbia River is in the Wenatchee Subbasin, although there are a number of TMDL efforts underway across the state outside of the Columbia Basin. Lack of staff resources at DOE is a major impediment to the development of additional TMDLs. During its 2003 session, the Washington State Legislature acted to limit DOE's authority to regulate water withdrawals for the protection of in-stream flows. While DOE had not exercised this authority until 2002, its first attempt to do so resulted in the subject legislation. It is now doubtful that the CWA, implemented by DOE, will be used to resolve in-stream flow problems in Washington State.

Recovery planning for listed salmonids in Puget Sound is being conducted through a voluntary, collaborative process called the Puget Sound Shared Strategy. Federal agencies, tribal governments, state and local governments, private businesses, and environmental organizations are working together through the Shared Strategy to complete a recovery plan for listed Puget Sound chinook by 2005. This effort is focused on the development of local watershed recovery plans, each of which will describe specific actions within a given watershed necessary to recover the local listed salmon populations. In addition to the individual watershed recovery plans, an inter-disciplinary group of planners, scientists, and government agency staffs are preparing a plan for the recovery of nearshore and estuarine habitats in Puget Sound. Drafts of these plans will be completed by June 2004. The plans will be included, to the maximum extent practicable, as part of the Puget Sound chinook ESU recovery plan to be completed by the summer of 2005.

In the Lower Columbia River, WDFW has developed an FMEP for listed chinook salmon, listed *O. mykiss*, and listed chum salmon under Limit 4 of the 4(d) rule. The FMEP was approved by NMFS in December 2003. Under the FMEP only adipose fin-clipped chinook, *O. mykiss*, chum and coho salmon may be harvested. All unmarked wild fish must be released unharmed. Changes in trout fishing regulations reduce harvest rates on juvenile steelhead to less than 2 percent.

Protective Efforts in Idaho

Federal Efforts—The USFS is currently in the process of revising its Land and Resource Management Plans (LRMPs) across the Snake River Basin. This LRMP revision will be used by the USFS to replace the existing protective efforts of PACFISH, INFISH, and the related LRMP biological opinions, providing comparable protection for ESA-listed fish species but at a site-specific scale. LRMPs have recently been revised for the Boise, Payette, and Sawtooth National Forests (Southwest Idaho Ecogroup), and will soon be revised on the Clearwater, Wallowa-Whitman, and Salmon-Challis National Forests. Direction provided by these LRMPs will guide all management activities across applicable National Forest lands for the next 10 to 15 years. As in the revision for the Southwest Idaho Ecogroup, each of these LRMPs will likely include some form of an Aquatic Conservation Strategy (ACS), a strategy designed to ensure that future management activities work to maintain and restore proper functioning fish habitat conditions.

To accomplish this goal, LRMPs will provide guidelines for timber harvest, road maintenance, and other activities. They will include but not be limited to: (1) Placing restrictions on the types and magnitude of management activities across the forest or within individual

watersheds; (2) placing restrictions on the location and extent of ground-disturbing activities in a watershed (including road network development); (3) allocating important watersheds to listed fish species for restoration emphasis versus commodity production; (4) identifying watershed restoration needs and priorities; (5) establishing a process for riparian reserve network delineation; and (6) incorporating an adaptive management process to ensure that restoration priorities remain current.

Success of habitat restoration efforts on Federal lands will depend upon adequate funding. NMFS believes that implementation of the LRMPs for National Forest lands in the Snake River Basin will continue to provide substantial benefits to Snake River *O. mykiss* and chinook salmon. While the LRMP covers a very large area, the overall effectiveness of efforts on Federal lands in conserving Snake River *O. mykiss* and chinook salmon is somewhat limited by the extent of Federal lands and the fact that Federal land ownership is not uniformly distributed in watersheds within the ranges of affected ESUs. Therefore, long-term habitat protection within the range of this ESU continues to depend on improvement in non-Federal land management, particularly those lands used for timber harvest and agriculture.

To date, three HCPs are under development within the range of Snake River *O. mykiss*, fall and spring/summer chinook and sockeye, one by Plum Creek Timber Company and the other two by the Upper Salmon River and Lemhi River Irrigators. However, only the Plum Creek HCP has been formally submitted to NMFS. The success of HCPs depends on funding and implementation of restoration activities basinwide.

The Idaho Screen Shop in Salmon, Idaho, is very active in screening diversions throughout the Salmon River basin. The screen shop is run by Idaho Department of Fish and Game, with funding from BPA and NMFS under the Mitchell Act. The BOR provides technical assistance in design. This program has been effective in reducing fish losses to irrigation systems.

The BOR is responsible for addressing flow, passage and screening problems on non-public land pursuant to the 2000 FCRPS Biological Opinion. In 2002, BOR facilitated the completion of ten projects in the Lemhi River, and two projects in the East Fork Salmon River to replace headgates, consolidate diversions, and install screens in an effort to eliminate fish passage barriers. In 2003, BOR began work in the upper Salmon River, and as a result completed two projects on Upper and Lower Beaver Creek. Additionally, BOR has contacted landowners in other subbasins to locate and remove fish passage barriers. BOR is currently designing several projects to remove fish passage barriers in the upper Salmon River subbasin. The objective of BOR's action is to restore flows needed to avoid jeopardy to listed species, screen all diversions, and resolve all passage obstructions within each of 16 priority subbasins. Water acquisition will occur through water purchase or lease. This program may be highly successful in opening additional spawning and rearing habitat and increasing flows for out-migrating anadromous fish. Success depends upon sufficient funding, identification of problem areas and adequate design and implementation. BOR has in the past and will continue to consult with NMFS and the FWS when designing projects to eliminate fish passage barriers.

Non-Federal Efforts—Demands for Idaho's groundwater resources have caused groundwater levels to drop and reduced flow in springs for which there are senior water rights. The Idaho Department of Water Resources is continuing studies and has promulgated rules that address water right conflicts and demands on a limited resource. The studies have identified aquifer recharge as a mitigation measure with the potential to affect the quantity of water in certain streams, particularly those essential to listed species. Idaho continues to address the potential to improve flows for fish passage through state programs. Idaho water law has been changed to allow water rentals and the retention of instream flows for fish in the Lemhi River. Idaho and local irrigators have negotiated short-term agreements to ensure minimum in-stream flows through 2003 and have committed to developing a long-term HCP with NMFS for the Lemhi River. However, Idaho has not yet augmented flows to any significant extent in subbasins other than the Lemhi. Efforts to recover listed salmon are likely to be impeded until Idaho begins to explore opportunities to address the limitations of state water law to increase flows in other subbasins.

In 2001, the Idaho state legislature extended for one year BOR's authority to rent water from Idaho's water rental pools, for delivery to BOR's flow augmentation program. In recent years, BOR rented up to about 250,000 acre-feet from these rental pools of the total 427,000 acre-feet delivered for salmon flow augmentation. While this legislation allowed such rentals to continue during 2001, a severe drought occurred in 2001 and very little water was available for rental. In 2001–2003 water was rented in the Lemhi River.

The Idaho Department of Environmental Quality continues to establish court-required TMDLs in the Snake River Basin, a program regarded as having positive water quality effects. TMDLs were completed in 2001 in the following subbasins: South Fork Clearwater River, Mid-Salmon Panther (completed and approved), Mid-Salmon Chamberlain (approval pending), and South Fork Salmon (approval pending). TMDLs were completed in 2002 in the following subbasins: Pahsimeroi (1 sediment, 1 temperature), Mid-Salmon Chamberlain [(Crooked Creek) (1 segment temperature) (EPA requested changes; resubmitted September 2002)], and South Fork Salmon (assessment complete; no new TMDLs; existing 1991 TMDL on mainstem remains in effect). Additionally the following work is underway: South Fork Clearwater (Subbasin assessment/TMDL loading analysis underway), Snake River-Hells Canyon (submittal pending; TMDLs for temperature, sediment loads at mouths of tributaries, nutrients, dissolved oxygen, total dissolved gas), Potlatch (starting assessment) and small tributaries of the Clearwater on Nez Perce Reservation (developing work plans). An agreement establishing a schedule for completion of TMDLs in Idaho was reached in 2002. Corrective actions to meet TMDL targets will need to be identified, funded, and implemented.

Summary of Protective Efforts Addressing Habitat, Harvest, and Passage Issues

In summary, the ESA listings of salmon and *O. mykiss* ESUs have provided the incentive for numerous protective efforts. While many causes of decline in salmon and *O. mykiss* ESUs are being addressed (*e.g.*, providing fish passage above artificial barriers), habitat degradation and destruction has been slowed but not prevented. The protective efforts described above are directed toward addressing the numerous factors that limit recovery of threatened and endangered ESUs—water quality and quantity, safe migration, riparian vegetation, food, predation dynamics and complex stream channels, and floodplain connectivity. These actions all will aid in improving these factors within the area of each project. Cumulative effects of these and other protective efforts, and any additional measures necessary to address the ESUs' factors for decline

and extinction risk, are being evaluated through recovery planning.

Proposed Listing Determinations

The ESA defines a species as including any subspecies, or any distinct population segment of a vertebrate species, which interbreeds when mature. The ESA further defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and taking into account those efforts, if any, being made to protect such species.

The proposed listing determinations are described below for each of the 27 ESUs of West Coast salmon and *O. mykiss* under review, as defined in the section *''Determinations of ''Species'' Under the ESA.''* Informed by the BRT's findings (NMFS, 2003b), NMFS' assessment of the effects of artificial propagation programs on ESU viability (NMFS, 2004b), the Artificial Propagation Evaluation Workshop conclusions regarding the extinction risk of ESUs in-total (NMFS, 2004c), and after considering the efforts being made to protect these ESUs, NMFS has determined that four ESUs warrant listing as endangered species, and 23 ESUs warrant listing as threatened species. Collectively, these ESUs include 162 artificial propagation programs. Informed by the *Alsea* ruling and consistent with the proposed Hatchery Listing Policy published elsewhere in this issue of the **Federal Register**, any artificial propagation programs considered to be part of an ESU will be included in the listing if it is determined that the ESU in-total is threatened or endangered. Table 3 at the end of this section provides a summary of the proposed listing determinations.

In many of these ESUs, adult returns have been significantly higher in the last 1 to 3 years than has been observed in the past decade or more. These recent improvements, principally in ESU abundance and productivity, are encouraging and represent a relative reduction in extinction risk. However, the favorable responses observed in recent years are often uneven across populations within these ESUs. Additionally, the causes for the recent increases in abundance and productivity are not well understood, and in many (perhaps most) cases may be primarily due to unusually favorable conditions in the marine environment rather than more permanent reductions in the factors that have led to the widespread declines in salmonid abundance over the past century (See NMFS, 2003b for further discussion). For ESUs limited by factors affecting their spatial structure, improvements in fish passage and other issues are difficult to obtain and are slow to show a biological response. Reform of harmful hatchery practices has alleviated threats to the diversity of many ESUs, but it is uncertain the degree to which past harmful effects are reversible.

Snake River Sockeye ESU

The BRT unanimously concluded that the Snake River sockeye ESU is ''in danger of extinction.'' Although the Redfish Lake captive broodstock program was instrumental in rescuing the ESU from extinction, it does not substantially mitigate the BRT's assessment of risk. Actions under the 2000 FCRPS Biological opinion, as well as other protective efforts in the region and the State of Idaho, have improved habitat conditions for the ESU. Nonetheless, risks to the ESU's abundance, productivity, spatial structure, and diversity remain extremely high. NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the Redfish Lake captive broodstock program does not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''in danger of extinction.'' NMFS concludes that the ESU in-total is in danger of extinction throughout all or a significant portion of its range, and proposes that the Snake River sockeye ESU remain listed under the ESA as an endangered species.

Ozette Lake Sockeye ESU

The BRT concluded that the naturally spawned component of the Ozette Lake sockeye ESU is ''likely to become endangered within the foreseeable future.'' The Makah Tribe's artificial propagation program has improved the ESU's overall abundance and spatial structure, but these efforts likely have not mitigated the risks faced by the beach spawning sockeye aggregations. Uncertainties and biases in the available data continue to confound evaluations of abundance and productivity trends in the ESU. NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' Although the WA DNR HCP, Washington State Forest Practice Rules, and other protective efforts are encouraging signs, these efforts have yet to demonstrate substantive improvements to Ozette Lake habitat conditions. NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and proposes that the Ozette Lake sockeye ESU remain listed under the ESA as a threatened species.

Sacramento River Winter-Run Chinook ESU

The BRT concluded that the naturally spawned component of the Sacramento winter-run chinook ESU is ''in danger of extinction.'' Informed by the BRT's findings (NMFS, 2003b) and the assessment of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Sacramento River winter-run chinook ESU in-total is presently ''in danger of extinction'' (NMFS 2004c). Major efforts have been undertaken by NMFS and others over the past decade to: Assess the viability of, and conduct research on, the winter run chinook population; implement freshwater and ocean harvest management conservation efforts; and implement a wide range of habitat conservation measures. The State of California has listed winter-run chinook under the California Endangered Species Act, implemented freshwater harvest management conservation measures, and increased monitoring and evaluation efforts in support of conserving this ESU. Harvest and habitat conservation efforts have substantially benefited the ESU's abundance and productivity over the past decade. These efforts include: Changes in Central Valley Project and State Water Project operations and other actions undertaken pursuant to implementation of the Central Valley Project biological opinion that have increased freshwater survival; changes in salmon ocean harvest pursuant to the ocean harvest biological opinion that have increased ocean survival and adult

escapement; implementation of habitat restoration efforts throughout the central valley as a result of the CALFED program and other central valley habitat restoration projects. A key concern of the BRT was the lack of diversity within this ESU and the fact that it is represented by a single extant population at present. However, significant efforts are underway through the CALFED ecosystem restoration program to restore habitat and anadromous fish access to Battle Creek which would provide an opportunity for this ESU to establish a second population. The two artificial propagation programs that are part of this ESU also provide benefits to the ESU's viability by contributing to abundance and by preserving the genetic diversity of the ESU through careful use of spawning protocols and other tools that maximize genetic diversity of propagated fish and minimize impacts on naturally spawning fish. The Livingston Stone NFH program also safeguarded the natural population during a period of critically low abundance in the early 1990s, and preserved the genetic and behavioral characteristics of the extant natural population. NMFS believes that the protective efforts being implemented for this ESU, as evaluated pursuant to the PECE, provide sufficient certainty of implementation and effectiveness to alter the BRT's and Artificial Propagation Workshop's assessments that the ESU is ''in danger of extinction.'' NMFS concludes that the ESU in-total is not in danger of extinction, but is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Accordingly, NMFS proposes that the Sacramento River winter-run chinook ESU, presently listed as an endangered species, be listed as a threatened species under the ESA.

Central Valley Spring-run Chinook ESU

The BRT concluded that the Central Valley Spring-run chinook ESU is ''likely to become endangered within the foreseeable future'' (NMFS, 2003b). There are no artificial propagation programs producing spring chinook that are considered to be part of the ESU, and therefore, the Artificial Propagation Evaluation Workshop did not consider this ESU. The BRT was particularly concerned about the loss of the ESU's diversity caused by extirpation of populations in most portions of the Central Valley, as well as the geographic proximity of the relatively small populations that remain. NMFS believes that the various habitat restoration efforts in the Central Valley have contributed substantially to improving the viability of the remaining spring chinook populations. Current efforts in Battle Creek and elsewhere are likely to provide additional habitat for spring chinook. In addition, the State of California has listed spring run chinook under the California Endangered Species Act and has implemented freshwater harvest management measures, as well as increased its monitoring and evaluation of naturally spawning populations. However, the blockage of historical spawning habitat, the limited distribution of natural production areas, and the risks posed by the non-ESU Feather River hatchery program remain to be addressed. Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's assessment that the ESU is ''likely to become endangered within the foreseeable future.'' NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and therefore, proposes that the Central Valley spring-run chinook ESU remain listed as threatened under the ESA.

California Coastal Chinook ESU

The BRT concluded that the naturally spawned component of the California Coastal chinook ESU is ''likely to become endangered within the foreseeable future.'' Informed by the BRT's findings (NMFS, 2003b) and the assessment of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the California Coastal Chinook ESU in-total is ''likely to become endangered within the foreseeable future'' (NMFS, 2004c). Some coastal habitat protective efforts have provided benefits to the ESU, most notably: the State's habitat restoration grant program, which is funded in large part by the Pacific Coast Salmon Restoration Fund; the multi-county conservation planning and implementation efforts which have focused on fixing migration barriers and improving road maintenance programs; and implementation of the Pacific Lumber Company HCP, which is expected to contribute to achieving properly functioning habitat conditions in some watersheds occupied by this ESU. Collectively, however, these programs do not substantially reduce risks to the ESU. Implementation of the Potter Valley hydroelectric project biological opinion by FERC and completion of the Russian River consultation addressing water project operations in the Russian River are expected to benefit this ESU in the future. Similarly, ongoing efforts by NMFS and CDFG to develop a coastal salmon and steelhead monitoring program are expected to substantially improve the amount and quality of available information on the abundance and spatial distribution of naturally spawning populations in the future, thereby allowing improved long-term assessment of population viability and trends. Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. NMFS proposes that the California Coastal chinook ESU remain listed as a threatened species under the ESA.

Upper Willamette River Chinook ESU

The BRT concluded that the naturally spawned component of the Upper Willamette River chinook ESU is ''likely to become endangered within the foreseeable future.'' NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' Efforts under FWS' Greenspaces Program, the Oregon Plan, hatchery reform efforts, and other protective efforts are encouraging signs. However, restoration efforts in the ESU are very local in scale, and have yet to provide benefits at the scale of watersheds or at the larger spatial scale of the ESU. The blockage of historical spawning habitat and the restriction of natural production areas remain to be addressed. NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and proposes that the Upper Willamette River chinook ESU remain listed under the ESA as a threatened species.

Lower Columbia River Chinook ESU

The BRT concluded that the naturally spawned component of the Lower Columbia River chinook ESU is ''likely to become endangered within the foreseeable future.'' NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' Planned dam removals on the Sandy River, federally funded habitat restoration efforts, the WA DNR HCP, and other protective efforts are encouraging signs in addressing the ESU's factors for decline, but they do not as yet substantially reduce threats to the ESU. NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and proposes that the Lower Columbia River chinook ESU remain listed under the ESA as a threatened species.

Upper Columbia River Spring-run Chinook ESU

The BRT was divided on the extinction risk faced by the naturally spawned component of the Upper Columbia River spring-run chinook ESU between ''in danger of extinction'' and ''likely to become endangered within the foreseeable future,'' with a slight majority finding that the ESU is ''in danger of extinction.'' NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is in danger of extinction or likely to become so in the foreseeable future. Actions under the 2000 FCRPS biological opinion, federally funded habitat restoration efforts, and other protective efforts are encouraging signs in addressing the ESU's factors for decline, but they do not as yet substantially reduce the ESU's extinction risk.

NMFS is concerned that artificial propagation practices within the geographic range of the ESU are not fully supporting the conservation and recovery of Upper Columbia River spring-run chinook. In particular, NMFS is concerned that the non-ESU Entiat NFH has compromised the genetic integrity of the native natural population of spring-run chinook in the Entiat basin. NMFS concludes that the Upper Columbia River spring-run chinook ESU in-total is in danger of extinction throughout all or a significant portion of its range. NMFS proposes that the Upper Columbia River spring-run chinook ESU remain listed under the ESA as an endangered species.

Puget Sound Chinook ESU

The BRT concluded that the naturally spawned component of the Puget Sound chinook ESU is ''likely to become endangered within the foreseeable future.'' NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS 2004c). In particular, NMFS is concerned that the pervasive use of the Green River derived hatchery stocks throughout the range of the ESU in proximity to locally adapted naturally spawning populations continues to erode the ESU's spatial structure and diversity. Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' There have been significant and positive actions to address factors limiting the viability of Puget Sound chinook including: implementation of the Forest and Fish agreement for timber practices; DOT's Routine Road Maintenance 4(d) limit and its implementation by local governments; changes to harvest management; hatchery reform; and habitat restoration and conservation actions by local governments and voluntary organizations. However, the degradation and loss of estuarine, riparian, and freshwater habitats through past and present urbanization, agricultural activities, man-made impassible barriers, and forest practices remain significant limiting factors in this ESU. NMFS is encouraged by the parties working in the Shared Strategy process and will consider the results of this process provided they: address the limiting factors caused by past actions; address future losses from human population growth; and contain sufficient commitments over necessary time frames to evaluate the certainty of implementation. Without the necessary commitments to address the ESU's limiting factors, NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. NMFS proposes that the Puget Sound chinook ESU remain listed under the ESA as a threatened species.

Snake River Fall-run Chinook ESU

The BRT concluded that the Snake River fall-run chinook ESU is ''likely to become endangered within the foreseeable future.'' The within-ESU propagated stocks derived from the Lyons Ferry Hatchery stock have contributed to some encouraging increases in total ESU abundance in recent years; however, NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' Nonetheless, actions under the 2000 FCRPS biological opinion and improvements in hatchery practices have provided some encouraging signs in addressing the ESU's factors for decline. Other protective efforts, such as measures associated with the FERC relicensing of the Idaho Power Company's Hells Canyon Complex, are under development or ongoing. NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. NMFS proposes that the Snake River fall-run chinook ESU remain listed under the ESA as a threatened species.

Snake River Spring/Summer Chinook ESU

The BRT concluded that the Snake River spring/summer-run chinook ESU is ''likely to become endangered within the foreseeable future.'' NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to

alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' Nonetheless, actions under the 2000 FCRPS biological opinion, and improvements in hatchery practices have provided some encouraging signs in addressing the ESU's factors for decline. NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. NMFS proposes that the Snake River spring/summer-run chinook ESU remain listed under the ESA as a threatened species.

Central California Coast Coho ESU

The BRT concluded that the naturally spawned component of the Central California Coast coho ESU is ''in danger of extinction.'' Informed by the BRT findings (NMFS, 2003b) and the assessment of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Central California Coast coho ESU in-total is ''in danger of extinction.'' The State of California has initiated the process for listing coho salmon under the California ESA and is expected to make a final listing decision in June 2004. In conjunction with this California ESA listing process the State has also developed a comprehensive, state-wide coho salmon recovery strategy and plan. This recovery strategy and plan was developed by the CDFG in 2003 and approved by the California Fish and Game Commission in February 2004. The plan is comprehensive in scope, addresses a wide range of factors responsible for the decline of coho throughout the State, and was developed by a broad range of stakeholders who will be responsible for the plan's implementation. The CDFG is in the process of developing an implementation plan that will prioritize recovery actions and estimate implementation costs. In the short-term, CDFG is using existing staff and financial resources to implement the plan, but is expected to pursue additional financial resources after the implementation plan is completed. In addition, CDFG has integrated the coho recovery plan with its coastal habitat restoration grant program by ensuring that high priority recovery plan actions in high priority watersheds receive a greater likelihood of funding.

Although NMFS believes the plan will provide substantial benefits to this ESU over the long-term if it is implemented, the long-term prospects for plan funding and implementation are uncertain. Both freshwater and ocean harvest impacts to coho salmon have also been reduced, which has contributed to reducing extinction risk for the ESU. Other protective efforts that have provided benefits to this ESU include: Implementation of numerous freshwater habitat restoration projects funded through the State's habitat restoration grant program; efforts by multi-county conservation planning groups to inventory, prioritize, and fix salmonid migration barriers and to modify road maintenance activities throughout the range of the ESU; and the completion of numerous ESA section 7 consultations for gravel mining and other habitat impacting actions. Several future projects are expected to provide benefits to this ESU, including completion and implementation of the Russian River consultation addressing water project operations in the Russian River, and completion and approval of the Green Diamond Resource Company and Mendocino Redwoods timber harvest HCPs. Ongoing efforts by NMFS and CDFG to develop a coastal salmon and steelhead monitoring program are also expected to substantially improve the amount and quality of available information on the abundance and spatial distribution of naturally spawning populations in the future, thereby allowing much improved long-term assessment of population viability and trends. Although the artificial propagation programs that are part of this ESU were not found to substantially affect the viability of the ESU in-total, implementation of these programs in conjunction with the other protective efforts that are addressing habitat related factors for decline are expected to provide benefits to the ESU in the long term. Nonetheless, NMFS believes that protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''in danger of extinction.'' NMFS concludes, therefore, that the ESU in-total is in danger of extinction throughout all or a significant portion of its range. Accordingly, NMFS proposes that the Central California Coast coho salmon ESU, presently listed as a threatened species, be listed as an endangered species under the ESA.

Southern Oregon/Northern California Coast Coho ESU

The BRT concluded that the naturally spawned component of the Southern Oregon/Northern California Coast coho ESU is ''likely to become endangered within the foreseeable future.'' Informed by the BRT findings (NMFS, 2003b) and the assessment of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Southern Oregon/Northern California Coast coho ESU is ''likely to become endangered within the foreseeable future'' (NMFS, 2004c). The State of California has initiated the process for listing coho salmon within this ESU under the California ESA and is expected to make a final listing decision in June 2004. The State also developed a comprehensive, state-wide coho salmon recovery strategy and plan that was approved by the California Fish and Game Commission in February 2004. NMFS believes the plan will provide substantial benefits to the California portion of this ESU over the long-term if it is successfully implemented, but the long term prospects for plan funding and implementation are uncertain. In both Oregon and California, changes to freshwater and ocean harvest management have reduced impacts to coho salmon, which have contributed to reducing extinction risk for the ESU. Other protective efforts that have provided benefits to this ESU include: implementation of numerous freshwater habitat restoration projects in California through the state's habitat restoration grant program; efforts by the Five County conservation planning group to inventory, prioritize, and fix salmonid migration barriers and to modify road maintenance activities throughout the California portion of the ESU; implementation of the Oregon Plan in the Oregon portion of the ESU; implementation of the long-term Klamath Project biological opinion; and implementation of the Pacific Lumber Company HCP.

NMFS and the State of California are developing a coastal salmon and steelhead monitoring program, which if implemented is expected to substantially improve the amount and quality of available information on the abundance and spatial distribution of naturally spawning populations in California, which would enhance the long-term assessment of population viability and trends. Although a wide range of important protective efforts have been implemented in both Oregon and California, these protective efforts, as yet, do not reduce threats sufficiently to the ESU. Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial

Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. NMFS proposes that the Southern Oregon/Northern California Coast coho ESU remain listed under the ESA as a threatened species.

Oregon Coast Coho ESU

The BRT concluded that the naturally spawned component of the Oregon Coast coho ESU is ''likely to become endangered within the foreseeable future.'' Following recruitment failure for the 1994–1996 brood years (returning in 1997–1999, respectively), the ESU has seen near record recruitment for the 1997–1999 brood years (returning in 2000–2002, respectively). These recent returns are extremely encouraging; however, these increases need to be sustained through additional brood years to resolve remaining uncertainties regarding the ESU's viability. Additional data demonstrating that the freshwater habitat can support high abundances of natural spawners and sustain recent abundance levels would help resolve uncertainties regarding the ESU's resilience under less favorable ocean conditions.

The artificial propagation programs producing coho populations considered to be part of the ESU have undergone substantial changes in the last 10 years to limit adverse effects to natural Oregon Coast coho populations. However, they are not managed to contribute to the ESU's abundance, productivity, spatial structure, or diversity. NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). The severe reduction of harvest levels for Oregon Coast coho populations since 1998 has contributed to the increased abundance of natural spawners. Hatchery reform and the reduction of harvest represent effective management tools that can quickly yield results. However, once implemented, there is limited management flexibility to respond to future declines in the ESU's productivity if caused by deteriorating ocean or freshwater conditions.

The Oregon Plan has made or encouraged significant contributions toward conserving salmon and steelhead populations in the state of Oregon. As noted in the *Protective Efforts in Oregon* section, an ESU-scale analysis of the effectiveness of measures under the Oregon Plan in conserving the Oregon Coast Coho ESU is underway but not yet completed. In the absence of this analysis, the information available as evaluated pursuant to the PECE does not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' Based upon the information currently available, which does not include the findings from Oregon's analysis of the Oregon Plan with respect to this ESU, NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. NMFS, therefore, proposes that the Oregon Coast coho ESU be listed under the ESA as a threatened species. If, upon completion of the analysis, information is made available to the agency showing that the Oregon Plan and/or other conservation efforts substantially mitigate ESU extinction risk, NMFS will re-initiate a status review for Oregon Coast coho to consider the best and most recent scientific and commercial information available.

Lower Columbia River Coho ESU

The BRT concluded that the naturally spawned component of the Lower Columbia River coho ESU is ''in danger of extinction.'' The BRT observed that although the scale of artificial propagation poses genetic and ecological threats to the two extant natural populations in the ESU, the within-ESU hatchery programs represent a substantial proportion of the genetic resources remaining in the ESU. However, the manner in which the majority of these hatchery fish are being produced does not adhere to best management practices, and may be compromising the integrity of these genetic resources. NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that hatchery programs collectively mitigate the immediacy of extinction risk for the Lower Columbia River coho ESU in-total in the short term, but that these programs do not substantially reduce the extinction risk of the ESU in the foreseeable future (NMFS, 2004c). Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the Artificial Propagation Evaluation Workshop's assessment that the ESU is ''likely to become endangered within the foreseeable future.'' However, several conservation measures represent encouraging signs in addressing the ESU's factors for decline. The expected dam removals on the Sandy River, once accomplished, would restore fish passage and open up currently inaccessible spawning and rearing habitats. Federal, state, and locally funded projects have improved fish passage, river flow management, and instream and riparian habitat conditions at many locations. The WA DNR HCP will benefit riparian zone habitats, improve road and forest management practices, and encourage improved monitoring efforts.

NMFS recognizes that the genetic resources that reside in the ESU's hatchery programs may play a vital role in the future in expanding the distribution of naturally spawning coho populations in the Lower Columbia River. The manner in which these genetic resources are being managed, however, poses significant risks to the sustainability of these programs in the foreseeable future, as well as the ESU in-total. NMFS strongly encourages the reform of existing hatchery practices to provide better stewardship over the ESU's remaining diversity. Potentially effective improvements in hatchery practices by the Oregon and Washington Departments of Fish and Wildlife include: (1) Ending the transfer of eggs among basins; (2) use of broodstock that reflects what was historically present in a given basin, (3) development of Hatchery and Genetic Management Plans that reflect the natural escapement goals for each basin, and that identify how the hatchery programs will incorporate natural-origin fish into their broodstock; (4) commitments to continue 100 percent marking of released hatchery fish; (5) commitments to continue monitoring of natural production and the proportion of hatchery-origin fish on spawning grounds; and (6) development of a program to evaluate the reproductive success of naturally spawning hatchery coho and their contribution to the productivity of the natural populations.

NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future over all or a significant portion of its range, and proposes that Lower Columbia River coho ESU be listed under the ESA as a threatened species.

Columbia River Chum ESU

The BRT concluded that the Columbia River chum ESU is ''likely to become endangered within the foreseeable future.'' NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the

within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' However, flow management under the 2000 FCRPS biological opinion, federally funded habitat restoration efforts, the WA DNR HCP, and other protective efforts are encouraging signs in addressing the ESU's factors for decline. NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and proposes that the Columbia River chum ESU remain listed under the ESA as a threatened species.

Hood Canal Summer Chum ESU

The BRT concluded that the naturally spawned component of the Hood Canal summer-run chum ESU is ''likely to become endangered within the foreseeable future.'' NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' Habitat improvements, HCPs, and other protective efforts are nonetheless encouraging signs in addressing the ESU's factors for decline. NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and proposes that the Hood Canal summer chum ESU remain listed under the ESA as a threatened species.

Southern California *O. mykiss* ESU

The BRT concluded that the Southern California *O. mykiss* ESU is ''in danger of extinction'' (NMFS, 2003b). For some BRT members, the presence of relatively numerous resident fish reduces risks to the ESU's abundance, but provides an uncertain contribution to the ESU's productivity, spatial structure, and diversity. There are no artificial propagation programs producing hatchery *O. mykiss* populations within the geographic range of the ESU, and therefore, the Artificial Propagation Evaluation Workshop did not evaluate this ESU. The most important protective efforts in this ESU have resulted from ESA section 7 consultations and habitat restoration projects funded by the State of California. Habitat restoration efforts in the Lower Santa Ynez River and new fish passage facilities at the Robles Diversion Dam on the Ventura River are recent efforts that are expected to provide benefits to *O. mykiss.* Other conservation efforts such as the Matilija and Rindge Dam removal projects have long-term potential to benefit the ESU, but their implementation is uncertain. Other habitat restoration or protective efforts are very local in scale, and so they do not provide benefits at the scale of large watersheds or the ESU in-total. Blockage of historical spawning and rearing habitat in both large and small watersheds and instream flow conditions remain to be addressed on a broad scale in this ESU. Information on the abundance and distribution of steelhead and resident *O. mykiss* remains limited and is a major concern since there are not comprehensive monitoring efforts being implemented. Efforts are underway by NMFS and the State, however, to develop a coastal salmonid monitoring program that, if implemented for this ESU, will likely allow improved long-term assessment of spatial distribution and abundance trends. Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's assessment that the ESU is ''in danger of extinction.'' NMFS, therefore, concludes that the ESU in-total is in danger of extinction throughout all or a significant portion of its range. NMFS proposes that the Southern California *O. mykiss* ESU remain listed under the ESA as an endangered species.

South-Central California Coast *O. mykiss* ESU

The BRT concluded that the naturally spawned component of the South-Central California Coast *O. mykiss* ESU is ''likely to become endangered within the foreseeable future'' (NMFS, 2003b). For some BRT members, presence of relatively numerous resident fish reduces risks to the ESU's abundance, but provides an uncertain contribution to the ESU's productivity, spatial structure, and diversity. No artificial propagation programs are considered to be part of this ESU, and therefore, the Artificial Propagation Evaluation Workshop did not evaluate this ESU. Protective efforts in the Carmel watershed appear to have contributed, at least in part, to a substantial increase in the steelhead escapement to the Carmel River since the mid-1990s. Recreational harvest of *O. mykiss* has been reduced by the State in recent years and the outplanting of hatchery fish from the Monterey Bay Salmon and Trout Project into this ESU has been halted. Both of these protective efforts have provided benefits to the ESU. Other restoration efforts and protective efforts, such as ESA section 7 consultations and habitat restoration projects funded by the State have provided benefits on a local scale, but have not reduced extinction risk at the scale of the ESU. The BRT expressed particular concern about the degraded habitat conditions in the Pajaro and Salinas river basins. No significant protective efforts are currently being implemented in either watershed. Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's assessment that the ESU is ''likely to become endangered within the foreseeable future.'' NMFS concludes that the ESU in-total is likely to become endangered in the foreseeable future throughout all or a significant portion of its range. NMFS proposes that the South-Central Coast *O. mykiss* ESU remain listed under the ESA as a threatened species.

Central California Coast *O. mykiss* ESU

The BRT concluded that the naturally spawned component of the Central California Coast *O. mykiss* ESU is ''likely to become endangered within the foreseeable future.'' For some BRT members, the presence of resident fish reduces risks to the ESU's natural abundance, but provides an uncertain contribution to the ESU's productivity, spatial structure, and diversity. Informed by the BRT's findings (NMFS, 2003b) and the assessment of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Central California Coast *O. mykiss* ESU is ''likely to become endangered within the foreseeable future'' (NMFS, 2004c). There are two artificial propagation programs that are considered to be part of the ESU. These two programs likely provide some limited benefits to the ESU's viability by contributing to local population abundance, but do not substantially reduce the ESU's extinction risk. Resident *O. mykiss* populations above Dam 1 on Alameda Creek are genetically similar to below-dam populations that are part of the ESU, and therefore, are considered to be part of the ESU. Although these above-

dam resident populations are considered part of the ESU, it is unclear how and to what extent these resident populations contribute to the viability of the ESU in-total. Protective efforts that have provided benefits to this ESU include implementation of numerous habitat restoration projects as part of the state's habitat restoration grant program as well as ESA section 7 consultations for gravel mining and other habitat impacting activities. Protective efforts that are expected to have benefits to this ESU include completion and implementation of the Russian River water project operations consultation with the USACE, and ongoing local county planning and restoration efforts that are addressing migration barriers and routine road maintenance activities. Although some of the habitat protective efforts have provided benefits to the ESU, most notably the state's habitat restoration grant program and the multi-county restoration efforts, they do no reduce the ESU's extinction risk. Changes in the management of recreational angling on the north coast since the late 1990's have reduced impacts to naturally spawning *O. mykiss* and likely contributed to reducing the ESU's extinction risk. In addition, the cessation of *O. mykiss* planting from the Monterey Bay Salmon and Trout Project into the adjacent South-Central Coast ESU is a positive development. Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' NMFS therefore concludes that the ESU in-total is ''likely to become endangered in the foreseeable future throughout all or a significant portion of its range, and therefore, proposes that the Central California Coast *O. mykiss* ESU remain listed as a threatened species under the ESA.

California Central Valley *O. mykiss* ESU

The BRT concluded that the California Central Valley *O. mykiss* ESU is ''in danger of extinction.'' For some BRT members, the presence of resident fish reduces risks to the ESU's abundance somewhat, but provides an uncertain contribution to the ESU's productivity, spatial structure, and diversity. Informed by the BRT's findings (NMFS, 2003b) and the assessment of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the California Central Valley *O. mykiss* ESU is ''in danger of extinction'' (NMFS, 2004c). The two artificial propagation programs considered to be part of the ESU provide some limited benefits to the ESU's abundance, but they do not substantially reduce the ESU's extinction risk. The BRT was concerned that two out-of-ESU hatchery programs may pose ecological and diversity risks to the natural *O. mykiss* populations in this ESU. All out-of-ESU hatchery production, however, is marked and releases occur in relatively close proximity to the hatchery facilities. These measures likely minimize straying and genetic introgression from the out-of-ESU hatchery stocks. In addition, in-river harvest of hatchery steelhead is encouraged by complete marking of all hatchery production, and State fishing regulations which allow retention of marked fish only. Nonetheless, it is uncertain the degree to which these out-of-ESU hatchery programs are an ecological risk and compromise the ESU's diversity. The loss of most historical spawning and rearing habitat above impassable dams throughout the California Central Valley, the restriction of natural production areas, the apparent continuing decline in *O. mykiss* abundance, and the lack of any monitoring efforts designed to assess *O. mykiss* abundance and trends remain major concerns for this ESU. A positive development is that CALFED has recently approved funding to develop a monitoring program for *O. mykiss* in the Central Valley. Development of this program and its subsequent implementation is a critically important action needed to assess the response of *O. mykiss* to habitat restoration efforts in the Central Valley. Major efforts have been undertaken over the past decade by Federal and state agencies to improve habitat conditions in the Central Valley and the major tributaries supporting spring chinook salmon. These efforts have also provided benefits to *O. mykiss* as well. These efforts include projects implemented as part of the CALFED program and the Central Valley Project Improvement Act. Restoration efforts have been implemented and are ongoing in Battle Creek, Butte Creek, Little Chico Creek, Clear Creek, and the Yuba River. In addition, local watershed groups are working in many of these watersheds to improve habitat conditions that provide benefits to both spring chinook and *O. mykiss*. NMFS has worked closely with the state over the past several years to ensure that in-river harvest impacts on natural *O. mykiss* are minimized and efforts are continuing to develop a fishing management and evaluation plan for *O. mykiss* in the central valley. NMFS believes that the protective efforts being implemented for this ESU, as evaluated pursuant to the PECE, provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''in danger of extinction.'' NMFS concludes that the ESU in-total is not in danger of extinction, but is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Accordingly, NMFS proposes that the California Central Valley *O. mykiss* ESU remain listed as a threatened species under the ESA.

Northern California *O. mykiss* ESU

The BRT concluded that the naturally spawned component of the Northern California *O. mykiss* ESU is ''likely to become endangered within the foreseeable future.'' The BRT did not consider resident fish to reduce risks to the ESU's abundance, and their contribution to the ESU's productivity, spatial structure, and diversity is uncertain. Informed by the BRT's findings (NMFS, 2003b) and the assessment of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Northern California *O. mykiss* ESU is ''likely to become endangered within the foreseeable future'' (NMFS, 2004c). The two artificial propagation programs considered to be part of the ESU may provide some benefit to the abundance of local populations, but they affect only a small portion of the ESU in-total and do not substantially reduce the ESU's extinction risk. Although some protective efforts aimed at reducing threats to habitat and harvest impacts have benefited this ESU, most notably the State's habitat restoration grant program and multi-county conservation planning efforts aimed primarily at fixing migration barriers and improving road maintenance activities, these and other programs collectively do not substantially reduce the ESU's extinction risk. These protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable

future throughout all or a significant portion of its range. NMFS proposes that the Northern California *O. mykiss* ESU remain listed as a threatened species under the ESA.

Upper Willamette River *O. mykiss* ESU

The BRT concluded that the Upper Willamette River *O. mykiss* ESU is ''likely to become endangered within the foreseeable future.'' The BRT did not consider resident fish to reduce risks to the ESU's abundance, and their contribution to the ESU's productivity, spatial structure, and diversity is uncertain. There are no artificial propagation programs producing hatchery *O. mykiss* populations that are considered to be part of the ESU. Protective efforts under FWS' Greenspaces Program, the Oregon Plan, and other efforts are encouraging signs. However, restoration efforts in the ESU are very local in scale, and have yet to provide benefits at the scale of watersheds or the larger spatial scale of the ESU. The blockage of historical spawning habitat and the restriction of natural production areas remain to be addressed. Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's assessment that the ESU is ''likely to become endangered within the foreseeable future.'' NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and proposes that the Upper Willamette River *O. mykiss* ESU remain listed under the ESA as a threatened species.

Lower Columbia River *O. mykiss* ESU

The BRT concluded that the naturally spawned component of the Lower Columbia River *O. mykiss* ESU is ''likely to become endangered within the foreseeable future.'' The BRT did not consider resident fish to reduce risks to the ESU's abundance, and their contribution to the ESU's productivity, spatial structure, and diversity is uncertain. NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' Nonetheless, the expected dam removals on the Sandy River, federally funded habitat restoration efforts, and the WA DNR HCP are encouraging signs in addressing the ESU's factors for decline. NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and proposes that the Lower Columbia River *O. mykiss* ESU remain listed under the ESA as a threatened species.

Middle Columbia River *O. mykiss* ESU

The BRT was closely divided on the extinction risk faced by the naturally spawned component of the Middle Columbia River *O. mykiss* ESU between ''likely to become endangered within the foreseeable future'' and ''not in danger of extinction or likely to become endangered within the foreseeable future.'' The BRT concluded that the relatively abundant and widely distributed resident fish in the ESU reduce risks to overall ESU abundance, but provide an uncertain contribution to the ESU's productivity, spatial structure, and diversity. The improved viability of the ESU is attributable, in part, to recent improvements in ocean and freshwater conditions. The principal improvements in viability over the last 5 years include: Dramatic increases in abundance throughout the ESU; and positive short-term productivity in all production areas. However, there is insufficient certainty that these encouraging trends will continue into the future. Despite recent increases, the natural populations in the Yakima, Klickitat, and Touchet Rivers remain well below their interim recovery target abundance levels, and long-term trends for 11 of 12 production areas in the ESU remain negative. Although adult returns in the Deschutes River have increased, the presence of substantial numbers of out-of-basin hatchery strays may pose risks to the productivity and diversity of this population.

NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' Ongoing actions under the 2000 FCRPS biological opinion, federally funded habitat restoration efforts, and other protective efforts continue to benefit the ESU, but do not as yet substantially reduce threats to the ESU.

Continued and additional conservation efforts are needed to address threats to the ESU to the point that the protections afforded under the ESA are no longer necessary. Conservative harvest and hatchery management, continued riparian zone and habitat restoration efforts, improvements in fish passage and the management of instream flows, and adherence to best management practices for grazing, forestry, artificial propagation, mining, and recreational activities are all critical to the recovery of the Middle Columbia River *O. mykiss* ESU. NMFS concludes that the ESU is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and proposes that the Middle Columbia River *O. mykiss* ESU remain listed as a threatened species.

Although NMFS believes that the Middle Columbia River *O. mykiss* ESU at present still warrants listing under the ESA, the risk assessments by the BRT and the Artificial Propagation Evaluation Workshop were almost evenly divided on whether the ESU is likely to become endangered in the foreseeable future. NMFS recognizes that the decision to propose retaining the threatened listing was a close one. NMFS views the improved viability of the Middle Columbia River *O. mykiss* ESU as an exceptional opportunity to secure specific conservation measures that would help ensure the ESU's viability over the long term, and likely bring the ESU to the point where the protections of the ESA are no longer necessary. NMFS is interested in assuring that certain major threats are addressed through firm commitments, plans, and funding. In addition to continued habitat protections, the following specific actions are likely to have the greatest influence on the viability of this ESU: (1) Continued funding by the Bonneville Power Administration of ESU-wide riparian zone and instream habitat restoration efforts, consistent with its Fish and Wildlife Program's portion of the subbasin and recovery plans being developed; (2) adherence of the BLM to best management practices for grazing, mining, and recreational activities ESU-wide; (3) adherence of the USFS to best management practices for grazing, forestry, and mining activities ESU-wide; (4) continued conservative fisheries management by the Washington Department of Fish and Wildlife within the range of this ESU, and its development and implementation of a long-term approach

that balances natural and hatchery production across the ESU; (5) continued conservative fisheries management by ODFW in this ESU (particularly in the John Day River subbasin), its development and implementation of management approaches to reduce the straying of out-of-basin stocks into Deschutes and John Day spawning areas, and its development and implementation of a long-term approach that balances natural and hatchery production across the ESU; (6) improved passage and flow management by the BOR in the Yakima River and the Umatilla River subbasins, including the establishment of fish passage into significant tributaries; (7) establishment of passage in the Deschutes River subbasin above the Pelton/Rounde Butte complex, the restoration of the downstream water temperature regime to historical levels, and the restoration and enhancement of upstream/downstream habitats by the FERC; (8) improvements in fish passage, screening and flow management in the Walla Walla River subbasin by the USACE, as well as altering the flood operating rule for Mill Creek or alternatively screening the diversion into Bennington Lake; (9) continued conservative hatchery and harvest management and adherence to best land management practices by the Yakama Nation; (10) continued conservative hatchery and harvest management by the Confederated Tribes of the Umatilla Reservation; and (11) continued adherence to best land management practices by the Confederated Tribes of the Warm Springs Reservation in the Deschutes River subbasin.

In the event that such actions are undertaken to address these factors prior to making our final listing determination, and adequate commitments are made that they will be continued, NMFS will take such opportunity to re-initiate a status review for the Middle Columbia River *O. mykiss* ESU. If such actions were taken following a final determination to list this ESU, NMFS may similarly reinitiate a status review to consider the best and most recent scientific and commercial information available.

Upper Columbia River *O. mykiss* ESU

The BRT was divided on the extinction risk faced by the naturally spawned component of the Upper Columbia River *O. mykiss* ESU between ''in danger of extinction'' and ''likely to become endangered within the foreseeable future,'' with a majority finding that the ESU is ''in danger of extinction.'' For many BRT members, the presence of relatively numerous resident fish reduces risks to the ESU's abundance, but provides an uncertain contribution to the ESU's productivity, spatial structure, and diversity. NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that hatchery programs collectively mitigate the immediacy of extinction risk for the Upper Columbia River *O. mykiss* ESU in-total in the short term, but that the contribution of these programs in the foreseeable future is uncertain (NMFS, 2004c). Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' Actions under the 2000 FCRPS biological opinion, federally funded habitat restoration efforts, and other protective efforts are encouraging signs in addressing the ESU's factors for decline, but do not as yet substantially reduce the ESU's extinction risk. NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. NMFS proposes that the Upper Columbia River *O. mykiss* ESU, presently listed as an endangered species, be listed under the ESA as a threatened species.

Snake River Basin *O. mykiss* ESU

The BRT concluded that the naturally spawned component of the Snake River Basin *O. mykiss* ESU is ''likely to become endangered within the foreseeable future.'' For many BRT members, the presence of relatively numerous resident fish reduces risks to the ESU's abundance, but provides an uncertain contribution to the ESU's productivity, spatial structure, and diversity. Native resident *O. mykiss* populations above Dworshak Dam on the North Fork Clearwater River are genetically similar to below-dam populations that are part of the ESU, and, therefore, are considered to be part of the ESU. Although these above-dam resident populations are considered part of the ESU, it is unclear how and to what extent these resident populations contribute to the viability of the ESU in-total. NMFS' assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to the PECE, do not provide sufficient certainty of implementation and effectiveness to alter the BRT's and the Artificial Propagation Evaluation Workshop's assessments that the ESU is ''likely to become endangered within the foreseeable future.'' Nonetheless, actions under the 2000 FCRPS biological opinion and improvements in hatchery practices have provided some encouraging signs in addressing the ESU's factors for decline. NMFS concludes that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. NMFS proposes that the Snake River Basin *O. mykiss* ESU remain listed under the ESA as a threatened species.

Evolutionarily significant unit (ESU)	Current Endangered Species Act (ESA) status	Proposed listing determination	Number of artificial propagation programs included in the ESU
Snake River sockeye ESU	Endangered	Endangered	1
Ozette Lake sockeye ESU	Threatened	Threatened	2
Sacramento River winter-run chinook ESU	Endangered	Threatened	2
Central Valley spring-run chinook ESU	Threatened	Threatened	0
California Coastal chinook ESU	Threatened	Threatened	7
Upper Willamette River chinook ESU	Threatened	Threatened	7
Lower Columbia River chinook ESU	Threatened	Threatened	17
Upper Columbia River spring-run chinook ESU	Endangered	Endangered	6
Puget Sound chinook ESU	Threatened	Threatened	22
Snake River fall-run chinook ESU	Threatened	Threatened	4
Snake River spring/summer-run chinook ESU	Threatened	Threatened	15

Evolutionarily significant unit (ESU)	Current Endangered Species Act (ESA) status	Proposed listing determination	Number of artificial propagation programs included in the ESU
Central California Coast coho ESU	Threatened	Endangered	4
Southern Oregon/Northern California Coast coho ESU	Threatened	Threatened	3
Oregon Coast coho ESU	Threatened*	Threatened	5
Lower Columbia River coho ESU	Candidate	Threatened	21
Columbia River chum ESU	Threatened	Threatened	3
Hood Canal summer-run chum ESU	Threatened	Threatened	8
Southern California *O. mykiss* ESU	Endangered	Endangered	0
South-Central California Coast *O. mykiss* ESU	Threatened	Threatened	0
Central California Coast *O. mykiss* ESU	Threatened	Threatened	2
California Central Valley *O. mykiss* ESU	Threatened	Threatened	2
Northern California *O. mykiss* ESU	Threatened	Threatened	2
Upper Willamette River *O. mykiss* ESU	Threatened	Threatened	0
Lower Columbia River *O. mykiss* ESU	Threatened	Threatened	10
Middle Columbia River *O. mykiss* ESU	Threatened	Threatened	7
Upper Columbia River *O. mykiss* ESU	Endangered	Threatened	6
Snake River Basin *O. mykiss* ESU	Threatened	Threatened	6

*But see *Alsea Valley Alliance* v. *Evans,* 358 F.3d 1181 (9th Cir. Feb. 24, 2004).

Findings on Delisting Petitions

With regard to the six petitions (detailed above in the ''*Summary of Petitions*'' section) seeking to delist a total of 15 salmon and *O. mykiss* ESUs, NMFS finds on the basis of the best available scientific and commercial information that the petitioned actions are not warranted. NMFS finds that listing is warranted for all of the 15 petitioned ESUs: six chinook ESUs (the Snake River spring/summer-run, Snake River fall-run, Puget Sound, Lower Columbia River, Upper Willamette River, and Upper Columbia River spring-run chinook ESUs); two coho ESUs (the Central California Coast and Southern Oregon/Northern California Coast coho ESUs); two chum ESUs (the Hood Canal summer-run and Columbia River chum ESUs); and five *O. mykiss* ESUs (the Upper Columbia River, Snake River Basin, Middle Columbia River, Lower Columbia River, and Upper Willamette River *O. mykiss* ESUs).

Prohibitions and Protective Regulations

ESA section 9(a) take prohibitions (16 U.S.C. 1538(a)(1)(B)) apply to all species listed as endangered. Hatchery stocks determined to be part of endangered ESUs are afforded the full protections of the ESA. In the case of threatened species, ESA section 4(d) leaves it to the Secretary's discretion whether and to what extent to extend the statutory 9(a) ''take'' prohibitions, and directs the agency to issue regulations it considers necessary and advisable for the conservation of the species. NMFS has flexibility under section 4(d) to tailor protective regulations based on the contributions of available conservation measures. The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. These 9(a) prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction.

Even though existing protective efforts and plans, including certain artificial propagation programs and their associated hatchery stocks, are not sufficient to preclude the need for listing the subject ESUs at this time, they are nevertheless valuable for improving watershed health and restoring fishery resources. In those cases where regulations or conservation programs are in place, which will adequately protect threatened ESUs, NMFS may choose to limit the application of the take prohibitions for those ESUs. NMFS has already adopted ESA 4(d) rules that exempt a range of activities from the take prohibitions for threatened salmon and *O. mykiss* ESUs (62 FR 38479, July 18, 1997; 65 FR 42422, July 10, 2000; 65 FR 42485, July 10, 2000; 67 FR 1116, January 9, 2002; see description of the current 4(d) protective regulations for threatened salmonids in the following section).

NMFS intends to use the flexibility of the ESA to respond appropriately to the biological condition of each ESU and to the strength of regulations and conservation programs to protect them. The Court ruled in the *Alsea* case that NMFS may not list only a portion of an ESU when making its ESA listing determinations. Informed by the Court's ruling, hatchery stocks considered to be part of an ESU will be listed if it is determined that the ESU in-total is threatened or endangered. This approach, however, presents some challenges to hatchery and fisheries management. While the ESA requires NMFS to list all populations within a threatened or endangered ESU, it does not require NMFS to implement protective regulations equally among populations within threatened ESUs. NMFS has discretion under the ESA to allow for the take of hatchery fish, considered to be part of a threatened ESU, provided that such take is not inconsistent with the recovery of the ESU.

Current ESA 4(d) Protective Regulations for Threatened Salmonids

Currently there are a total of 29 ''limits'' to ESA Section 9(a) ''take'' prohibitions for threatened salmonid ESUs. Comprehensive descriptions of each 4(d) limit are contained in ''A Citizen's Guide to the 4(d) Rule'(available on the Internet at *http://www.nwr.noaa.gov/1salmon/salmesa/final4d.htm),* and in previously published **Federal Register** notices (62 FR 38479, July 18, 1997; 65 FR 42422, July 10, 2000; 65 FR 42485, July 10, 2000; 67 FR 1116, January 9, 2002).

The first six of these limits promulgated (50 CFR 223.204(b)(1) through (b)(6)) were published as an interim rule in 1997 for the Southern Oregon/Northern California Coast coho ESU (62 FR 38479, July 18, 1997). These six limits allow for the take of coho salmon in Oregon and California, under certain circumstances, if the take is: part of approved fisheries management plans; part of an approved hatchery program; part of approved fisheries research and monitoring activities; or part of approved habitat restoration activities.

In 2000, NMFS promulgated 13 limits affecting, in total, 14 ESUs in California, Oregon, and Washington (65 FR 42422, July 10, 2000; 50 CFR 223.203(b)(1) through (b)(13)). These ''limits'' include: paragraph (b)(1) activities conducted in accordance with ESA section 10 incidental take authorization; paragraph (b)(2) scientific or artificial propagation activities with pending applications at the time of rulemaking; paragraph (b)(3) emergency actions related to injured, stranded, or dead salmonids; paragraph (b)(4) fishery management activities; paragraph (b)(5) hatchery and genetic management programs; paragraph (b)(6) activities in compliance with joint tribal/state plans developed within *United States (U.S.)* v. *Washington* or *U.S.* v. *Oregon;* paragraph (b)(7) scientific research activities permitted or conducted by the states; paragraph (b)(8) state, local, and private habitat restoration activities; paragraph (b)(9) properly screened water diversion devices; paragraph (b)(10) routine road maintenance activities; paragraph (b)(11) certain park pest management activities in Portland, Oregon; paragraph (b)(12) certain municipal, residential, commercial, and industrial development and redevelopment activities; and paragraph (b)(13) forest management activities on state and private lands within the State of Washington. The Southern Oregon/Northern California Coasts coho ESU was included under two of these 13 limits (limits 50 CFR 223.203(b)(1) and (b)(3)). The limits published in 2000 that addressed fishery and harvest management, scientific research, and habitat restoration activities did not supersede the 6 limits for the Southern Oregon/Northern California Coast coho ESU promulgated in the 1997 interim rule, despite addressing the same types of activities (although for different ESUs). Also in 2000, NMFS issued a limit for all threatened ESUs exempting activities undertaken consistent with an approved tribal resource management plan (65 FR 42485, July 10, 2000; 50 CFR 223.209).

In 2002, NMFS added an additional nine limits (67 FR 1116, January 9, 2002; 50 CFR 223.203(b)(14) through (b)(22)) addressing four salmonid ESUs in California: the Central Valley spring-run chinook, California Coastal chinook, Central California Coast coho, and Northern California *O. mykiss* ESUs. These limits are essentially identical to limits previously promulgated in 2000. These additional nine limits similarly address emergency actions, fishery management activities, artificial propagation programs, scientific research, habitat restoration activities; properly screened water diversions, routine road maintenance activities, and development and redevelopment activities. Rather than including the four California ESUs under the limits promulgated in 2000, these ESUs were treated under separate limits.

Proposed Amendment to 4(d) Protective Regulations for Threatened Salmonid ESUs

NMFS proposes to amend existing 4(d) regulations to provide the necessary flexibility to ensure that fisheries and artificial propagation programs are managed consistently with the conservation needs of ESA-listed ESUs. NMFS proposes to apply section 4(d) protections to unmarked anadromous fish with an intact adipose fin. (The clipping of adipose fins in hatchery fish just prior to release into the natural environment is a commonly employed method for the marking of hatchery production). Hatchery fish that are surplus to the recovery needs of an ESU, and that are otherwise distinguishable from naturally spawned fish in the ESU (*e.g.*, by run timing or location) may be exempted from the section 4(d) protections under limits (b)(4) and (b)(6) under 50 CFR 223.203 for fishery management plans, as well as under 50 CFR 223.209 for tribal resource management plans. NMFS believes this approach provides needed flexibility to appropriately manage artificial propagation and direct take of threatened salmon and *O. mykiss* for the conservation and recovery of these ESUs. Not all hatchery stocks considered to be part of listed ESUs are of equal value for use in conservation and recovery. Certain ESU hatchery stocks may comprise a substantial portion of the genetic diversity remaining in a threatened ESU, and thus are essential assets for ongoing and future recovery efforts. If released with adipose fins intact, hatchery fish in these populations would be afforded protections under 4(d). NMFS, however, may need to allow take of listed hatchery stocks to manage the number of hatchery fish allowed to spawn naturally to limit potential adverse effects to spawning natural-origin fish. Other hatchery stocks, although considered to be part of a threatened ESU, may be of limited or uncertain conservation value. Artificial propagation programs producing within-ESU hatchery populations could release adipose-fin-clipped fish, such that protections under 4(d) would not apply, and these populations could fulfill other purposes (*e.g.*, fulfilling Federal trust and tribal treaty obligations) while preserving all future recovery options. It may be determined through ongoing recovery planning efforts that these hatchery stocks are essential for recovery.

Simplification of Existing 4(d) Protective Regulations for Threatened Salmonids

Although the ESA section 4(d) regulations for threatened salmonids have proven effective at appropriately protecting threatened salmonid ESUs and permitting certain activities, several of the limits described therein are redundant, outdated, or are located disjunctly in the Code of Federal Regulations (CFR). The resulting complexity of the existing 4(d) regulations unnecessarily increases the administrative and regulatory burden of managing protective regulations for threatened ESUs, and does not effectively convey to the public the specific ESUs for which certain activities may be exempted from the take prohibitions under 4(d). As part of this proposed rulemaking, NMFS proposes to clarify the existing section 4(d) regulations for threatened salmonids so that they can be more efficiently and effectively accessed and interpreted by all affected parties.

NMFS proposes simplifying the ESA 4(d) regulations by making the following clarifying changes: (1) NMFS proposes to apply the same set of limits to all threatened ESUs by bringing the Snake River fall-run chinook, Snake River spring/summer-run chinook, Southern Oregon/Northern California Coast coho, Central Valley spring-run chinook, California Coastal chinook, Central California Coast coho, Lower Columbia River coho, and Northern California *O. mykiss* ESUs under the 13 limits promulgated in 2000; (2) for those ESUs currently listed as endangered but being proposed for threatened status (the Sacramento River winter-run chinook, Upper Columbia River spring-run chinook, and Upper Columbia River *O. mykiss* ESUs), NMFS also proposes to apply the 4(d) protections and 13 limits promulgated in 2000; (3) NMFS proposes to amend an expired limit (50 CFR 223.203(b)(2)) to apply to the Lower Columbia River coho ESU; and (4) NMFS proposes moving the limit for Tribal Resource Management Plans (50 CFR 223.209) so that it appears in the CFR next to the 4(d) rule. These four clarifying changes are described in further detail below.

NMFS believes that the clarity and consistency of the existing ESA 4(d) regulations would be improved by including all threatened salmonid ESUs under the same set of limits, rather than maintaining separate and partially

redundant sets of limits for different ESUs. As noted in the previous section, the limits added in 2002 are essentially identical to limits promulgated in 2000. Removing the nine limits promulgated in 2002 (67 FR 1116, January 9, 2002; limits 50 CFR 223.203 (b)(14) through (b)(22)) and consolidating them under the limits promulgated in 2000 will simplify and clarify the existing 4(d) regulations, reduce their regulatory and administrative impact, while remaining equally protective of the affected ESUs: the Central Valley spring-run chinook, California Coastal chinook, Central California Coast coho, and Northern California *O. mykiss* ESUs.

NMFS also proposes to apply the limits promulgated in 2000 to the Snake River fall-run and spring/summer-run chinook ESUs. Currently, these ESUs are afforded the section 9(a) take prohibitions and the limit exempting activities with ESA section 10 incidental take authorization (50 CFR 223.203(b)(1)). However, the remaining 12 limits promulgated in 2000 do not apply (50 CFR 223.203 (b)(2) through (b)(13)). At the time of the 2000 rulemaking, NMFS stated that the 4(d) protective regulations for the two Snake River chinook ESUs provided the necessary flexibility to support research, monitoring, and conservation activities. However, the take limits provided by the 2000 rulemaking have proved extremely useful in managing other threatened ESUs, including the Snake River Basin *O. mykiss* ESU, which has an overlapping geographic range with the two Snake River chinook ESUs. NMFS proposes including these two ESUs under limits 50 CFR 223.203(b)(3) through (b)(13) to provide consistency with other threatened ESUs and to encourage regulations and conservation programs that are consistent with their conservation and recovery.

Section 4(d) of the ESA states that whenever any species is listed as a threatened species, ''the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of the species.'' NMFS proposes to apply the 4(d) protections and 13 limits promulgated in 2000 to the Lower Columbia River coho ESU, being proposed for threatened status. These protections are necessary to promote the conservation of the remaining natural populations in the ESU (*i.e.*, the Sandy and Clackamas River populations). However, extending the 4(d) protective regulations to the Lower Columbia River coho ESU will not represent an additional administrative or regulatory burden. The ESU has an overlapping geographic range with four threatened ESUs that are currently subject to the 2000 4(d) protective regulations (*i.e.*, the Columbia River chum, Lower Columbia River chinook, Upper Willamette River chinook, and Lower Columbia River *O. mykiss* ESUs). The 21 hatchery programs included in the ESU all employ 100 percent marking by adipose-fin clip. Extending the 4(d) protective regulations to the Lower Columbia River ESU is necessary to provide the needed flexibility to appropriately manage artificial propagation and direct take consistent with the conservation and recovery of the ESU.

NMFS proposes to remove the six limits of the 1997 interim rule for the Southern Oregon/Northern California Coast coho ESU (62 FR 38479, July 18, 1997; 50 CFR 223.204), and to bring the ESU under the limits promulgated in 2000 (65 FR 42422; July 10, 2000; limits 50 CFR 223.203 (b)(1) through (b)(13)). The 1997 interim rule was the first ''limited'' ESA 4(d) regulation promulgated by NMFS for a salmonid ESU. The limits promulgated in 2000 addressed the same types of activities addressed in the 1997 interim rule, as additional activities determined to be consistent with the conservation and recovery of threatened salmonid ESUs.

Including the Southern Oregon/Northern California Coasts coho ESU under the 2000 ESA 4(d) limits will result in two substantive changes in the take prohibitions afforded. The first change concerns the use of electrofishing in research and monitoring activities. In lieu of agency technical guidance on how to minimize the adverse effects of electrofishing on salmonids, the 1997 interim rule specifically prohibits the use of electrofishing (50 CFR 223.204(a)(5)). In 2000, NMFS released its ''Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act'' (Electrofishing Guidelines; NMFS, 2000b; available online at *http://www.nwr.noaa.gov/1salmon/salmesa/4ddocs/final4d/electro2000.pdf),* based on NMFS' research expertise, as well as input from fishery researchers and specialists in electrofishing technology. NMFS believes that exempting the use of electrofishing in research and monitoring activities for the Southern Oregon/Northern California Coast coho ESU, consistent with the Electrofishing Guidelines, will adequately protect fish in the ESU. Additionally, this action will provide consistency by permitting similar activities for the Southern Oregon/Northern California Coast coho ESU as are permitted for other ESUs within the same geographical range that are covered under the limits promulgated in 2000.

The second substantive change in the protective regulations for the Southern Oregon/Northern California Coast coho ESU concerns certain scientific research activities. Under the 1997 interim ESA 4(d) rule for this ESU (50 CFR 223.204(a)(4)) take of the listed species associated with certain fisheries research and monitoring activities conducted by ODFW and CDFG personnel are not prohibited, pending NMFS' review and approval. This limit is not extended beyond ODFW and CDFG, such that take for all other research (*e.g.*, research conducted by academic researchers, contractors, and consultants) can only be exempted under section 10(a)(1). However, a limit promulgated in 2000 (specifically 50 CFR 223.203 (b)(7)) provides for a take limitation to any party conducting research under a state permit. NMFS has determined that the impact on listed species is the same whether take is afforded under section 4(d) or section 10. However, requiring parties to seek take exemptions under section 10 increases the regulatory and administrative burden without providing additional protections or safeguards for listed fish. Accordingly, this proposed change will streamline the permitting processes for research activities, while remaining equally protective of the Southern Oregon/Northern California Coasts coho ESU.

Limit 50 CFR 223.203(b)(2) exempts scientific or artificial propagation activities with pending applications at the time of 2000 rulemaking (65 FR 42422, July 10, 2000; 67 FR 1116, January 9, 2002). The deadline associated with this exemption has expired. The proposed amendment of this expired limit will not impact in any way the protective regulations for the threatened ESUs addressed in the 2000 rulemaking. NMFS proposes to amend limit § 223.203(b)(2) to apply to the Lower Columbia River coho ESU, which is presently not a listed species but is being proposed for threatened status. NMFS proposes to amend limit § 223.203(b)(2) to allow for research on Lower Columbia River coho to continue for 6 months, provided the researcher submits an application within 30 days of the effective date of the final ESA 4(d) rule.

The limit for certain tribal resource management plans (50 CFR 223.209) is separated by several sections in the CFR from the other limits (50 CFR 223.203). Although this does not diminish the applicability of the limit to certain activities under tribal plans, its appearance in the CFR as a disjunct

section does not clearly convey to tribal governments the opportunities associated with these plans. NMFS proposes to move the limit for tribal plans, so that it appears in the CFR next to the 13 ESA 4(d) limits. This reorganization will improve the clarity of the ESA 4(d) regulations, but will not modify the limit for tribal plans in any way.

NMFS believes that the ESA section 9(a) take prohibitions, which are applicable for endangered species, are to some extent necessary and advisable for the conservation of the Sacramento winter-run chinook, Lower Columbia River coho, and Upper Columbia River *O. mykiss* ESUs, which are being proposed for threatened status. However, the take of listed fish in these ESUs need not be prohibited when it results from activities which are in accordance with adequate regulations and conservation programs. NMFS therefore proposes to apply ESA section 9(a) prohibitions to these three ESUs, and to apply the 13 limits promulgated in 2000. No change is needed in 50 CFR 223.209 to include these three ESUs under the limit for Tribal Resource Management Plans. Limit 50 CFR 223.209(a) applies the limit for tribal plans to all threatened species listed in 50 CFR 223.203(a).

Certain ESA 4(d) limits are regional in scope and are not necessarily applicable to those ESUs outside the area of coverage. These limits are for: activities in compliance with joint tribal/state plans developed within *United States* (U.S.) v. *Washington* or *U.S.* v. *Oregon* (50 CFR 223.203(b)(6)); certain park pest management activities in Portland, Oregon (50 CFR 223.203(b)(11); and forest management activities on state and private lands within the State of Washington (50 CFR 223.203(b)(13)).

NMFS emphasizes that these take limits are not prescriptive regulations. The fact that an activity is not conducted within the specified criteria for a take limit does not automatically mean that the activity violates the ESA or the proposed regulation. Many activities do not affect the threatened ESUs covered by this proposed rule, and, therefore, need not necessarily be conducted within a given limit to avoid section 9 take violations. Nevertheless, there is greater certainty that an activity or program is not at risk of violating the section 9 take prohibitions, and at risk of enforcement actions, if it is conducted in accordance with these take limits.

Jurisdictions, entities, and individuals are encouraged to evaluate their practices and activities to determine the likelihood of whether take is occurring. NMFS can provide ESA coverage through ESA section 4(d) rules, section 10 research, enhancement, and incidental take permits, or through section 7 consultation with Federal agencies. If take is likely to occur, then the jurisdiction, entity or individual should modify its practices to avoid the take of these threatened salmonid ESUs, or seek protection from potential ESA liability through section 7, section 10, or section 4(d) procedures.

Jurisdictions, entities, and individuals are not required to seek coverage under an ESA 4(d) limit from NMFS. In order to reduce its liability, a jurisdiction, entity, or individual may also informally comply with a limit by choosing to modify its programs to be consistent with the evaluation considerations described in the individual limits. Finally, a jurisdiction, entity, or individual may seek to qualify its plans or ordinances for inclusion under a take limit by obtaining a 4(d) take limit authorization from NMFS.

NMFS will continue to work collaboratively with all affected governmental entities to recognize existing management programs that conserve and meet the biological requirements of listed salmonids, and to strengthen other programs toward the conservation of listed ESUs. Any final rule resulting from this proposal may be amended (through proposed rule making and public comment) to add new limits on the take prohibitions, or to amend or delete adopted take limits as circumstances warrant.

Other Protective Regulations

Section 7(a)(4) of the ESA requires that Federal agencies confer with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS. Examples of Federal actions likely to affect salmon and O. mykiss include authorized land management activities of the USFS and the BLM, as well as operation of hydroelectric and storage projects of the BOR and the USACE. Such activities include timber sales and harvest, permitting livestock grazing, hydroelectric power generation, and flood control. Federal actions, including the USACE section 404 permitting activities under the Clean Water Act, USACE permitting activities under the River and Harbors Act, FERC licenses for non-Federal development and operation of hydropower, and Federal salmon hatcheries, may also require consultation.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species. A directed take refers to the intentional take of listed species. NMFS has issued section 10(a)(1)(A) research/enhancement permits for currently listed salmon and *O. mykiss* ESUs for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches, and collection of adult fish for artificial propagation programs. Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities which may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state or academic research not receiving Federal authorization or funding, the implementation of state fishing regulations, logging, road building, grazing, and diverting water into private lands.

NMFS Policies on Endangered and Threatened Fish and Wildlife

On July 1, 1994, NMFS, jointly with FWS, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

Role of Peer Review

The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, NMFS will solicit the expert opinions of at least three qualified specialists, concurrent with the public comment period. Independent peer reviewers will be selected from the academic and scientific community, Native American

tribal groups, federal and state agencies, and the private sector.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

NMFS and the FWS published in the **Federal Register** on July 1, 1994 (59 FR 34272), a policy that NMFS shall identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. At the time of the final rule, NMFS will identify to the extent known specific activities that will not be considered likely to result in violation of section 9, as well as activities that will be considered likely to result in violation. NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9:

1. Possession of salmon or *O. mykiss* from any ESU listed as threatened which are acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA; or

2. Federally funded or approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which section 7 consultation has been completed, and when activities are conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanying a biological opinion.

Activities that NMFS believes could potentially ''harm'' salmon or *O. mykiss* (see ESA 3(19) and 50 CFR 222.102 [harm]) in any of the proposed ESUs, and result in a violation of the section 9 take prohibition include, but are not limited to:

1. Land-use activities that adversely affect salmon or *O. mykiss* habitats in any proposed ESU (*e.g.*, logging, grazing, farming, urban development, road construction in riparian areas and areas susceptible to mass wasting and surface erosion);

2. Destruction/alteration of the salmon or *O. mykiss* habitats in any proposed ESU, such as removal of large woody debris and '''sinker logs''' or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow;

3. Discharges or dumping of toxic chemicals or other pollutants (*e.g.*, sewage, oil, gasoline) into waters or riparian areas supporting the salmon or *O. mykiss* in any proposed ESU;

4. Violation of discharge permits;

5. Pesticide applications;

6. Interstate and foreign commerce of salmon or *O. mykiss* from any of the proposed ESUs and import/export of salmon or *O. mykiss* from any ESU without a threatened or endangered species permit;

7. Collecting or handling of salmon or *O. mykiss* from any of the proposed ESUs. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species; or

8. Introduction of non-native species likely to prey on salmon or *O. mykiss* in any proposed ESU or displace them from their habitat.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of salmon or *O. mykiss* in any of the proposed ESUs under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of the section 9 take prohibition, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Critical Habitat

Section 4(b)(2) of the ESA requires NMFS to designate critical habitat for threatened and endangered species ''on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.'' This section grants the Secretary [of Commerce] discretion to exclude any area from critical habitat if he determines ''the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat.'' The Secretary's discretion is limited, as he may not exclude areas if it ''will result in the extinction of the species.'' In addition, the Secretary may not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan under Section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation (see section 318(a)(3) of the National Defense Authorization Act, Pub. L. 108–136).

The ESA defines critical habitat under section 3(5)(A) as:

''(I) The specific areas within the geographical area occupied by the species, at the time it is listed * * *, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by the species at the time it is listed * * * upon a determination by the Secretary that such areas are essential for the conservation of the species.''

Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure they do not fund, authorize or carry out any actions that will destroy or adversely modify that habitat. This requirement is in addition to the other principal section 7 requirement that Federal agencies ensure their actions do not jeopardize the continued existence of listed species.

On February 16, 2000, NMFS published a final rule designating critical habitat for 19 ESUs of west coast salmon and *O. mykiss* (65 FR 7764). The designations included more than 150 river subbasins in WA, OR, ID, and CA. Within each occupied subbasin, NMFS designated as critical habitat those lakes and river reaches accessible to listed fish along with the associated riparian zone, except for reaches on Indian land. Areas considered inaccessible included areas above long-standing natural impassable barriers and areas above impassable dams, but not areas above ephemeral barriers such as failed culverts.

In considering the economic impact, NMFS determined that the critical habitat designations would impose very little or no additional costs beyond those already imposed by the listing of the species themselves. NMFS reasoned that since it was designating only occupied habitat, there would be few or no actions that adversely modified critical habitat that also did not jeopardize the continued existence of the species. Therefore, there would be no economic impact as a result of the designations (65 FR 7764, 7765; February 16, 2000).

The National Association of Homebuilders (NAHB) challenged the designations in District Court in Washington, DC, as having inadequately considered the economic impacts of the critical habitat designations (*National Association of Homebuilders* v. *Evans*,

2002 WL 1205743 No. 00–CV–2799 (D.D.C.). NAHB also challenged NMFS' designation of Essential Fish Habitat (EFH) (Pacific Coast Salmon Fishery Management Plan, 2000). While the NAHB litigation was pending, the Court of Appeals for the 10th Circuit issued its decision in *New Mexico Cattlegrowers' Association* v. *U.S. Fish and Wildlife Service*, 248 F.3d 1277 (10th Cir. 2001) (*NMCA*). In that case, the Court rejected the FWS' approach to economic analysis, which was similar to the approach taken by NMFS in the final rule designating critical habitat for 19 ESUs of west coast salmon and *O. mykiss*. The Court ruled that ''Congress intended that the FWS conduct a full analysis of all of the economic impacts of a critical habitat designation, regardless of whether those impacts are attributable co-extensively to other causes.'' Subsequent to the 10th Circuit decision, NMFS entered into and sought judicial approval of a consent decree resolving the NAHB litigation. That decree provided for the withdrawal of critical habitat designations for the 19 salmon and *O. mykiss* ESUs and dismissed NAHB's challenge to the EFH designations. The District Court approved the consent decree and vacated the critical habitat designations by Court order on April 30, 2002 (*National Association of Homebuilders* v. *Evans*, 2002 WL 1205743 (D.D.C. 2002).

As a result of the Court's decision, NMFS removed critical habitat designations for the following 19 ESUs of salmon and *O. mykiss:* One sockeye ESU (the Ozette Lake sockeye ESU); six chinook ESUs (the Puget Sound, Lower Columbia River, Upper Willamette River, Upper Columbia River, California Central Valley spring-run, and California coastal chinook ESUs); one coho ESU (the Oregon Coast coho ESU); two chum ESUs (the Hood Canal summer-run and Columbia River chum ESUs; and nine *O. mykiss* ESUs (the Southern California, South-Central California Coast, Central California Coast, California Central Valley, Upper Columbia River, Snake River Basin, Lower Columbia River, Upper Willamette River, and Middle Columbia River *O. mykiss* ESUs) (68 FR 55900; September 29, 2003). NMFS is currently compiling information to prepare critical habitat proposals for the 19 ESUs vacated by the Court in April 2002, as well as for the Northern California *O. mykiss* ESU listed as threatened on February 12, 2001 (66 FR 9808). If new information warrants, the agency also may later revise, subject to appropriate regulatory procedures, existing critical habitat designations for six ESUs (the Snake River sockeye, Sacramento River winter-run chinook, Central California Coast coho, Southern Oregon/Northern California Coast coho, Snake River spring/summer-run chinook, and Snake River fall-run chinook ESUs) that were not subject to the Court's decision in *National Association of Homebuilders* v. *Evans*. *See* 68 FR 55926 (September 29, 2003) for further detail on NMFS' efforts in designating critical habitat for West Coast salmon and *O. mykiss*.

Public Comments Solicited

To ensure that the final action resulting from this proposed rule will be as accurate and effective as possible, and informed by the best available scientific and commercial information, NMFS is soliciting information, comments, and suggestions from the public, other governmental agencies, the scientific community, industry, and any other interested parties. Public hearings will be held in several locations in the range of the proposed ESUs; details regarding the locations, dates and times will be published in a forthcoming **Federal Register** document.

NMFS recognizes that in several instances there are serious limits to the quantity and quality of available information, and accordingly NMFS has exercised its best professional judgment in developing this proposed rule. NMFS will appreciate any additional information regarding: (1) The relatedness of specific hatchery stocks to the 27 subject ESUs; (2) biological or other relevant data concerning the viability and/or threats to Pacific salmon and *O. mykiss* ESUs, including the abundance, productivity, spatial structure, and diversity of the subject ESUs; (3) current or planned activities in the subject areas and their possible impact on these species; (4) the relationship, range, distribution, and habitat-use patterns of anadromous and resident *O. mykiss* populations; (5) genetic or other relevant data indicating the amount of exchange and the degree of relatedness between anadromous and resident *O. mykiss* life-history forms; (6) the existence of natural and artificial barriers to anadromous *O. mykiss* populations, and the relationship of resident fish located above natural and manmade impassible barriers to anadromous and resident populations below such barriers; (7) efforts being made to protect salmonid populations in California, Oregon, Washington, and Idaho; and (8) suggestions for specific regulations under section 4(d) of the ESA to apply to threatened salmon and *O. mykiss* ESUs, including the description of ''limits'' or activities that should not be subject to the take prohibitions for these threatened species. Additionally, NMFS seeks comment on: (a) The divergence threshold used for determining whether hatchery stocks should be considered part of a salmonid ESU (*i.e.*, excluding from ESUs those hatchery stocks that exhibit substantial genetic divergence from the natural population(s)); (b) NMFS' BRT assessment of the viability and extinction risk of the naturally spawned component of the subject ESUs; (c) NMFS' consideration of artificial propagation and hatchery stocks in evaluating the extinction risk of ESUs in-total; (d) NMFS' assessment of the benefits and risks provided by artificial propagation programs and hatchery stocks; (e) NMFS' overall assessments of ESU-level extinction risk and ESA listing status for the subject ESUs; and (f) NMFS' proposed approach for managing protective regulations under section 4(d) of the ESA for threatened species.

NMFS invites and will consider all pertinent information and comment. NMFS requests that information and comments be organized and identified as relating to issues (1)–(8) and (a)–(f) listed above to ensure that it is most effectively and efficiently considered in the development of the final rule. It is further requested that data, information, and comments be accompanied by: Supporting documentation such as maps, logbooks, bibliographic references, personal notes, and/or reprints of pertinent publications; and the name of the person submitting the data, the address, and any association, institution, or business that the person represents.

Public Hearings

Joint Commerce—Interior ESA implementing regulations state that the Secretary shall promptly hold at least one public hearing if any person who requests within 45 days of publication of a proposed regulation to list a species or to designate critical habitat (see 50 CFR 424.16(c)(3)). In a forthcoming **Federal Register** document, NMFS will announce the dates and locations of public meetings to provide the opportunity for the interested individuals and parties to give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed rule. NMFS encourages the public's involvement in such ESA matters.

References

A complete list of the references used in this proposed rule is available upon

request (see **ADDRESSES**) or via the Internet at *http://www.nwr.noaa.gov/ProposedListings/References.html*.

Classification

National Environmental Policy Act

Proposed ESA listing decisions are exempt from the requirement to prepare an environmental assessment or environmental impact statement under the NEPA. See NOAA Administrative Order 216–6.03(e)(1) and *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir. 1981). Thus, NMFS has determined that the proposed listing determinations for 27 ESUs of Pacific salmonids described in this notice are exempt from the requirements of the NEPA of 1969. NMFS has conducted an Environmental Assessment (EA) under the NEPA analyzing the proposed amendments to the 4(d) protective regulations for Pacific salmonids. Copies of the EA are available from NMFS upon request (*see* **FOR FURTHER INFORMATION CONTACT** and **ADDRESSES**, above).

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule issued under authority of ESA section 4, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis for the proposed listing determinations contained in this rule has been prepared.

Basis and Purpose of the Proposed Rule

Under section 4(d) of the ESA, NMFS is required to adopt such regulations as it deems necessary and advisable for the conservation of species listed as threatened, including prohibiting ''take'' of the listed species. With respect to the listing determination itself, economic impacts cannot be considered, as noted in the Conference Report on the 1982 amendments to the ESA. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. Adoption of regulations under ESA section 4(d), in contrast, contains elements of discretion and, therefore, it is appropriate to consider its impacts on small entities.

NMFS has previously adopted ESA 4(d) rules prohibiting take, except in certain circumstances, of all salmon and steelhead (salmonid) species listed as threatened under the ESA. Pursuant to a court order, NMFS is now proposing to list all hatchery fish considered part of the listed species. In most cases, it is not necessary or advisable for the conservation of the listed species to prohibit the take of hatchery fish. Moreover, if NMFS does not amend the current rules, take of hatchery fish will be prohibited once they are listed. West coast commercial and recreational fisheries primarily harvest hatchery salmonids.

NMFS is proposing to revise the current ESA section 4(d) rule so that take is prohibited only of fish with an intact adipose fin. Hatchery managers typically mark fish intended for harvest by removing the small fin near the tail on the fish's back. This visible mark allows harvesters to distinguish and release naturally spawned fish while retaining clipped fish.

NMFS is also proposing to amend the rule to protect two species that were previously listed as endangered but are now proposed for threatened status; to protect one species newly proposed for listing; and to consolidate certain provisions of the existing rules that provide exceptions to the take prohibition in certain circumstances.

Description and Estimate of the Number of Small Entities to Which the Rule Applies

The proposed rule applies to Non-tribal commercial salmon fisheries including ocean troll, Puget Sound seine and gillnet, Washington coastal bays gillnet, and lower Columbia non-Indian gillnet. Most of the entities involved in these fisheries are small entities. In Washington, California and Oregon combined, there were 2,840 troll licenses as of 2003; in the Columbia River there were 588 gillnet licenses as of 2003; and in Washington there were 1,274 purse seine and gillnet licenses as of 2000. Not all of these licenses are actively fished. In 2003 the total number of vessels reporting landings in all ocean fisheries was 1120. In 2003, the value of commercial landings of west coast salmon in all fisheries was $33 million. Ocean harvest accounted for $19 million of that total, with $12 million in the troll fishery. The average ex-vessel value of landings per vessel was $17,567.

Recreational salmon fisheries include ocean, inland marine and freshwater as far inland as Idaho. The entities that service the recreational fisheries include bait and tackle suppliers, guides, outfitters, charter boat operators, and lodging and related service providers. These entities range in size from multi-national corporations and chain stores to small local family businesses. Except for the multi-national corporations and chain stores, most of these entities are small businesses. According to the Northwest Sportfishing Industry Association, salmon and steelhead anglers spend over $600 million per year in the Northwest. (Other sources provide lower and higher estimates.)

Tribal salmon fisheries are conducted by over 30 west coast Indian tribes with treaty and other rights to fish. Tribes range in size from a few hundred to several thousand individuals. Tribal members rely on salmon fisheries for ceremonial and subsistence needs as well as for economic benefit. The value of ceremonial and subsistence fisheries is incalculable. The value of salmon harvest for commercial sale is included in the figures available for commercial fisheries generally.

Economic Impacts

The revisions NMFS is proposing will largely preserve the existing regulatory regime. Currently, hatchery fish are not listed, so their take is not prohibited. The proposed revisions will allow hatchery fish to continue to be available for harvest by not prohibiting their take. Currently, for the two species listed as endangered, all take is prohibited by section 9(a) of the ESA. The proposed revisions will maintain take prohibitions but with the greater flexibility allowed by a section 4(d) rule. Currently, the species listed as threatened are covered under a mix of 4(d) rules with varying degrees of flexibility. The proposed revisions will consolidate all of the species under one rule and apply the set of prohibitions and exceptions NMFS has found most flexible. For one species, Columbia River Coho, the proposed revisions will impose take prohibitions where none previously existed. NMFS has concluded that this revision will not have significant impacts on small entities. Since take of hatchery fish will not be prohibited, fisheries will be largely unaffected. Landowners will not be affected because the range of the newly listed coho ESU overlaps that of already-listed species whose take is already prohibited.

Conclusion

NMFS concludes that the proposed rule will not have a significant impact on a substantial number of small entities because it largely leaves intact the existing regulatory scheme. Moreover, failure to adopt the revisions would have a large adverse impact on small businesses by prohibiting take of newly-listed hatchery fish.

If you believe that this proposed rule will impact your economic activity, please comment on whether there is a preferable alternative that would meet

the statutory requirements of ESA section 4(d) (*see* **ADDRESSES**). Please describe the impact that alternative would have on your economic activity and why the alternative is preferable.

Paperwork Reduction Act (PRA)

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 Office of Management and Budget (OMB) Control Number.

This proposed rule does not contain a collection-of-information requirement for purposes of the PRA of 1980.

Executive Order (E.O.) 12866

The proposed listing determinations and amendments to the ESA 4(d) protective regulations addressed in this rule have been determined to be significant for the purposes of E.O. 12866. NMFS has prepared a Regulatory Impact Review which was provided to the OMB.

E.O. 13084—Consultation and Coordination With Indian Tribal Governments

E.O. 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This proposed rule does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposed rule. Nonetheless, NMFS intends to inform potentially affected tribal governments and to solicit their input on the proposed rule. NMFS will continue to give careful consideration to all written and oral comments received on the proposed rule and will continue its coordination and discussions with interested tribes as the agency moves forward toward a final rule.

E.O. 13132—Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this proposed rule. In fact, this notice proposes mechanisms by which NMFS, in the form of 4(d) limits to take prohibitions, may defer to state and local governments where they proved necessary protections for threatened salmonids.

List of Subjects

50 CFR Part 223

Enumeration of threatened marine and anadromous species, Restrictions applicable to threatened marine and anadromous species.

50 CFR Part 224

Enumeration of endangered marine and anadromous species.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: May 28, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 223 and 224 are proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.102, paragraph (a) is revised to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(a) *Marine and anadromous fish.* The following table lists the common and scientific names of threatened species, the locations where they are listed, and the citations for the listings and critical habitat designations.

Species [1]		Where listed	Citation(s) for listing determinations	Citation(s) for critical habitat designations
Common name	Scientific name			
(1)Gulf sturgeon	*Acipenser oxyrinchus desotoi.*	Everywhere	56 FR 49653, Sep. 30, 1991.	68 FR 13370, Mar. 19, 2003.
(2) Ozette Lake sockeye	*Oncorhynchus nerka*	U.S.A., WA, including all naturally spawned populations of sockeye salmon in Ozette Lake and streams and tributaries flowing into Ozette Lake, Washington, as well as two artificial propagation programs: The Umbrella Creek and Big River sockeye hatchery programs.	64 FR 14528, Mar. 25, 1999, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].
(3) Sacramento winter-run chinook.	*Oncorhynchus tshawytscha.*	U.S.A., CA, including all naturally spawned populations of winter-run chinook salmon in the Sacramento River and its tributaries in California, as well as two artificial propagation programs: Winter-run chinook from the Livingston Stone National Fish Hatchery (NFH), and winter run chinook in a captive broodstock program maintained at Livingston Stone NFH and the University of California Bodega Marine Laboratory.	[FR CITATION WHEN PUBLISHED AS A FINAL RULE]..	58 FR 33212, June 16, 1993.
(4) Central Valley spring-run chinook.	*Oncorhynchus tshawytscha.*	U.S.A., CA, including all naturally spawned populations of spring-run chinook salmon in the Sacramento River and its tributaries in California.	64 FR 50394, Sep. 16, 1999, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].

Species [1]		Where listed	Citation(s) for listing determinations	Citation(s) for critical habitat designations
Common name	Scientific name			
(5) California Coastal chinook.	*Oncorhynchus tshawytscha*.	U.S.A., CA, including all naturally spawned populations of chinook salmon from rivers and streams south of the Kalmath River to the Russian River, California, as well as sever artificial propagation programs: The Humboldt Fish Action Council (Freshwater Creek), Yager Creek, Redwood Creek, Hollow Tree, Van Arsdale Fish Station, Mattole Salmon Group, and Mad River Hatchery fall-run chinook hatchery programs.	64 FR 50394, Sep. 16, 1999, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].
(6) Upper Willamette River chinook.	*Oncorhynchus tshawytscha*.	U.S.A., OR, including all naturally spawned populations of spring-run chinook salmon in the Clackamas River and in the Willamette River, and its tributaries, above Willamette Falls, Oregon, as well as seven artificial propagation programs: The McKenzie River Hatchery (Oregon Department of Fish and Wildlife (ODFW) stock # 24), Marion Forks/North Fork Santiam River (ODFW Stock # 21), South Santiam Hatchery (ODFW stock # 23) in the South Fork Santiam River, South Santiam Hatchery in the Calapooia River, South Santiam Hatchery in the Mollala River, Willamette Hatchery (ODFW stock # 22), and Clackamas hatchery (ODFW stock # 19) spring-run chinook hatchery programs.	64 FR 14308, Mar. 24, 1999, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].
(7) Lower Columbia River chinook.	*Oncorhynchus tshawytscha*.	U.S.A., OR, WA, including all naturally spawned populations of chinook salmon from the Columbia River and its tributaries from its mouth at the Pacific Ocean upstream to a transitional point between Washington and Oregon east of the Hood River and the White Salmon River, and includes the Willamette River to Willamette Falls, Oregon, exclusive of spring-run chinook salmon in the Clackamas River, as well as seventeen artificial propagation programs: The Sea Resources Tule chinook Program, Big Creek Tule chinook Program, Astoria High School (STEP) Tule chinook Program, Warrenton High School (STEP) Tule chinook Program, Elochoman River Tule chinook Program, Spring Creek NFH Tule chinook Program, Cowlitz Tule Chinook Program, North Fork Toutle Tule chinook Program, Kalama Tule chinook Program, Washougal River Tule chinook Program, Spring Creek NFH Tule Chinook Program, Cowlitz spring chinook Program in the Upper Cowlitz River and the Cispus River, Friends of the Cowlitz spring chinook Program, Kalama River spring chinook Program, Lewis River spring chinook Program, Fish First spring chinook Program, and the Sandy River Hatchery (ODFW stock #11) chinook hatchery programs.	64 FR 14308, Mar. 24, 1999, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].
(8) Puget Sound chinook ...	*Oncorhynchus tshawytscha*.	U.S.A., WA including all naturally spawned populations of chinook salmon from rivers and streams flowing into Puget Sound including the Straits of Juan De Fuca from the Elwha River, eastward, including rivers and streams flowing into Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington, as well as twenty-two artificial propagation programs: The Kendal Creek Hatchery, Marblemount Hatchery (fall, spring yearlings, spring subyearlings, and summer run), Harvey Creek Hatchery, Whitehorse Springs Pond, Wallace River Hatchery (yearlings and subyearlings), Tualip Bay, Soos Creek Hatchery, Icy Creek Hatchery, Keta Creek Hatchery, White River Hatchery, White Acclimation Pond, Hupp Springs Hatchery, Voights Creek Hatchery, Diru Creek, Clear Creek, Kalama Creek, Dungeness/Hurd Creek Hatchery, Elwha Channel Hatchery Chinook Hatchery program.	64 FR 14308, Mar. 24, 1999, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].

Species [1]		Where listed	Citation(s) for listing determinations	Citation(s) for critical habitat designations
Common name	Scientific name			
(9) Snake River fall-run chinook.	*Oncorhynchus tshawytscha*.	U.S.A., OR, WA, ID, including all naturally spawned populations of fall-run chinook salmon in the mainstem Snake River and in the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River, as well as four artificial propagation programs: The Lyons Ferry Hatchery, Fall Chinook Acclimation Ponds Program, Nez Perce Tribal Hatchery, and Oxbow Hatchery fall-run chinook hatchery programs.	57 FR 34639, Apr. 22, 1992; 57 FR 23458, Jun. 3, 1992, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	58 FR 68543, Dec. 28, 1993.
(10) Snake River spring/summer-run chinook.	*Oncorhynchus tshawytscha*.	U.S.A., OR, WA, ID, including all naturally spawned populations of spring/summer-run chinook salmon in the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins, as well as fifteen artificial propagation programs: the Tucannon River conventional Hatchery, Tucannon River Captive Broodstock Program, Lostine River, Catherine Creek, Lookingglass Hatchery, Upper Grande Ronde, Imnaha River, Big Sheep Creek, McCall Hatchery, Johnson Creek Artificial Propagation Enhancement, Lemhi River Captive Rearing Experiment, Pahsimeroi Hatchery, East Fork Captive Rearing Experiment, West Fork Yankee Fork Captive Rearing Experiment, and the Sawtooth Hatchery spring/summer-run chinook hatchery programs.	57 FR 34639, Apr. 22, 1992; 57 FR 23458, Jun. 3, 1992 [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	58 FR 68543, Dec. 28, 1993. 64 FR 57399, Oct. 25, 1999.
(11) Oregon Coast coho	*Oncorhynchus kisutch*	U.S.A., OR, including all naturally spawned populations of coho salmon in Oregon coastal streams south of the Columbia River and north of Cape Blanco, as well as five artificial propagation programs: the North Umpqua River (ODFW stock #18), Cow Creek (ODFW stock #37), Coos Basin (ODFW stock #37), Coquille River (ODFW stock #44), and North Fork Nehalem River (ODFW stock #32) coho hatchery programs.	63 FR 42587, Aug. 10, 1998 [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].
(12) Southern Oregon/Northern California Coast coho.	*Oncorhynchus kisutch*	U.S.A., CA, OR, including all naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California, as well three artificial propagation programs: the Cole Rivers Hatchery (ODFW stock #52), Trinity River Hatchery, and Iron Gate Hatchery coho hatchery programs.	62 FR 24588, May 6, 1997 [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	64 FR 24049, May 5, 1999.
(13) Lower Columbia River coho.	*Oncorhynchus kisutch*	U.S.A., OR, WA, including all naturally spawned populations of coho salmon in the Columbia River and its tributaries in Washington and Oregon, from the mouth of the Columbia up to and including the Big White Salmon and Hood Rivers, as well as twenty-one artificial propagation programs; the Grays River, Sea Resources Hatchery, Peterson Coho Project, Big Creek Hatchery, Astoria High School (STEP) Coho Program, Warrenton High School (STEP) Coho Program, Elochoman Type-S Coho Program, Elochoman Type-N Coho Program, Cathlamet High School FFA Type-N Coho Program, Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers, Cowlitz Game and Anglers Coho Program, Friends of the Cowlitz Coho Program, North Fork Toutle River Hatchery, Lewis River Type-N Coho Program, Lewis River Type-S Coho Program, Fish First Wild Coho Program, Fish First Type-N Coho Program, Syverson Project Type-N Coho Program, Sandy Hatchery, and the Bonneville/Cascade/Oxbow complex coho hatchery programs.	[FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA.
(14) Columbia River chum	*Oncorhynchus keta*	U.S.A., OR, WA, including all naturally spawned populations of chum salmon in the Columbia River and its tributaries in Washington and Oregon, as well as three artificial propagation programs: the Chinook River (Sea Resources Hatchery), Grays River, and Washougal River/Duncan Creek chum hatchery programs.	64 FR 14508, Mar. 25, 1999 [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].

Species [1]		Where listed	Citation(s) for listing determinations	Citation(s) for critical habitat designations
Common name	Scientific name			
(15) Hood Canal summer-run chum.	*Oncorhynchus keta*	U.S.A., WA, including all naturally spawned populations of summer-run chum salmon in Hood Canal and it tributaries as well as populations in Olympic Peninsula rivers between Hood Canal and Dungeness Bay, Washington, as well as eight artificial propagation programs: the Quilcene NFH, Hamma Hamma Fish Hatchery, Lilliwaup Creek Fish Hatchery, Union River/Tahuya, Big Beef Creek Fish Hatchery, Salmon Creek Fish Hatchery, Chimacum Creek Fish Hatchery, and the Jimmycomelately Creek Fish Hatchery summer-run hatchery programs.	64 FR 14508, Mar. 25, 1999 [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].
(16) South-Central California Coast *Oncorhynchus mykiss*.	*Oncorhynchus mykiss*	U.S.A., CA, including all naturally spawned anadromous *O. mykiss* (steelhead) populations, as well as co-occurring resident *O. mykiss* (rainbow trout) populations, below natural and manmade impassible barriers in streams from the Pajaro River (inclusive) to, but not including the Santa Maria River, California.	64 FR 43937, Aug. 18, 1997 [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].
(17) Central California Coast *Oncorhynchus mykiss*.	*Oncorhynchus mykiss*	U.S.A., CA, including all naturally spawned anadromous *O. mykiss* (steelhead) populations, as well as co-occurring resident *O. mykiss* (rainbow trout) populations, below natural and manmade impassible barriers in California streams from the Russian River to Aptos Creek, and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), excluding the Sacramento-San Joaquin River Basin, as well as two artificial propagation programs: the Dan Clausen Fish Hatchery, and Kingfisher Flat Hatchery/Scott Creek (Monterey Bay Salmon and Trout Project) steelhead hatchery programs. Native resident *O. mykiss* above Rubber Dam 1 on Alameda Creek are also considered part of the ESU.	64 FR 43937, Aug. 18, 1997 [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].
(18) California Central Valley *Oncorhynchus mykiss*.	*Oncorhynchus mykiss*	U.S.A., CA, including all naturally spawned anadromous *O. mykiss* (steelhead) populations, as well as co-occurring resident *O. mykiss* (rainbow trout) populations, below natural and manmade impassible barriers in the Sacramento and San Joaquin Rivers and their tributaries, excluding steelhead from San Francisco and San Pablo Bays and their tributaries, as well as two artificial propagation programs: the Coleman NFH, and Feather River Hatchery steelhead hatchery programs.	[FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].
(19) Northern California *Oncorhynchus mykiss*.	*Oncorhynchus mykiss*	U.S.A., CA, including all naturally spawned anadromous *O. mykiss* (steelhead) populations, as well as co-occurring resident *O. mykiss* (rainbow trout) populations, below natural and manmade impassible barriers in California coastal river basins from Redwood Creek south to the Gualala River (inclusive), as well as two artificial propagation programs: the Yager Creek Hatchery, and North Fork Gualala River Hatchery (Gualala River Steelhead Project) steelhead hatchery programs.	65 FR 36074, June 7, 2000, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA.
(20) Upper Willamette River *Oncorhynchus mykiss*.	*Oncorhynchus mykiss*	U.S.A., OR, including all naturally spawned anadromous *O. mykiss* (steelhead) populations, as well as co-occurring resident *O. mykiss* (rainbow trout) populations, below natural and manmade impassible barriers in the Willamette River, Oregon, and its tributaries upstream from Willamette falls to the Calapooia River (inclusive).	62 FR 43937, Aug. 18, 1997, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].

Species [1]		Where listed	Citation(s) for listing determinations	Citation(s) for critical habitat designations
Common name	Scientific name			
(21) Lower Columbia River *Oncorhynchus mykiss*.	*Oncorhynchus mykiss*	U.S.A., OR, WA, including all naturally spawned anadromous *O. mykiss* (steelhead) populations, as well as co-occurring resident *O. mykiss* (rainbow trout) populations, below natural and manmade impassible barriers in streams and tributaries to the Columbia River between the Cowlitz and Wind Rivers, Washington (inclusive), and the Willamette and Hood Rivers, Oregon (inclusive), as well as ten artificial propagation programs: the Cowlitz Trout Hatchery (in the Cispus, Upper Cowlitz, Lower Cowlitz, and Tilton Rivers), Kalama River Wild (winter- and summer-run), Clackamas Hatchery, Sandy Hatchery, and Hood River (winter- and summer-run) steelhead hatchery programs. Excluded are *O. mykiss* populations in the upper Willamette River Basin above Willamette Falls, Oregon, and from the Little and Big White Salmon Rivers, Washington.	63 FR 13347, Mar. 19, 1998, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].
(22) Middle Columbia River *Oncorhynchus mykiss*.	*Oncorhynchus mykiss*	U.S.A., OR, WA, including all naturally spawned anadromous *O. mykiss* (steelhead) populations, as well as co-occurring resident *O. mykiss* (rainbow trout) populations, below natural and manmade impassible barriers in streams from above the Wind River, Washington, and the Hood River, Oregon (exclusive), upstream to, and including, the Yakima River, Washington, excluding *O. mykiss* from the Snake River Basin, as well seven artificial propagation programs: the Touchet River Endemic, Yakima River Kelt Reconditioning Program (in Satus Creek, Toppenish Creek, Naches River, and Upper Yakima River), Umatilla River, and the Deschutes River steelhead hatchery programs..	57 FR 14517, Mar. 25, 1999, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].
(23) Upper Columbia River *Oncorhynchus mykiss*.	*Oncorhynchus mykiss*	U.S.A., WA, including all naturally spawned anadromous *O. mykiss* (steelhead) populations, as well as co-occurring resident *O. mykiss* (rainbow trout) populations, below natural a–d manmade impassible barriers in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the U.S.-Canada border, as well six artificial propagation programs: the Wenatchee River, Wells Hatchery (in the Methow and Okanogan Rivers), Winthrop NFH, Omak Creek, and the Ringold steelhead hatchery programs.	62 FR 43937, Aug. 18, 1997, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].
(24) Snake River Basin *Oncorhynchus mykiss*.	*Oncorhynchus mykiss*	U.S.A., OR, WA, ID, including all naturally spawned anadromous *O. mykiss* (steelhead) populations, as well as co-occurring resident *O. mykiss* (rainbow trout) populations, below natural and manmade impassible barriers in streams in the Snake River Basin of southeast Washington, northeast Oregon, and Idaho, as well six artificial propagation programs: the Tucannon River, Dworshak NFH, Lolo Creek, North Fork Clearwater, East Fork Salmon River, and the Little Sheep Creek/Imnaha River Hatchery steelhead hatchery progrmas. Native resident *O. mykiss* above Dworshak Dam on the North Fork Clearwater River are also considered part of the ESU.	62 FR 43937, Aug. 18, 1997, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

3. In § 223.203, paragraphs (a), (b) introductory text, and (b)(2) are revised to read as follows:

§ 223.203 Anadromous fish.

* * * * *

(a) *Prohibitions.* The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1) relating to endangered species apply to unmarked anadromous fish with an intact adipose fin that are part of the threatened species of salmonids listed in § 223.102(a)(2) through (a)(24).

(b) *Limits on the prohibitions.* The limits to the prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) are described in subparagraphs (b)(1) through (b)(13) below:

(1) * * *

(2) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(2) through (a)(24) do not apply to activities specified in an application for a permit for scientific purposes or to enhance the conservation

or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than [date 60 days after the publication of the final rule in the **Federal Register**]. The prohibitions of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of a permit, or [date 6 months after the publication of the final rule in the **Federal Register**], whichever occurs earliest.

* * * * *

4. In § 223.203, paragraphs (b)(1) through (b)(13), and (c), the references in the sections listed in the first column below are amended according to the directions in the second and third columns.

Section	Remove	Add
§ 223.203(b)(1)	§ 223.102(a)(1) through (a)(10), and (a)(12) through (a)(22).	§ 223.102(a)(2) through (a)(24).
§ 223.203(b)(3) introductory text	§ 223.102(a)(4) through (a)(10), and (a)(12) through (a)(19).	§ 223.102(a)(2) through (a)(24).
§ 223.203(b)(4) introductory text	§ 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19).	§ 223.102(a)(2) through (a)(24).
§ 223.203(b)(5) introductory text	§ 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19).	§ 223.102(a)(2) through (a)(24).
§ 223.203(b)(6) introductory text	§ 223.102(a)(7), (a)(8), (a)(10), and (a)(12) through (a)(19).	§ 223.102(a)(2) through (a)(24).
§ 223.203(b)(7) introductory text	§ 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19).	§ 223.102(a)(2) through (a)(24).
§ 223.203(b)(8) introductory text	§ 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19).	§ 223.102(a)(2) through (a)(24).
§ 223.203(b)(9) introductory text	§ 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19).	§ 223.102(a)(2) through (a)(24).
§ 223.203(b)(10) introductory text	§ 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19).	§ 223.102(a)(2) through (a)(24).
§ 223.203(b)(11) introductory text	§ 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19).	§ 223.102(a)(2) through (a)(24).
§ 223.203(b)(12) introductory text	§ 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19).	§ 223.102(a)(2) through (a)(24).
§ 223.203(b)(13) introductory text	§ 223.102(a)(12), (a)(13), (a)(16), (a)(17), and (a)(19).	§ 223.102(a)(2) through (a) (24).
§ 223.203(c)	§ 223.102(a)(3), (a)(5) through (a)(10), and (a)(12) through (a)(22).	§ 223.102(a)(2) through (a)(24).
§ 223.203(c)	§ 223.209(a)	§ 223.204(a).

§ 223.203 [Amended]

5. Remove § 223.203(b)(14) through (b)(22).

§ 223.204 [Removed]

6. Remove § 223.204.

§ 223.209 [Redesignated]

7. Redesignate § 223.209 as § 223.204, and reserve § 223.209.

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

2. Revise § 224.101(a) to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(a) *Marine and anadromous fish.*

The following table lists the common and scientific names of endangered species, the locations where they are listed, and the citations for the listings and critical habitat designations.

Species [1]		Where listed	Citations for listing determination(s)	Critical habitat
Common name	Scientific name			
Shortnose sturgeon	*Acipenser brevirostrum*	Everywhere	32 FR 4001, Mar. 11, 1967.	NA
Smalltooth sawfish	*Pristis pectinata*	U.S.A	68 FR 15674, Apr. 1, 2003	NA
Totoaba	*Cynoscion macdonaldi*	Everywhere	44 FR 29480, May 21, 1979.	NA
Atlantic salmon	*Salmo salar*	U.S.A., ME, Gulf of Maine population, which includes all naturally reproducing populations and those river-specific hatchery populations cultured from them.	65 FR 69459, Nov. 17, 2000.	NA
Snake River sockeye	*Oncorhynchus nerka*	U.S.A., ID, including all anadromous and residual sockeye salmon from the Snake River Basin, Idaho, as well as artificially propagated sockeye salmon from the Redfish Lake captive propagation program.	56 FR 58619, Nov. 20, 1991, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	58 FR 68543, Dec. 28, 1993.

Species [1]		Where listed	Citations for listing determination(s)	Critical habitat
Common name	Scientific name			
Upper Columbia River Spring-run chinook.	*Oncorhynchus tshawytscha*.	U.S.A., WA, including all naturally spawned populations of chinook salmon in all river reaches accessible to chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington (excluding the Okanogan River), the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington, as well as six artificial propagation programs: the Twisp River, Chewuch River, Methow Composite, Winthrop NFH, Chiwawa River, and White River spring-run chinook hatchery programs.	64 FR 14308, Mar. 24, 1999, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].
Central California Coast coho.	*Oncorhynchus kisutch*	U.S.A., CA, including all naturally spawned populations of coho salmon from Punta Gorda in northern California south to and including the San Lorenzo River in central California, as well as populations in tributaries to San Francisco Bay, excluding the Sacramento-San Joaquin River system, as well as four artificial propagation programs: the Don Clausen Fish Hatchery Captive Broodstock Program, Scott Creek/King Fisher Flats Conservation Program, Scott Creek Captive Broodstock Program, and the Noyo River Fish Station egg-take Program coho hatchery programs.	61 FR 56138, Oct. 31, 1996, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	64 FR 24049, May 5, 1999.
Southern California *Oncorhynchus mykiss*.	*Oncorhynchus mykiss*	U.S.A., CA, including all naturally spawned anadromous *O. mykiss* (steelhead) populations, as well as co-occurring resident *O. mykiss* (rainbow trout) populations, below natural and manmade impassible barriers in streams from the Santa Maria River, San Luis Obispo County, California, (inclusive) to the U.S.-Mexico Border.	62 FR 43937, Aug. 18, 1997, [FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA [vacated 9/29/03; 68 FR 55900].

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

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Federal Register

Monday,
June 14, 2004

Part III

Department of Health and Human Services

Administration for Children and Families

Early Learning Opportunities Act (ELOA) Discretionary Grants; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Early Learning Opportunities Act (ELOA) Discretionary Grants

Program Office Name: Administration for Children and Families, Administration on Children, Youth and Families, Child Care Bureau.

Funding Opportunity Title: Early Learning Opportunities Act (ELOA) Discretionary Grants.

Announcement Type: Competitive Grant-Initial.

Funding Opportunity Number: HHS–2004–ACF–ACYF–LO–0024.

CFDA Number: 93.577.

Due Date for Applications: Applications are due July 27, 2004.

Due Date for Letter of Intent (Optional): Letters of intent are due 3 weeks prior to application due date.

I. Funding Opportunity Description

Priority Area: I. Early Learning Opportunities Act

The Administration on Children, Youth and Families, Child Care Bureau announces the availability of funds and request for applications for its FY 2004 Early Learning Opportunities Act (ELOA) grants. Funds will be awarded to Local Councils that have been designated, as evidenced in a letter of designation, by an entity of local government, an Indian Tribe, Regional Corporation, or Native Hawaiian entity, as the Local Council for the purposes of applying for an ELOA grant. Local Councils *must* submit the results of a current needs and resources assessment and a plan, addressing the most significant needs. Local Councils are encouraged to promote the involvement of faith-based and community organizations and providers.

Local Councils *must* include: Representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA; parents; other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services; and, other key community leaders.

ELOA funds may be used to develop, operate, or enhance voluntary early learning programs that are likely to produce sustained gains in early learning. To be considered for funding, applications must include activities for ''enhancing early childhood literacy'' AND two or more of the other allowable activities: promoting effective parenting; helping parents, caregivers, child care providers, and educators increase their capacity to facilitate child development and promote learning readiness; developing linkages among and between early learning programs and health care services for young children; increasing access to early learning opportunities for young children with special needs; increasing access to existing early learning programs by expanding the days or times that young children are served, by expanding the number served, or by improving the affordability of the programs for low-income families; improving the quality of early learning programs through professional development and training activities, increased compensation, and recruitment and retention incentives for providers; and removing ancillary barriers to early learning, including transportation difficulties and absence of programs during nontraditional work times. ELOA funds may only be used for young children from birth to the age of mandatory school attendance in the State where the child resides. Construction and purchase of real property are not allowable.

A. The Child Care Bureau

The Child Care Bureau was established in 1995 to provide leadership to efforts to enhance the quality, affordability, and supply of child care. The Child Care Bureau administers the Child Care and Development Fund (CCDF), a $4.8 billion child care program that includes funding for child care subsidies and activities to improve the quality and availability of child care. CCDF was created after amendments to ACF child care programs by Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 consolidated four Federal child care funding streams including the Child Care and Development Block Grant, AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care. With related State and Federal funding, CCDF provides more than $11 billion a year to States, Territories, and Tribes to help low-income working families access child care services.

The Bureau works closely with ACF Regional Offices, States, Territories, and Tribes to assist with, oversee, and document implementation of new policies and programs in support of State, local, and private sector administration of child care services and systems. In addition, the Bureau collaborates extensively with other offices throughout the Federal government to promote integrated, family-focused services, and coordinated child care delivery systems. In all of these activities, the Bureau seeks to enhance the quality, availability, and affordability of child care services, support children's healthy growth and development in safe child care environments, enhance parental choice and involvement in their children's care, and facilitate the linkage of child care with other community services.

B. The Early Learning Opportunities Act

The Early Learning Opportunities Act (ELOA) was passed by Congress to award grants to States* to enable them to increase, support, expand and better coordinate early learning opportunities for children and their families through local community organizations. The purposes of the Act are:

- To increase the availability of voluntary programs, services, and activities that support early childhood development, increase parent effectiveness, and promote the learning readiness of young children so that they enter school ready to learn;
- To support parents, child care providers, and caregivers who want to incorporate early learning activities into the daily lives of young children;
- To remove barriers to the provision of an accessible system of early childhood learning programs in communities throughout the United States;
- To increase the availability and affordability of professional development activities and compensation for caregivers and child care providers; and
- To facilitate the development of community-based systems of collaborative service delivery models characterized by resource sharing, linkages between appropriate supports, and local planning for services.

* The Act provides that if the amount appropriated for this program in any fiscal year is less than $150 million, the Department of Health and Human Services (DHHS) shall award grants on a competitive basis directly to Local Councils. DHHS is administering the program under this special provision in Fiscal Year (FY) 2004.

C. Allowable Early Learning Activities and Preferred Action

In general, Local Councils may use ELOA funds to pay for developing, operating, or enhancing voluntary early learning programs that are likely to produce sustained gains in early learning. The President has identified the enhancement of early childhood

literacy as a priority for this administration. Therefore, for FY 2004 grants, the Child Care Bureau will only consider for funding those Local Councils that include in their applications activities for ''Enhancing Early Childhood Literacy'' (see Item 1. below), AND two or more of the other allowable activities listed below (*i.e.,* Items 2 through 8):

1. Enhancing early childhood literacy;
2. Helping parents, caregivers, child care providers, and educators increase their capacity to facilitate the development of cognitive, language comprehension, expressive language, social emotional, and motor skills, and promote learning readiness;
3. Promoting effective parenting;
4. Developing linkages among early learning programs within a community and between early learning programs and health care services for young children;
5. Increasing access to early learning opportunities for young children with special needs including developmental delays, by facilitating coordination with other programs serving such young children;
6. Increasing access to existing early learning programs by expanding the days or times that the young children are served, by expanding the number of young children served, or by improving the affordability of the programs for low-income families;
7. Improving the quality of early learning programs through professional development and training activities, increased compensation, and recruitment and retention incentives for early learning providers;
8. Removing ancillary barriers to early learning, including transportation difficulties and absence of programs during nontraditional work times.

Letter(s) of Designation (Designation of Local Council by Local Government Entity)

An eligible applicant for an FY 2004 ELOA grant must be a Local Council designated, in writing, by a local government entity(ies) (or Indian Tribe, Regional Corporation, or Native Hawaiian entity) as the ''Local Council'' to serve one or more localities for the purpose of applying for an ELOA discretionary grant. The applicant must include a ''Letter of Designation'' in its application from an appropriate local government entity(ies) specifically designating it as the Local Council *for the purpose of applying for* an ELOA discretionary grant.

Because the structure and authority of local governments differ greatly across the nation, and even within a State, it is the responsibility of the applicant to determine and identify the appropriate entity(ies) of local government to designate them as the Local Council for an ELOA grant application. The local government entity(ies) making the designation must also clearly explain in its letter the source/nature of its authority to make such a designation on behalf of the locality(ies) it represents. Examples of officials that may be authorized to sign the Letter of Designation on behalf of the local government entity(ies) include but are not limited to: Mayors, city managers, city councils, county boards of supervisors, county boards of commissioners, county administrators, Tribal Councils, boards of municipal officers, etc.

Applicants serving multiple localities (*e.g.,* cities, townships, boroughs, counties) are strongly encouraged to obtain a Letter of Designation from an appropriate entity of local government from each of the localities to be served. Appendices A and B include sample Letters of Designation that meet this purpose. Applicants are strongly encouraged to utilize the language and format provided in the sample Letters of Designation. Appendix A is a sample Letter of Designation for a Local Council when the services of a Fiscal Agent will not be used, while Appendix B is a sample Letter of Designation for a Local Council that will use a Fiscal Agent.

Composition of a Local Council

To receive an award, the membership of the Local Council must be composed of the following:

a. Representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA and this announcement;

b. Parents;

c. Other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services; and

d. Other key community leaders.

See Section III, Additional Information on Eligibility, for more information on identifying the membership of their Local Council. Applicants are strongly encouraged to use the sample format in Appendix C to meet this purpose.

Local Councils are encouraged to include representatives and leaders of faith-based and community organizations and providers as members of the Local Council.

D. Definitions

Administrative Costs—means costs related to the overall management of the program, which do not directly relate to the provision of program services. These costs can be in both the personnel and non-personnel budget categories and include, but are not limited to: salaries of managerial and administrative staff, indirect costs, and other costs associated with administrative functions such as accounting, payroll services, or auditing.

Note: Not more than three percent of the total Federal share received by the Local Council through this announcement shall be used to pay for the ''administrative costs'' of the Local Council, including administrative costs of any sub-grantees and third parties in carrying out activities funded under the grant.

Budget Period—for the purposes of this announcement, budget period means the 17-month period of time for which ELOA funds are made available to a particular grantee (*i.e.*, beginning on September 30, 2004, and ending on February 28, 2006).

Caregiver—means an individual, including a relative, neighbor, or family friend, who regularly or frequently provides care, with or without compensation, for a child for whom the individual is not the parent.

Child Care Provider—means a provider of non-residential child care services (including center-based, family-based, and in-home child care services) for compensation who or that is legally operating under State law, and in compliance with applicable State and local requirements for the provision of child care services.

Early Learning—when used with respect to a program or activity, means learning designed to facilitate the development of cognitive, language, motor, and social-emotional skills to promote learning readiness in young children (see definition of young child).

Early Learning Program—means a program of services or activities that helps parents, caregivers, and child care providers to incorporate early learning into the daily lives of young children; or a program that directly provides early learning to young children.

Indian Tribe—has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Local Council—means a Local Council established or designated by a local government, Indian Tribe, Regional Corporation, or Native Hawaiian entity to serve as applicant under this announcement serving one or more localities.

Local Government—means a county, municipality, city, town, township, borough, parish, select board, council of local governments (whether or not incorporated as a non-profit corporation under State law), intra-state district, a general purpose unit of local government, and any other interstate or regional unit of local government. ''Local Government'' does not mean any of the 50 States, or any agency or instrumentality of a State exclusive of local governments.

Locality—means a city, county, borough, township, or area served by another general purpose unit of local government, an Indian Tribe, a Regional Corporation, or a Native Hawaiian entity.

Native Hawaiian Entity—means a private non-profit organization that serves the interests of Native Hawaiians, and is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or parts of programs) for the benefit of Native Hawaiians.

Non-Federal Share—means that portion of project costs not borne by the Federal government. Under ELOA, the minimum required Non-Federal Share is 15 percent of the total cost of the approved project.

Parent—means a biological parent, an adoptive parent, a stepparent, a foster parent, or a legal guardian of, or a person standing in loco parentis to a child.

Program Income—means gross income earned by the grantee or subgrantee that is directly generated by a grant supported activity, or earned only as a result of the award. 45 CFR Parts 74 and 92 include similar types of earned revenue, which qualify as program income. These include but are not limited to income from fees for services performed and the use of rental property.

Project Period—for the purposes of this announcement, project period means the 17-month period starting on September 30, 2004, and ending on February 28, 2006.

Real Property—means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Regional Corporation—means a Native Alaska Regional Corporation; an entity listed in section 419(4)(B) of the Social Security Act (42 U.S.C. 619(4)(B)).

Training—means instruction in early learning that—(a) Is required for certification under State and local laws, regulations, and policies; (b) is required to receive a nationally or State recognized credential or its equivalent; (c) is received in a postsecondary education program focused on early learning or early childhood development in which the individual is enrolled; or (d) is provided, certified, or sponsored by an organization that is recognized for its expertise in promoting early learning or early childhood development.

Young Child—for purposes of this program, means any child from birth to the age of mandatory school attendance in the State where the child resides. Information on the compulsory school age in each State is available at *http://nces.ed.gov/pubs2002/digest2001/tables/dt151.asp*.

E. Protections

1. No person, including a parent, shall be required to participate in any program of early childhood education, early learning, parent education, or developmental screening pursuant to the provisions of the Early Learning Opportunities Act.

2. Nothing in the Early Learning Opportunities Act shall be construed to affect the rights of parents otherwise established in Federal, State, or local law.

3. No entity that receives funds under the Early Learning Opportunities Act shall be required to provide services under this announcement through a particular instructional method or in a particular instructional setting to comply with the ELOA.

Appendices: Appendices D and E of this announcement provide detail about current ELOA grants. Applicants are strongly encouraged to check these appendices to ensure that they are not proposing to offer services in a geographic area served by a current ELOA grantee.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Program Funding: $33,579,313.

Anticipated Number of Awards: 30 to 50 per budget period.

Ceiling of Individual Awards: $1,000,000 per budget period.

Floor of Individual Awards: $250,000 per budget period.

Average Project Award Amount: $700,000 per budget period.

Project Periods for Awards: 17 months (project and budget period).

III. Eligibility Information

1. Eligible Applicants

Other: Please see Additional Information on Eligibility for specific eligibility guidelines.

Additional Information on Eligibility:

A. Letter(s) of Designation (Designation of Local Council by Local Government Entity)

An eligible applicant for an FY 2004 ELOA grant must be a Local Council designated, in writing, by a local government entity(ies) (or Indian Tribe, Regional Corporation, or Native Hawaiian entity) as the ''Local Council'' to serve one or more localities for the purpose of applying for an ELOA discretionary grant. The applicant must include a ''Letter of Designation'' in its application from an appropriate local government entity(ies) specifically designating it as the Local Council *for the purpose of applying for* an ELOA discretionary grant.

Because the structure and authority of local governments differ greatly across the nation, and even within a State, it is the responsibility of the applicant to determine and identify the appropriate entity(ies) of local government to designate them as the Local Council for an ELOA grant application. The local government entity(ies) making the designation must also clearly explain in its letter the source/nature of its authority to make such a designation on behalf of the locality(ies) it represents. Examples of officials that may be authorized to sign the Letter of Designation on behalf of the local government entity(ies) include but are not limited to: mayors, city managers, city councils, county boards of supervisors, county boards of commissioners, county administrators, Tribal Councils, boards of municipal officers, etc.

B. Composition of a Local Council

To receive an award, the membership of the Local Council must be composed of the following:

a. Representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA and this announcement;

b. Parents;

c. Other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services; and

d. Other key community leaders.

C. Designation of a Fiscal Agent by the Local Council

A Local Council may enter into an agreement with an entity that is affected by, or concerned with early learning issues, and that has a demonstrated capacity for administering grants, to serve as Fiscal Agent for the

administration of grant funds received by the Local Council under this program. This may include faith-based organizations or a State.

While the Fiscal Agent will *be* identified as the recipient organization of the funds under this announcement (see Application for Federal Assistance, SF–424, Item 5), the Local Council, if selected to receive a grant, will be the Grantee and responsible for ensuring compliance with all activities and terms of the grant. Identifying information for the Fiscal Agent is entered in Item 5 (*i.e.*, ''Legal Name of Fiscal Agent applying on behalf of the Name of the Local Council'') and the Employer Identification Number (EIN) for the Fiscal Agent is entered in Item 6 on the Application for Federal Assistance (SF–424).

If a Local Council uses a Fiscal Agent, the Fiscal Agent's name and Employer Identification Number (EIN) must also be included in the ''Letter of Designation'' (see Appendix B).

D. Geographic Location and Locality(ies) To Be Served

At the beginning of the project descriptions, applicants must describe the precise location of the project and boundaries of the area to be served including the following: the State, county(ies), and specific locality(ies) (*e.g.*, city, town, township, borough, parish, or area served by another general purpose unit of local government, Indian Tribe, Alaska Native Regional Corporation, or Native Hawaiian entity).

In general, Local Councils in each of the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico are eligible to apply under this announcement.

However, since one of the ELOA statutory purposes is ''to facilitate the development of community-based systems of collaborative service delivery and resource sharing,'' only one application per geographic area will be considered. This is to avoid situations in which Local Councils serve overlapping areas. Specifically:

a. Applications received from competing applicants (Local Councils) that are proposing to serve the same or overlapping geographic areas will be disqualified and not competed for an award. For example, if a Local Council proposing to serve all of County X applies, and a Local Council proposing to serve only Community A, which is within County X, also applies, both applications will be excluded from the review and not competed for an award.

b. Further, applicants proposing to serve all or part of a geographic area currently being served by an ELOA grantee whose grant is expected to be in effect on September 30, 2004, will be excluded and not competed for an award (see Appendices D and E).

E. Council Designation and Other Provisions

a. Local Councils may include faith-based organizations in their membership, provided that the other eligibility criteria are met.

b. ''Letter(s) of Support'' for the Local Council from a local government entity(ies) will not be considered as meeting the eligibility requirement for a ''Letter of Designation.''

c. Applications from Indian Tribes and Regional Corporations must include a tribal resolution from the governing body of the Tribe(s) or Regional Corporation(s), designating a Local Council for the purpose of the ELOA grant. The Tribal Council would not be considered a Local Council for ELOA unless its membership also meets the composition requirements (see Composition of Local Council).

d. ''State'' governments do not meet the definition of ''Local Government'' (see Part I (D)). Therefore, a Letter(s) of Designation from an entity(ies) of State Government will not be considered as meeting these eligibility requirements.

e. Local Councils that were formed prior to the date of enactment of the ELOA and that meet the membership requirements below will be considered eligible for the purposes of applying for an ELOA grant if a Letter(s) of Designation from an appropriate entity(ies) of local government is submitted as part of the application. In localities where a Local Council does not exist, one may be formed and designated for the purposes of applying for an ELOA grant.

f. FY 2002 ELOA grantees whose grant project period ends on or before September 29, 2004 are eligible to apply for an FY 2004 grant under this program announcement. **Note:** The project period for all grantees is noted in Block 9 of their ''Financial Assistance Award'' document.

g. To be considered eligible for a new award, current ELOA grantees may not have a pending request to extend their existing ELOA grant project period beyond September 29, 2004.

h. The 43 Local Councils (and the localities served by those Local Councils) that received FY 2003 ELOA grants will not be considered for FY 2004 awards under this announcement (see Appendix E).

i. Only Local Councils, not individuals or individual organizations/agencies, are eligible to apply under this announcement.

j. Applicants proposing to use ELOA funds for construction purposes or for the purchase of real property will be disqualified and not competed for an award.

k. Nonprofit organizations submitting an application must submit proof of their nonprofit status at the time of their submission. This can be accomplished by providing: (1) A copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code; (2) a copy of the currently valid IRS tax exemption certificate; (3) a copy of the articles of incorporation bearing the seal of the State; (4) a statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (5) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or (6) any of the items in the subparagraphs immediately above for a State or national parent organization and a statement singed by the parent organization that the applicant organization is a local non-profit affiliate.

F. Set Aside

The Act (section 809) provides that the Secretary shall reserve a portion of each year's total ELOA appropriation for Indian Tribes, Regional Corporations, and Native Hawaiian entities. ACF anticipates competitively awarding funds to at least one Local Council designated by an Indian Tribe and one Local Council designated by an Alaska Native Regional Corporation or Native Hawaiian entity, subject to receipt of applications meeting the requirements of the Act as reflected in this announcement. ACF is setting aside no less than one percent of the FY 2004 ELOA appropriation for these purposes.

Applicants are cautioned that the ceiling for individual awards is $1,000,000. An application that exceeds $1,000,000 will be considered non-responsive and be returned to the applicant without further review.

2. Cost Sharing or Matching

Yes.

Grantees must provide at least 15 percent of the total approved project cost. The total approved project cost is the sum of the ACF share and the non-federal share. The non-federal share may be met by cash or in-kind

contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, in order to meet the match requirements, a project with a total approved cost of $500,000, requesting in ACF funds, must provide a non-federal share of at least $88,235 (15 percent of the total approved project cost). To compute the non-Federal share: Divide the Federal share by .85 and subtract the Federal share from that amount. For example: $500,000 ÷ .85 = $588,235 minus $500,000 = $88,235. The total approved project cost in this example is $588,235. Grantees will be held accountable for commitments of non-federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal funds.

Applications that fail to include the required amount of cost-sharing will be considered as non-responsive and will not be eligible for funding under this announcement.

3. Other

Dun and Bradstreet Data Universal Numbering System

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applications exceeding the $1,000,000 threshold will be returned without review.

Applications that fail to include the required amount of cost-sharing will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. *Address to request an application package:* ACYF Operations Center, c/o The Dixon Center, Inc., ELOA/CCB, 118 Q Street NE., Washington, DC 20002–2132, 1–866–796–1591, *CCB@dixongroup.com.*

2. *Content and Form of Application Submission:* To be considered for funding, the applicant must submit one signed original and two copies of the application, including all attachments, to the application receipt point specified above. The original copy of the application must have original signatures, signed in blue ink. The original must be stapled (back and front) in the upper left corner. Rubber bands may be used to secure the pages of the two copies. The original application and the two copies must be submitted in a single package. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

Each application will be duplicated, therefore, please do not use or include colored paper, colored ink, separate covers, binders, clips, tabs, plastic inserts, over-sized paper, videotapes, or any other items that cannot be easily duplicated on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including the supporting documentation. Applicants are advised that a copy (not the original) of the application as submitted will be reproduced by the Federal government for review by the panel of evaluators.

Letters of Intent: Applicants are strongly encouraged to notify Ms. Taryonka Reid at the Child Care Bureau by fax (202–690–5600) at least three weeks prior to the deadline. Your fax should include the following information: number and title of this announcement (required); the name and address of the Local Council (required) and Fiscal Agent (if known); and your contact person's name, phone number, fax number, and email address. This information will be used to determine the number of expert reviewers needed to evaluate applications and to update the mailing list for future program announcements. Do not include a description of your proposed project.

A complete application consists of the following items in the order listed:

1. *Application for Federal Assistance (Standard Form 424, Rev. 9–2003)*—Follow the instructions on the back of the form. In Item 5 on the SF–424, enter the name of the applicant [Local Council]. However, if the Local Council is not incorporated or does not have an Employer Identification Number (EIN) issued by the Internal Revenue Service, the name of its fiscal agent must be entered followed by ''on behalf of the [name of Local Council].'' For example: Caring County Community Services on behalf of the Early Childhood Alliance Local Council. Enter the EIN of the Local Council, or if applicable, its Fiscal Agent, in Item 6. The EIN entered in Item 6 *must* be the number assigned to the entity identified in Item 5. In Item 8 on the SF–424, check ''New.'' In Item 10, clearly identify the Catalog of Federal Domestic Assistance program title and number (*i.e.*, Early Learning Opportunities Act, 93.577). A signature on the application constitutes an assurance that the applicant will comply with the relevant Departmental regulations contained in 45 CFR Part 74 or Part 92.

2. *Budget Information*—Non-Construction Programs (Standard Form 424A). Follow the instructions on the back of the form.

3. *Assurances*—Non-Construction Programs (Standard Form 424B). A duly authorized representative of the applicant organization must certify that the applicant is in compliance with the Pro-Children Act of 1994 (Certification Regarding Environmental Tobacco Smoke).

4. *Certification Regarding Lobbying*—Applicants must include an executed Certification Regarding Lobbying prior to receiving an award in excess of $100,000.

5. *Cover Letter*—Applicants must include a Cover Letter that includes the program announcement number and contact information for the applicant. The letter must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by terms and conditions of the grant award.

6. *Required Letter of Designation for the Local Council*—Applicants must include a signed Letter(s) of Designation for the Local Council from a local government entity(ies) that explains its authority to make such a designation and includes the required information on the membership composition of the Local Council. NOTE: ''Letter(s) of Support'' for the Local Council from a local government entity(ies) will not be considered as meeting the requirements for a Letter of Designation.

7. Membership Composition of the Local Council (see Appendix C).

8. Tribal Resolution, if applicable.

9. Table of Contents.

10. *A Project Summary/Abstract (one page maximum)*—Clearly mark this page with the applicant's name as shown in Item 5 on the SF–424 (*e.g.*, Caring County Community Services on behalf of the Early Childhood Alliance Local Council), identify the title of the proposed project as shown in Item 11 (*e.g.*, Building Resources for Early Learning Opportunities in Caring County), and the service area as shown in Item 12 of the SF–424 (*e.g.*, Caring County). The Project Description Summary/Abstract must not exceed 300 words. The first paragraph must describe the precise location of the project and the boundaries of the area to be served including the following: The State, county(ies), specific locality(ies) (*e.g.*, city, county, borough, township, parish, etc.) and/or region(s). Care should be taken to produce a Summary/Abstract that accurately and concisely reflects the proposed project. It should briefly describe the objectives of the project, the approach to be used, and the results and benefits expected. The Project Summary/Abstract must also clearly state which of the eight allowable ELOA activities are included in the project. **Note:** All applicants are required to include activities for ''enhancing early childhood literacy'' in their projects.

11. The *Project Narrative*—The applicant is strongly encouraged to use the evaluation criteria to organize its response. Specific information should be provided that addresses all components of each criterion. Local Councils receiving assistance under the ELOA shall ensure that programs, services, and activities assisted under this program, which customarily require a payment for such programs, services, or activities, adjust the cost of such programs, services, and activities provided to the individual or the individual's child based on the individual's ability to pay. It is in the applicant's best interest to ensure that the project description is easy to read, logically developed in accordance with the evaluation criteria, and adheres to recommended page limitations. In addition, the applicant should be mindful of the importance of preparing and submitting applications using language, terms, concepts, and descriptions that are generally known to the field of early learning as defined under this announcement. The pages of the project description must be double-spaced, printed in black only, printed on only one side, with no less than one-inch margins, and numbered. Applicants are strongly encouraged to limit this portion of their application to no more than 100 pages.

12. *Appendices*—The recommended maximum number of pages for supporting documentation is 50 numbered pages. These documents might include excerpts from the needs and resources assessment, resumes/job descriptions, photocopies of news clippings, documents related to the involvement and participation of the Local Council, and evidence of its efforts to coordinate early care and education services at the local level including letters of support and/or third-party agreements.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' titled ''Survey for Private, Non-Profit Grant Applicants.'' The forms are located on the web at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

3. Submission Dates and Times

The closing time and date for submission of applications is July 27, 2004. Mailed applications postmarked after the closing date will be classified as late.

Mailed applications shall be considered as meeting an announced deadline if they are post-marked on or before the deadline date and received by ACF in time for the independent review. All applications must be sent to: ACYF Operations Center, c/o The Dixon Group, ELOA/CCB, 118 Q Street NE, Washington, DC 20002–2132, Telephone: 1–866–796–1591.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as a proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks will not be acceptable as proof of timely mailing. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are postmarked before the closing date OR received before the receipt deadline time of 4:30 p.m. (Eastern Time).

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the closing date, between the hours of 8 a.m. and 4:30 p.m. (Eastern Time), Monday through Friday (excluding Federal holidays) at the above address. The address must appear on the envelope/package containing the application with the note ''Attention: ACYF Operations Center, ELOA/CCB''. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications which do not meet the criteria above are considered late applications. ACF will notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Receipt of Application: Applicants will be sent a postcard acknowledging receipt of their application.

Technical Assistance to Prospective Applicants: Applicants should direct questions about the application process to the ACYF Operations Center at 1–866–796–1591 or by e-mail at ccb@dixongroup.com and refer to the Funding Opportunity Number: HHS–2004–ACF–ACYF–LO–XXXX.

Required Forms and Due Date for Applications:

What to submit	Required content	Required form or format	When to submit
Standard Application for Federal Assistance (forms SF 424, 424A, and 424B).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

What to submit	Required content	Required form or format	When to submit
Certification regarding Lobbying and associated Disclosure of Lobbying Activities (SF LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Environmental Tobacco Smoke Certification.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Proof of Non-Profit Status (if applicable).	See Section III.3.F.k	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Cover Letter	Include the program announcement number and contact information for the applicant. The letter must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by terms and conditions of the grant award.	No required format	By application due date.
Letter of Designation for the Local Council (and Fiscal Agent, if appropriate) from an entity(ies) of local government.	See Appendices A & B	Appendix A must be used by Local Councils not using a Fiscal Agent. Appendix B must be used by Local Councils that will be using a Fiscal agent.	By application due date.
Composition of Local Council	See Appendix C	Name of each member of the Local Council, their title, role (see Legend below), and agency. Legend: A = Representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA and this announcement. B = Parents. C = Other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services. D = Other key community leaders.	By application due date.
Tribal Resolution, if applicable	Language designating the Local Council for the purpose of applying for an ELOA grant.	Fully-executed Tribal Resolution including: resolution number, date, voting information, and authorized signatures.	By application due date.
Table of Contents	List of application contents with page numbers or Appendix information.	None	By application due date.

What to submit	Required content	Required form or format	When to submit
Project Summary/Abstract	See Sections V.1.A	Clearly mark this page with the applicant's name as shown in Item 5 on the SF–424 (*e.g.*, Caring County Community Services on behalf of the Early Childhood Alliance Local Council), identify the title of the proposed project as shown in Item 11 (*e.g.*, Building Resources for Early Learning Opportunities in Caring County), and the service area as shown in Item 12 of the SF–424 (*e.g.*, Caring County). The Project Summary/Abstract must not exceed 300 words. The first paragraph must describe the precise location of the project and the boundaries of the area to be served including the following: the State, county(ies), specific locality(ies) (*e.g.*, city, county, borough, township, parish, etc.) and/or region(s). Care should be taken to produce a Summary/Abstract that accurately and concisely reflects the proposed project. It should briefly describe the objectives of the project, the approach to be used, and the results and benefits expected. The Project Summary/Abstract must also clearly state which of the eight allowable ELOA activities are included in the project. NOTE: All applicants are required to include activities for ''enhancing early childhood literacy'' in their projects.	By application due date.

What to submit	Required content	Required form or format	When to submit
Project Narrative	See Section V.A and V.B.	The applicant is strongly encouraged to use the evaluation criteria to organize its response. Specific information should be provided that addresses all components of each criterion. Local Councils receiving assistance under the ELOA shall ensure that programs, services, and activities assisted under this program, which customarily require a payment for such programs, services, or activities, adjust the cost of such programs, services, and activities provided to the individual or the individual's child based on the individual's ability to pay. It is in applicant's best interest to ensure that the project narrative is easy to read, logically developed in accordance with the evaluation criteria, and adheres to recommended page limitations. In addition, the applicant should be mindful of the importance of preparing and submitting applications using language, terms, concepts, and descriptions that are generally known to the field of early learning as defined under this announcement. The pages of the project narrative must be double-spaced, printed in black only, printed on only one side, with no less than one-inch margins, and the numbered. Applicants are strongly encouraged to limit this portion of their application to no more than 100 pages.	By application due date.
Appendices	As needed	The recommended maximum number of pages for supporting documentation is 50 numbered pages. These documents might include excerpts from the needs and resources assessment, resumes/job descriptions, photocopies of news clippings, documents related to the involvement and participation of the Local Council, and evidence of its efforts to coordinate early care and education services at the local level including letters of support and/or third-party agreements.	By application due date.

Additional Forms:

Additional forms: Private-non-profit organizations are encouraged to submit with their applications the additional survey located under ''Grant Related Documents and Forms'' entitled ''Survey for Private, Non-Profit Grant Applicants.''

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm*.	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is not covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.''

5. Funding Restrictions

(a) Since one of the ELOA statutory purposes is ''to facilitate the development of community-based systems of collaborative service delivery and resource sharing,'' only one application per geographic area will be considered. This is to avoid situations in which Local Councils serve overlapping areas. Specifically:

(i) Applications received from competing applicants (Local Councils) that are proposing to serve the same or overlapping geographic areas will be disqualified and not competed for an award. For example, if a Local Council proposing to serve all of County X applies, and a Local Council proposing to serve only Community A, which is within County X, also applies, both applications will be excluded from the review and not competed for an award; and

(ii) Applicants proposing to serve all or part of a geographic area currently being served by an ELOA grantee whose grant is expected to be in effect on September 30, 2004 will be excluded and not competed for an award (see Appendices D and E).

(b) Set Aside: The Act (section 809) provides that the Secretary shall reserve a portion of each year's total ELOA appropriation for Indian Tribes, Regional Corporations, and Native Hawaiian entities. ACF anticipates competitively awarding funds to at least one Local Council designated by an Indian Tribe and one Local Council designated by an Alaska Native Regional Corporation or Native Hawaiian entity, subject to receipt of applications meeting the requirements of the Act as reflected in this announcement. ACF is setting aside no less than one percent of the FY 2004 ELOA appropriation for these purposes.

(c) Pre-award costs are not allowable.

(d) The required 15 percent non-Federal share may be contributed in cash or in-kind, fairly evaluated, including facilities, equipment, or services, which may be provided from State or local public sources, or through donations from private entities. For the purposes of this paragraph, the term ''facilities'' includes the use of facilities, but, the term ''equipment'' means donated equipment and not the use of equipment.

(e) Applicants are discouraged from providing non-Federal share resources in excess of the required 15 percent. Applicants that provide more than the required 15 percent will not receive any additional credit or points under the evaluation criteria. Grantees will be held accountable on the grant award commitments of the non-Federal share even if the approved amount exceeds the required 15 percent.

(f) Funds received by grantees shall be used to supplement and not supplant other Federal, State, and local public funds expended to promote early learning. No funds provided shall be used to carry-out an activity funded under another provision of law providing for Federal child care or early learning programs, unless an expansion of such activity is identified in the local needs assessment and performance goals.

(g) Not more than three percent of the total Federal share received by the Local Council through this announcement shall be used to pay for the administrative costs of the Local Council, including the administrative costs of any of its sub-grantees and third parties, in carrying-out activities funded under the grant.

(h) Local Councils receiving assistance under the ELOA shall ensure that programs, services, and activities assisted under this program, which customarily require a payment for such programs, services, or activities, adjust the cost of such programs, services, and activities provided to the individual or the individual's child based on the individual's ability to pay.

(i) Applications proposing to use ELOA funds for construction purposes or for the purchase of real property will not be considered for funding.

6. Other Submission Requirements

Submission by Mail: Mailed applications shall be considered as meeting an announced deadline if they are post-marked on or before the deadline date and received by ACF in time for the independent review. All applications must be sent to: ACYF Operations Center, c/o The Dixon Group, ELOA/CCB, 118 Q Street NE, Washington, DC 20002–2132, Telephone: 1–866–796–1591.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as a proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks will not be acceptable as proof of timely mailing. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are postmarked before the closing date OR received before the receipt deadline time of 4:30 PM (Eastern Time).

Hand Delivery: Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the closing date, between the hours of 8 AM and 4:30 PM (Eastern Time), Monday through Friday (excluding Federal holidays) at the above address. The address must appear on the envelope/package containing the application with the note ''Attention: ACYF Operations Center, ELOA/CCB''. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

V. Application Review Information

1. Criteria

The Project Description—Overview

The following are instructions and guidelines on how to prepare the ''Project Summary/Abstract'' and ''Full Project Description'' sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD). Public Reporting for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information.

The project description is approved under OMB Control Number 0970–0139 which expires 4/30/2007.

An agency may nor 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.

Purpose: The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions: ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than

repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

A. *Project Summary/Abstract:* Provide a summary of the project description (one page or less) with reference to the funding request.

B. *Objectives and Need for Assistance:* Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support from concerned parties other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

C. *Approach:* Outline a plan of action, which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors, which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Local Councils are encouraged to promote the involvement of faith-based providers in their projects. In developing the local plans and activities, ACF encourages Local Councils to incorporate strategies and activities that involve fathers and strengthen families.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. For example, for any project that will include informal caregivers, including friends, family and in-home child care providers, or caregivers who are somewhat isolated, such as child care providers who operate alone or in rural areas, please describe the means by which training and technical assistance will be made available to such informal and/or isolated caregivers and quality child care will be supported/assured. The Child Care Bureau is interested in encouraging the appropriate use of innovative approaches, especially including distance learning techniques and other uses of technology, to meeting the needs of child care providers and parents. If distance learning techniques, such as use of public television, satellite downlinks, or Internet-based instruction, will be used for this purpose, please describe those techniques. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearances may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

D. *Results and Benefits Expected:* Identify the results and benefits to be derived. For example, explain how your proposed project will achieve the specific goals and objectives you have set; specify the number of children and families to be served, and how the services to be provided will be funded consistent with the local needs assessment. Or, explain how the expected results will benefit the population to be served in meeting its needs for early learning services and activities. What benefits will families derive from these services? How will the services help them? What lessons will be learned which might help other agencies and organizations that are addressing the needs of a similar client population?

E. *Evaluation:* Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives, and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met, and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

F. *Geographic Location:* Describe the precise geographic location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

G. *Organizational Profiles:* Provide information on the applicant organizations(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

1. Non-Profit Status: This can be accomplished by providing: (1) A copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code; (2) a copy of the currently valid IRS tax exemption certificate; (3) a copy of the articles of incorporation bearing the seal of the State; (4) a statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (5) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or (6) any of the items in the subparagraphs immediately above for a State or national parent organization and a statement singed by the parent organization that the applicant organization is a local non-profit affiliate.

2. Staff and Position Data: Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

3. Third-Party Agreements: Include written agreements between grantees and sub-grantees or subcontractors or other cooperating entities. These agreements must detail the scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

4. Letters of Support: Provide statements from the community, public and commercial leaders that support the project proposed for funding. All documents must be included in the application at the time of submission.

5. Plan for Project Continuance Beyond Grant Support: Provide a plan for securing resources and continuing project activities after Federal assistance has ceased.

H. *Budget and Budget Justification:* Provide line item detail and detailed calculations for each budget object class identified in the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers, if otherwise required for individuals. The copies may include summary salary information.

General: The following are guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: First column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The applicant should specify the costs for the entire 17-month ELOA project period, not separate costs into a 12-month and five-month budgets. For example: To compute salary costs for a full-time employee who will be employed for the entire 17-months of the ELOA project, divide the annual salary by 12 and then multiply by 17. To compute the costs for a full-time employee who will be paid by the hour for the entire 17-month project, multiply 2,947 hours by the hourly wage. The full-time equivalent for a 12-month position is 2,080 hours.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops must be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information, which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. Regulatory procurement standards for grantees can be found in 45 CFR 74.40–48; 74.43 addresses the need for competition.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the

required supporting information referred to in these instructions.

Other

Description: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (non-contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative.

Justification: Provide computations, a narrative description, and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has a current negotiated indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source, and anticipated use of program income in the budget or refer to the pages in the application, which contain this information.

Non-Federal Resources

Description: Amounts of non Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs

[Self-explanatory]

Evaluation Criteria

Criterion 1. Objectives and Need for Assistance (25 Points)

1. The extent to which the applicant demonstrates the need for assistance including identification and discussion of its needs and resources assessment concerning early learning services and the relevancy of the results as the basis for determining its objectives and need for assistance for early learning services. Relevant data from the needs and resources assessment should be included. Participant and beneficiary information must also be included.

2. The extent to which the applicant describes the context of the proposed project, including the characteristics of the community, magnitude, and severity of the problem, and the needs to be addressed.

3. The extent to which the applicant presents a vision of the project it anticipates developing; defines its goals and specific measurable objectives of the project; describes how its goals and objectives are linked together; and explains how implementation will fulfill the purposes of the ELOA. The extent to which the applicant demonstrates an understanding that goals are end products of a project, while objectives are measurable steps toward attainment of the goals. The extent to which the applicant demonstrates a thorough understanding of the importance of early learning services and activities that help parents, caregivers, and child care providers incorporate early learning into the daily lives of young children, as well as programs that directly provide early learning to young children.

4. The extent to which the applicant demonstrates how it will support activities/projects that maximize the use of resources through collaboration with other early learning programs, provide continuity of services for young children across the age spectrum, and help parents and other caregivers promote early learning with their young children.

5. The extent to which the applicant demonstrates that it has worked with local education agencies to identify cognitive, social, and emotional, and motor developmental abilities which are necessary to support children's readiness for school; that the programs, services, and activities assisted under this title will represent developmentally appropriate steps toward the acquisition of those abilities; and, that the programs, services, and activities assisted provide benefits for children cared for in their own homes as well as children placed in the care of others.

Criterion 2. Approach (25 Points)

1. The extent to which the applicant describes its project design, services, product development and dissemination. The extent to which the applicant presents an approach that: (a) Reflects an understanding of the characteristics, needs, and services currently available to the target population; (b) is based on current theory, research, and/or best practices; (c) is appropriate and feasible; (d) can be reliably evaluated; (e) could be replicated, if successful; and (f) can be sustained after Federal funding has ceased.

2. The extent to which the applicant includes a detailed plan that identifies goals and objectives, relates those goals and objectives to the findings of its needs and resources assessment, and provides a work plan identifying specific activities necessary to accomplish the stated goals and objectives. The extent to which the plan demonstrates that each of the project objectives and activities supports the current needs and resource assessment and can be accomplished with the available or expected resources during the proposed project period.

3. The extent to which the plan: (a) Describes the sequence and timing of the major activities, tasks and subtasks, important milestones, and reports, and indicates when each will be accomplished (a timeline is recommended). The extent to which the applicant's plan provides quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, the extent to which the accomplishment are listed in chronological order to show the schedule of accomplishments and target dates.

4. The extent to which the applicant: (a) Specifies who will conduct the activities under each objective; (b) describes how subcontractors will be

chosen and held accountable for carrying out activities in compliance with this application, and grant terms and conditions; (c) describes how actual and perceived conflict of interest will be avoided if the Local Council is also a direct service provider; and (d) indicates how programs, services, and activities will be provided based on the family's ability to pay (for those services that customarily require a payment).

5. The extent to which the applicant describes how the project will form collaborations among local early learning, youth, social service, educational providers (including faith-based organizations) and, as appropriate, organizations that can facilitate distance learning, to maximize resources and concentrate efforts on areas of greatest need.

6. The extent to which the applicant describes its work with local educational agencies to identify cognitive, social, emotional, and motor developmental abilities, which are necessary to support children's readiness for school.

7. The extent to which the applicant's programs, services, and activities assisted under ELOA will represent developmentally appropriate steps toward the acquisition of those abilities.

8. The extent to which the applicant's programs, services, and activities assisted under this announcement provide benefits for children cared for in their own homes as well as children placed in the care of others.

9. The extent to which the applicant's plan: (a) Describes how the project will be structured and managed; (b) defines the procedures to be used to determine whether the project is being conducted in a manner consistent with the work plan; (c) lists organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution to the project; (d) discusses the impact of the project's various activities on the project's effectiveness including factors that may affect project implementation or outcomes and presents realistic strategies for resolution of these difficulties; (e) describes how timeliness of activities will be ensured, how quality control will be maintained, and how costs will be controlled; and (f) describes how unanticipated problems will be resolved to ensure that the project will be completed on time and with a high degree of quality.

10. If the project includes the use of any distance learning techniques in support of informal or isolated child care providers, the extent to which the purposes of distance learning are clearly described and appropriate objectives are identified for specific types of child care providers. (If distance learning is not an element of the project, this sub-criterion does not apply.)

Criterion 3. Results and Benefits Expected (15 Points)

1. The extent to which the applicant specifies the number of children and families to be served and how the services to be provided will be funded consistent with the results of the needs assessment.

2. The extent to which the applicant explains how the expected results will benefit the population to be served in meeting its needs for early learning services and activities.

3. The extent to which the applicant demonstrates that completion of the proposed objectives will result in specific, measurable results.

Criterion 4. Evaluation (15 Points)

1. The extent to which the applicant appropriately links its needs and resources assessment, proposed activities, and anticipated results and benefits, and describes how the proposed evaluation will demonstrate the effectiveness of its activities and services in addressing the needs identified under its needs and resources assessment. The extent to which the applicant demonstrates how the results or benefits identified for each objective will serve as standards for evaluating the achievement of objectives at the end of the project period (*i.e.*, 17 months).

2. The extent to which the applicant's evaluation plan includes a process component that describes the activities of the project, how the project will operate, how well the design was followed, and the extent to which it produced the expected results. The extent to which the applicant's should contain an outcome component with output and outcome measures. For example, in addition to numbers of families and children served, what benefits did families derive from these services?

3. The extent to which the applicant demonstrates the relationships among the needs identified in the needs and resources assessment, the activities/interventions proposed, and anticipated results and benefits (*e.g.*, a diagram (logic model) for demonstration purposes).

4. The extent to which the design and implementation of its evaluation plan is methodologically sound, appropriate to the activities/interventions implemented, and demonstrates the extent to which program goals/objectives will be achieved.

5. The extent to which the applicant has allocated sufficient funds in the project budget to implement the proposed evaluation activities.

6. The extent to which the evaluation plan reflects sensitivity to technical, logistical, cultural, and ethical issues that may arise and includes realistic strategies for the resolution of difficulties.

7. The extent to which the evaluation plan adequately protects human subjects, confidentiality of data, and consent procedures, as appropriate.

8. If any distance learning technique is to be employed, the extent to which it is related to specific desired results for specified providers and there is a means by which to test for these results or contrast the results of distance learning with other techniques for providing information and assistance and supporting quality among child care providers. (If distance learning is not an element of the project, this sub-criterion does not apply.)

Criterion 5. Staff and Position Data/Organizational Profiles (10 Points)

1. The extent to which the applicant (Local Council) provides information and evidence of its management and administrative structure including its organizational capacity, and if applicable, that of its Fiscal Agent. Organizational capacity includes: (a) The extent to which the ability to manage a project of the proposed size and scope is demonstrated; (b) the extent to which successful experience with the target population is demonstrated; (c) the extent to which a Local Council (and/or designated individuals) is qualified and experienced to manage the project is demonstrated; (d) the extent to which a commitment to develop and sustain working relationships among key stakeholders is demonstrated; (e) the extent to which experience and commitment of any third parties including consultants is demonstrated; and (f) the extent to which an appropriate organizational structure, including the management information system, to implement the project is demonstrated.

2. The extent to which the applicant (Local Council) demonstrates its staff and organizational experience particularly in areas of facilitating needs and resources assessments and collaborative activities as they relate to early learning services. The extent to which the applicant documents its experience in facilitating such activities and the length of time the applicant has been involved in these activities. The extent to which the applicant clearly

shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

3. The extent to which the applicant provides position descriptions and/or resumes of key personnel, including those of consultants, which clearly relate to the personnel staffing required to achieve the ELOA project objectives and the proposed budget. The extent to which the position descriptions and resumes clearly describe the qualifications, any specialized skills, and duties for each position necessary for overall quality implementation of the project. The extent to which resumes are provided for individuals who have been identified for positions in the project. The extent to which the applicant lists organizations and consultants who will participate in the project along with a short description of the nature of their effort or contribution.

4. The extent to which the applicant describes its agency including the types, quantities, and costs of services it provides. The extent to which the applicant discusses the role of other organizations that will be involved in providing direct services to children and families through this grant.

5. If the Local Council plans to work with a fiscal agent, that entity, its qualifications, and its relationship to the Council must be described. The extent to which the applicant and/or its fiscal agent demonstrates that it has sufficient fiscal and accounting capacity to ensure prudent use, proper disbursement, and accurate accounting of funds.

6. The extent to which the applicant provides organizational charts for the Local Council, its members, and any third-party, including a list of all sites, addresses, phone numbers, and staff contacts and titles.

7. The extent to which the applicant demonstrates active participation of the entire Local Council in the development of its application and the project, including a description of the ongoing role of the Local Council in the implementation of the project, and methods for documenting its participation (*e.g.*, minutes of council meetings, council resolutions, newspaper articles, and community surveys).

8. The extent to which the applicant includes third-party agreements with cooperating entities, which detail the scope of work to be performed, work schedules, remuneration, and any other terms and conditions that structure or define the relationship. Information about new agreements that will be executed with subgrantees, contractors, or other cooperating entities should also be included. If no written agreements exist, sample/draft agreements may be submitted.

9. The extent to which the applicant demonstrates support for the project from parents, the community at-large, and other key leaders and stakeholders.

10. The extent to which the applicant demonstrates a feasible plan for securing resources and continuing project activities, if applicable, after Federal assistance has ceased. The extent to which the applicant demonstrates its understanding that ACF is interested in funding projects that will be completed, self-sustaining, or financed by other than ELOA funds at the end of the project period.

Criterion 6. Budget and Budget Justification (10 Points)

1. The extent to which the applicant demonstrates that the funds requested will be used for early learning services that are allowed under this announcement. The extent to which the discussion refers to (1) the budget information presented on Standard Forms 424 and 424A and the applicant's budget justification and (2) the results or benefits identified under Criterion 3 above.

2. The extent to which the project's costs are reasonable in view of the activities to be carried out, that the funds are appropriately allocated across component areas, and that the budget is sufficient to accomplish the objectives.

3. The extent to which the applicant's narrative budget justification provides detailed calculations that describes how the categorical costs are derived. The extent to which the applicant's detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The extent to which the applicant specifies the costs for the entire 17-month ELOA project period, not separate costs into 12-month and five-month budgets.

4. The extent to which the applicant provides sufficient funds in the project budget to implement the proposed evaluation activities.

5. If there is a distance learning component of the project, and that component includes evaluation of the efficacy of any distance learning technique(s) for child care providers, the extent to which the costs of that evaluation are adequately considered and provided for in the budget.

6. The extent to which funds are allocated to allow two representatives from the Local Council to attend one two-day grantee meeting in Washington, DC.

7. The extent to which the applicant provides Letter(s) of Commitment from the State, local, public and private organizations/agencies, and any other source that will be contributing toward the applicant's non-Federal share of project costs. The extent to which the Letter(s) of Commitment state the amount to be contributed and the form of the contribution (*i.e.*, cash or in-kind).

Note: Letter(s) of Commitment are not to be confused with Letter(s) of Support or with the Local Council's Letter of Designation by an Entity of Local Government.

2. Review and Selection Process

A. Initial Screening for Eligibility and Conformance

Each application will undergo an eligibility and conformance review by Federal Child Care Bureau staff. Applications that pass the eligibility and conformance review will be evaluated on a competitive basis according to the specified evaluation criteria.

B. Competitive Review Process

The competitive review will be conducted in the Washington, DC metropolitan area by panels of Federal and non-Federal experts knowledgeable in the areas of literacy, early learning, child care, early childhood education, and other relevant program areas.

Application review panels will assign a score to each application and identify its strengths and weaknesses.

C. Application Consideration and Selection

The Child Care Bureau will conduct an administrative review of the applications and results of the competitive review panels and make recommendations for funding to the Commissioner, ACYF.

Subject to the recommendation of the Child Care Bureau's Associate Commissioner, the Commissioner, ACYF, will make the final selection of the applications to be funded. An application may be funded in whole or in part depending on: (1) The ranked order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects that best meets the Bureau's objectives; (4) the funds available; (5) the statutory requirement that reserves funds for Indian Tribes, and Alaska Native Regional Corporations, and Native Hawaiian entities; and (6) other relevant considerations. The Commissioner may also elect not to fund any applicants with known management, fiscal, reporting, program, or other problems, which make it

unlikely that they would be able to provide effective services.

Approved but Unfunded Applications: Should more FY 2004 ELOA applications be approved for funding than ACYF can fund with available ELOA monies, the Grants Officer shall fund applications in their order of approval until the available funds are expended. When this occurs, ACYF has the option of carrying-over the approved applications to FY 2005 for funding consideration in that ELOA grant competition. These applications need not be reviewed nor scored again as long as the ELOA program's evaluation criteria do not change from FY 2004 to FY 2005. However, the approved but not funded applications must be placed in the proper rank order with the new FY 2005 ELOA applications.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document, which sets forth the amount of funds granted, the terms and conditions of the grant award, the effective date of the award, and the budget period for which support is given, the no-federal share to be provided, and the total project period for which support is provided. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirement

45 CFR Parts 16, 30, 46, 74, 75, 76, 80, 81, 84, 86, 91, 92, 93, and 100.

37 CFR Part 401.

3. Reporting Requirements

Programmatic Reports: Semi-annually and a final report is due 90 days after the end of the grant period.

Financial Reports: Semi-annually and a final report is due 90 days after the end of the grant period.

Original reports and one copy should be mailed to: William Wilson, Grants Officer, 330 C Street SW, Room 2070, Washington, DC 20447.

Audits: Audits will be conducted in accordance with guidelines established in the revised OMB Circular No. A–123, ''Audits of States, Local Governments, and Non-Profit Organizations,'' and implemented in 7 CFR Part 3052. In accordance with the provisions of OMB Circular No. A–133 (Revised, June 24, 1997), Audits of States, Local Governments, and Nonprofit Organizations, nonfederal entities that expend financial assistance of $300,000 or more in Federal awards will have a single or a program-specific audit conducted for that year. Nonfederal entities that expend less than $300,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in Circular A–133. Additional audits may be necessary.

Records: Grantees must maintain separate records for each grant to ensure that funds are used for the purpose for which the grant was awarded. All matching contributions must be verifiable in the grantee organization's records. Records are subject to inspection during the life of the grant and for three years thereafter.

VII. Agency Contacts

A. Program Office Contact

Carol L. Gage, ELOA Program Area Manager, 330 C Street SW., Room 2330/2046, Washington, DC 20447, 202–690–6243, *cgage@acf.hhs.gov.*

B. Grants Management Office Contact

William Wilson, Grants Officer, 330 C Street SW., Room 2070, Washington, DC 20447, 202–205–8913, *wwilson@acf.hhs.gov.*

C. General

Technical Assistance to Prospective Applicants about the application process or problems linking to the full announcement contact the ACYF Operations Center and refer to the ELOA Funding Opportunity Number: Toll free: 1–866–796–1591, *CCB@dixongroup.com.*

VIII. Other Information

Electronic Link to Announcement: Copies of this Program Announcement may be downloaded approximately 5 days after publication in the **Federal Register** from the Child Care Bureau's Web site at *http://www.acf.hhs.gov/programs/ccb/.*

Dated: June 4, 2004.

Frank Fuentes,

Deputy Commissioner, Administration on Children, Youth and Families.

Appendix A.—Sample 1—Letter of Designation of the Local Council by an Entity of Local Government

Date

To Whom It May Concern:

Under the authority granted by the *(Specify Source of Authority to Act on behalf of the Entity of Local Government),* I/We hereby designate the *(Insert Name of Local Council)* as the eligible Local Council for the *(Insert the name(s) of localities to be served by the Local Council (e.g., city(ies), county(ies), borough(s), etc.))* for the purposes of applying for a discretionary grant under the Early Learning Opportunities Act (ELOA) program. I/We also authorize the *(Insert Name of Local Council)* to develop and submit an application to the Administration on Children, Youth and Families, Child Care Bureau in response to the ELOA Funding Opportunity Number: HHS–ACF–CCB–ELOA–04–01, and to administer the implementation of the project if funded. As required under the statute governing ELOA, the *(Insert Name of Local Council)* includes: (1) Representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA and this announcement; (2) parents; (3) other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services; and (4) other key community leaders.

The *Insert Name of Local Council* was responsible for preparing and submitting the enclosed application for the ELOA discretionary grant program.

Sincerely,

Signed and dated by an individual with authority to represent the entity of local government (*e.g.,* mayor, city/county manager, city/county executive, city/county council, board of supervisors, select board, etc.)

Appendix B.—Sample 2—Letter of Designation of the Local Council and Identification of the Fiscal Agent by an Entity of Local Government

Date

To Whom It May Concern:

Under the authority granted by the *(Specify Source of Authority to Act on behalf of the Entity of Local Government),* I/We hereby designate the *(Insert Name of Local Council)* as the eligible Local Council for the *(Insert the name(s) of localities to be served by the Local Council (e.g.*, city(ies), county(ies), borough(s), etc.*))* for the purposes of the Early Learning Opportunities Act (ELOA) discretionary grant program. I/We also authorize the *(Insert Name of Local Council)* to develop and submit an application to the Administration on Children, Youth and Families, Child Care Bureau in response to the ELOA Funding Opportunity Number: HHS–ACF–CCB–ELOA–04–01, and to administer the implementation of the project if funded.

I/We hereby authorize the *(Insert Name of Fiscal Agent)* to serve as the Fiscal Agent on behalf of the *(Insert Name of Local Council)* and the Fiscal Agent's Employer Identification Number (EIN) is: _____ and this EIN has been entered in Item 6 on the Application for Federal Assistance (SF–424).

As required under the statute governing ELOA, the (Insert Name of Local Council) includes: (1) Representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA and this announcement; (2) parents; (3) other individuals concerned with early

learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services; and (4) other key community leaders.

The *(Insert Name of Local Council)* was responsible for preparing and submitting the enclosed application for the ELOA discretionary grant program.

Sincerely,

Signed and dated by an individual with authority to represent the entity of local government (*e.g.*, mayor, city/county manager, city/county executive, city/county council, board of supervisors, select board, etc.)

Appendix C.—Sample Format for Providing Information on the Composition of the Local Council

Member's name	Title	Role	Agency
L. M. Peterson	Superintendent	C	Emerald City Public Schools.
Rev. P. Nelson	Director, Child & Family Services	A, D	Holy Trinity Church.
Patricia Lawson	Director	A	Happy Days Child Care.
Fr. Michael Bates	Child & Family Program Manager	A, D	Catholic Charities.
Michele Dixon	Director	C	Child Care Resource & Referral.
Angela Bauer	Director	B	St. James Head Start.
Monica Presley	Director	C	Emerald County Health Dept.
Marsha Severn	Chair	D	Emerald City Chamber of Commerce.
Peggy Davis	Family Child Care Provider	C	
Sarah Curtis	Autism Consultant	A	Emerald City Public Schools.
Susan Meyers	Parent of Young Child	B	
Susan LaPierre	President	A	Emerald County Community College.
Alberta Collins	Vice President	D	Emerald City United Way Services.
Frank Jimenez	County Manager	D	Emerald County.
Sean Red Cloud	Consultant	D	Lakota Community Services.
Christopher Potter	Parent of Young Child	B	
Harriet Huggins	Director	C	Emerald County Social Services Dept.
Isabella Flores	Director	D	La Puerta Fundacíon.
T. Rex Reid	President	D	Emerald City Bank.
Lionel Mejias	Director	A	Early Childhood Services, Inc.
Ameila Quigley	Program Parent	B	Parents and Teachers.
Amy Takmamura	Director	A	Emerald City Child Care Consortium.
Juana Garcia	Director, Special Education	A	Emerald City Public Schools.

Legend:

A = Representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA and this announcement.

B = Parents.

C = Other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services.

D = Other key community leaders.

Appendix D.—FY 2002 Early Learning Opportunity Act Grantees and Geographic Service Areas

Thirty-one Early Learning Opportunity Act (ELOA) grants were awarded in FY 2002. Listed below is the name of each grantee, the title of its project, and its geographic service area. These 31 grants were all awarded a 17-month project period (*i.e.,* September 30, 2002–February 28, 2004). However, many of the grantees are likely to request and be approved a no cost extension to their February 28, 2004 project period end date. The length of an extension will vary from grantee-to-grantee, with the minimum extension being one month and the maximum being 12 months.

FY 2004 applicants proposing to serve all or part of a geographic area currently being served by an ELOA grantee whose grant is expected to be in effect on September 30, 2004 will be excluded and not competed for an award. To learn whether or not the project period for any of the FY 2002 ELOA grantees listed below has been extended, you may contact Carol L. Gage, the ELOA Program Area Manager, at 202–690–6243 or *cgage@acf.hhs.gov.*

State	Grantee's fiscal agent	Local council (ELOA grantee)	Project title	Geographic service area
Arizona (Chandler)	n/a	Mayor's Literacy Task Force.	Chandler Steps to Learning Project: A Community-based Early Learning and Parent Assistance Program.	City of Chandler.
Colorado (Denver)	The Clayton Foundation on behalf of the	City of Denver and Denver Public Schools Joint Council on Early Childhood Care and Education.	Early Learning Opportunities Project.	City & County of Denver.
Connecticut (Manchester)	Town of Manchester on behalf of the	Manchester School Readiness Council.	Manchester Early Learning Opportunities Project.	Town of Manchester.
District of Columbia	DC Department of Human Services on behalf of the	Mayor's Advisory Committee on Early Childhood Development.	DC Early Learning Opportunities Program.	Wards 1, 7, & 8 in the District of Columbia.
Florida (Miami)	n/a	Miami-Dade School Readiness Coalition.	Early Authors Program	Miami-Dade County.
Georgia (Atlanta)	n/a	Family Connection Partnership.	South Georgia EXCEL (Excellence in Childcare and Learning).	Coffee, Crisp, Mitchell, & Turner Counties.

State	Grantee's fiscal agent	Local council (ELOA grantee)	Project title	Geographic service area
Hawaii (Honolulu)	Good Beginnings Alliance on behalf of the	Good Beginnings Oahu Council.	Expanding Oahu's Early Learning Opportunities.	The island of Oahu with special attention in the Waianae, Waimanalo, & Kalihi communities.
Idaho (Pocatello)	United Way of Southeastern Idaho on behalf of the	Success By 6	Bannock County Ready to Learn Project.	Bannock County.
Maine (Wilton)	Western Maine Centers for Children on behalf of the	Western Maine Alliance for Children's Care, Education, and Support (ACCESS).	Western Maine ACCESS Early Learning Opportunity Grant.	Androscoggin, Franklin, & Oxford Counties.
Massachusetts (Boston)	Economic Development and Industrial Corporation on behalf of the	0–8 Coalition	Boston Learns: An Early Literacy Collaborative for Children, Families, and Educators.	City of Boston including the neighborhoods of Mattapan, Roslindale, & Hyde Park.
Massachusetts (Cambridge).	Cambridge Public Schools on behalf of the	Cambridge 0–8 Council	Accelerating Language and Literacy for Children, Families, and Providers.	City of Cambridge.
Massachusetts (Lowell)	Lowell Public Schools District on behalf of the	Lowell Community Partnership for Children.	Lowell Community Partnerships for Children Early Learning Opportunities Initiative.	City of Lowell.
Michigan (Grand Rapids) ..	Heart of West Michigan United Way on behalf of the	Kent County Family and Children's Coordinating Council.	Connections For Children	Kent County.
Minnesota (Minneapolis) ...	n/a	Minneapolis Youth Coordinating Board.	Minneapolis Youth Coordinating Board Readiness Initiative.	City of Minneapolis.
New Hampshire (Manchester).	Easter Seals New Hampshire on behalf of the	Early Learning Lasts a Lifetime Local Council of Southeastern New Hampshire.	Links to Early Learning	Rockingham & Strafford Counties.
New York (Binghampton) ..	Broome Community College on behalf of the	Broome County Early Childhood Coalition.	Building Brighter Futures For Broome.	Broome County.
North Carolina (Lenoir)	Communities In Schools of Caldwell County Inc. on behalf of the	Local Council for Early Childhood Development.	Early Learning Opportunities Movement.	Caldwell County.
Oklahoma (Pawhuska)	Osage Tribe of Indians of Oklahoma on behalf of the	Osage Tribal Council	Osage Nation Early Learning Center.	Osage Indian Tribal Reservation in Osage County.
Rhode Island (Providence)	The Providence Plan on behalf of the	Ready to Learn Providence Local Council.	Ready to Learn Providence.	City of Providence.
South Carolina (Lancaster)	n/a	Lancaster County First Steps.	Lancaster County First Steps.	Lancaster County.
South Carolina (Beaufort)	Beaufort County Council on behalf of the	Beaufort County Early Childhood Coalition.	Beaufort County Early Childhood Coalition.	Beaufort County.
Texas (El Paso)	El Paso Community College on behalf of the	Strong Families, Strong Future Council.	Using a Promotor de Salud to Promote Early Learning in At-Risk Populations along the US-Mexico Border.	El Paso County.
Texas (Levelland)	South Plains Community Action Association, Inc. on behalf of the	South Plains Early Childhood Council.	On the Road with Literacy	Counties of Bailey, Cochran, Crosby, Dickens, Garza, Hale, Hockley, Lamb, Floyd, Lynn, Lubbock, Terry, King, Motely, & Yoakum.
Vermont (Swanton)	Franklin Northwest Supervisory Union on behalf of the	Franklin County Early Childhood Advisory Council.	Franklin County Early Learning Opportunities Project.	Franklin County.
Virginia (Fairfax)	Fairfax County Board of Supervisors on behalf of the	Childcare Advisory Council	Fairfax Collaborative	Fairfax County including the cities of Falls Church & Fairfax.
Virginia (Harrisonburg)	United Way of Harrisonburg & Rockingham County, Inc. on behalf of the	United Way Success By 6 Coalition.	The Reading Road Show Early Literacy Initiative.	Rockingham County & the City of Harrisonburg.

State	Grantee's fiscal agent	Local council (ELOA grantee)	Project title	Geographic service area
Virginia (Norfolk)	n/a	Hampton Roads Partnership Square One.	Square One School Readiness Initiative.	Region known as Hampton Roads including 17 localities: Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Smithfield, Suffolk, Virginia Beach, & Williamsburg & the Counties of Gloucester, Isle of Wight, James City, Southampton, Surry, & York.
Washington (Spokane)	Health Improvement Partnership of Spokane County on behalf of the	Spokane Regional Child Care Initiative.	Strengthening Early Learning in Spokane County.	Spokane County.
Washington (Vancouver) ...	Educational Service District 112 on behalf of the	Support Early Learning and Families Local Council.	Every Moment Counts: Achieving School Readiness in Clark County.	Clark County.
West Virginia (Huntington)	Huntington West Virginia Housing Authority on behalf of the	Cabell-Wayne Early Childhood Council.	ERASE (Education, Rurality, Accessibility, Service, and Economic) Barriers Project.	Cabell & Wayne Counties.
West Virginia (Webster Springs).	Webster County Board of Education on behalf of the	Early Care and Education Consortium.	More by Four—Ready by Five.	Webster County.

Appendix E.—FY 2003 Early Learning Opportunity Act Grantees and Geographic Service Areas

Forty-three Early Learning Opportunity Act (ELOA) grants were awarded in FY 2003. Listed below is the name of each grantee, the title of its project, and its geographic service area. The 17-month project period for these grants is September 30, 2003—February 28, 2005. The ELOA Program Area Manager is Carol L. Gage, who can be reached at 202–690–6243 or *cgage@acf.hhs.gov.*

State	Grantee's fiscal agent	Local council (ELOA grantee)	Project title	Geographic service area
Alabama (Huntsville)	National Children's Advocacy Center on behalf of the	Children's Policy Council for Huntsville City and Madison County.	Building Blocks Project	Huntsville City & Madison County.
Alaska (Barrow)	Ilisagvik College on behalf of the	Community Child Care Council of the Arctic Slope Native Association.	Earlying Learning Enhancement for the North Slope Borough of Alaska.	North Slope Borough.
Arizona (Nogales)	Santa Cruz County Schools Office on behalf of the	Santa Cruz County Schools Consortium.	Santa Cruz County Early Learning-Learning Together/Aprendiendo Temprano—Aprendiendo Juntos Program.	Santa Cruz County.
California (Merced)	Merced County Office of Education on behalf of the	Merced County Local Childcare Planning Council.	CELO—Coalition for Early Learning Opportunity.	Merced County.
Califronia (NAPA)	Napa County Office of Education on behalf of the	Napa County Child Care Planning Council.	The EARLY II Project (Enhancing Accessibility and Readiness for Learning by Young children).	Napa County.
California (Oroville)	Butte County Office of Education on behalf of the	Butte County Local Child Care Planning Council.	Beginning Early Learning and Literacy Success.	Butte County.
California (Pleasant Hill)	Contra Costa County Office of Education on behalf of the	Contra Costa County Local Planning Council.	Contra Costa County Early Learning Project.	Contra Costs County.
California (Redwood City)	San Mateo County Superintendent of Schools on behalf of the	San Mateo County Child Care Partnership Council.	The San Mateo County Early Learning Project.	San Mateo County.
California (San Diego)	San Diego County Superintendent of Schools on behalf of the	San Diego County Child Care and Development Planning Council.	Project MENTOR (Meeting Educational Needs Through Outreach).	North San Diego County: Escondido, Vista, Oceanside, & Poway.

State	Grantee's fiscal agent	Local council (ELOA grantee)	Project title	Geographic service area
California (Shingle Springs)	n/a	First 5 El Dorado Children and Families Commission.	Early Learning Matters	El Dorado County.
Colorado (Dillon)	n/a	Summit County Child Care Resource & Referral Agency.	Summit County Reading Early Always Learning (R.E.A.L.) Project.	Summit County.
Delaware (Wilmington)	City of Wilmington on behalf of the	Wilmington Early Care and Education Council.	Wilmington Cares	City of Wilmington.
Florida (Orlando)	Orange County School readiness Coalition on behalf of the	Mayor's Education Action Council.	Orlando's Ore-K Enrichment Project.	City of Orlando.
Florida (Pineallas Park)	Juvenile Welfare Board of Pinellas County on behalf of the	Pinellas County School Readiness Coalition, Inc.	Pinellas Early Literacy Learning Community Program.	Pinellas County.
Georgia (Atlanta)	United Way of Metropolitan Atlanta on behalf of the	Central DeKalb SPARK Partnership.	Lighting the SPARK	DeKalb County.
Iowa (Webster City)	Hamilton County Auditor on behalf of the	Building Families	Early Childhood Enhancement Institute.	Hamilton, Humbodlt, & Wright Counties.
Kansas (Topeka)	United Way of Greater Topeka on behalf of the	Topeka Area Child Care Advisory Council.	Topeka Links to Learning	Shawnee County.
Louisiana (Monroe)	n/a	Children's Coalition for Northeast Louisiana.	Ouachita Parish Right Start Program.	Cities of Monore & West Monroe.
Maine (Waterville)	Kennebec Valley Community Action Program on behalf of the	Kennebec/Somerset Alliance for Children's Care, Education, and Support Services (ACCESS).	Project PLUS	Kennebec & Somerset Counties.
Maine (Wiscasset)	Coastal Enterprises, Inc. on behalf of the	Coastal Alliance for Children's Care, Education, and Support (ACCESS).	Coastal Early Care and Education Project.	Northern Cumberland, Sagadahoc, Lincoln, Waldo, & Know Counties.
Maryland (Baltimore)	n/a	Family Support Strategy Committee of the Family League of Baltimore City, Inc.	Baltimore's Early Literacy for Families (ELF) Project.	4 Communities in East/West Baltimore City: Druid Heights, Reservoir Hill, Upton; historic East Baltimore; Sandtown, Winchester, Harlem Park; & South-west Baltimore Consortium.
Maryland (Centreville)	Queen Anne's County Office of Finance on behalf of the	Queen Anne's County Community Partnerships for Children.	Families First Play to Learn Center.	Queen Anne County.
Maryland (Charlotte Hall)	n/a	Southern Maryland Child Care Resource Center.	Southern Maryland Early Literacy Project.	Calvert, Charles, & St. Mary's Counties.
Massachusetts (Northampton).	Hampshire Educational Collaborative on behalf of the	Eastern and South Hadley Community Partnership for Children.	Early Learning Web Project.	5 rural communities in western Massachusetts; Belchertown, South Hadley, & Ware (Hampshire County) & Monson & Palmer (Hampden County).
MIchigan (Adrian)	Lenawee Intermediate School District of behalf of the	Lenawee's CHILD Advisory Council.	Lenawee's CHILD: *C*ommunities *H*elping to *I*ncrease *L*earning and *D*evelopment.	Lenawee County.
Michigan (Detroit)	Southwest Counseling and Development Services on behalf of the	Family Support Team of Southwest Detroit.	New Steps—Organizing the Community for New Steps to Early Learning.	Wayne County.
Minnesota (W. St. Paul)	Dakota County Public Health Department on behalf of the	Dakota Healthy Families Steering Team.	Dakota Healthy Families Early Learning Project.	Dakota County.
Missouri & Kansas (Kansas City, MO).	Mid-America Regional Council on behalf of the	Metropolitan Council on Child Care.	Kansas City Early Childhood Excellence Project Phase II.	Kansas: Johnston, Leavenworth, & Wyandotte Counties; Missouri: Cass, Clay, Jackson, Platte, & Ray Counties.
New Jersey (Galloway)	AlantiCare Foundation on behalf of the	United Way of Atlantic County Success by 6 Initiative.	Parents As Teachers	Atlantic County.
New Jersey (Hillside)	Community Coordinated Child Care on behalf of the	Union County Association of Child Care Providers.	Union County Early Learning Opportunities Project.	Union County.

State	Grantee's fiscal agent	Local council (ELOA grantee)	Project title	Geographic service area
North Carolina (Morgantown).	n/a	Burke County Partnership for Children.	Asset-Based Literacy and Learning Initiative (ABBL).	Burke & Catawba Counties.
New Mexico (Santa Fe)	United Way of Santa Fe County on behalf of the	Success by 6 Council	Success By 6 Early Literacy Project.	Santa Fe County.
Pennsylvania (Wilkes-Barre).	United Way of Wyoming Valley on behalf of the	Children's Alliance of Luzerne County.	Healthy Families of Luzerne County.	Luzerne County.
South Carolina (Greenville)	United Way of Greenville County of behalf of the	United Way of Greenville County Success By 6 Child Care Initiative.	STEPS (Staff-Training-Environments-Parenting-Scholarships).	Greenville County.
Texas (Austin)	The Austin Project on behalf of the	Austin Child Care Council	Ticket to Learn—Early Learning Opportunities Initiative.	4 contiguous zip codes within the City of Austin, Travis County: 78723, 78752, 78753, & 78758.
Texas (Corpus Christi)	United Way of the Coastal Bend on behalf of the	Success by 6 Local Council.	Coastal Bend Early Learning Opportunities Project.	12-county Coastal Bend region of South TX: Arkansas, Bee, Brooks, Duval, Jim Wells, Kennedy, Kleberg, Live Oak McMullen, Nueces, Refugio, & San Patricio.
Texas (Houston)	Initiatives for Children on behalf of the	Greater Houston Collaborative for Children Governing Committee.	HELP (Harris County Early Learning Program for Kids).	Harris County.
Virginia (Richmond)	United Ways Services Success by Six on behalf of the	Greater Richmond Early Child Development Coalition.	Project EXCEL: *EX*cellence for *C*hildren and *E*early *L*earning.	City of Richmond & the Counties of Chesterfield & Henrico.
Washington (Oakville)	Confederated Tribes of the Chehalis Reservation on behalf of the	South Puget Council Tribal Local Council.	Tribal Early Learning Opportunities Project.	Chehalis Indian Reservation & Skokomish Reservation.
Washington & Idaho (Pullman).	Palouse Industries, Inc. on behalf of the	Early Childhood Service Council for Latah County, ID and Whitman County, WA.	Young Children and Family Programs on the Palouse.	Latah County, Idaho & Whitman County, Washington, an area geographically known as the "Palouse".
West Virginia (Elkins)	Youth Health Service, Inc. on behalf of the	Randolph & Barbour County Early Childhood Collaboratives.	Appalachian Readers	Randolph & Barbour Counties.
Wisconsin (Appleton)	Child Care Resource and Referral, Inc. on behalf of the	Healthy Infant and Child Alliance, Inc.	Quality Early Literacy Environments.	Calumet, Outagamie, & Waupaca Counties.
Wisconsin (Eau Claire)	Eau Claire County Department of Human Services on behalf of the	Connect for Children Council.	Connect for Children Early Learning Project.	Eau Claire County.

[FR Doc. 04–13079 Filed 6–10–04; 8:45 am]

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Federal Register

Monday,
June 14, 2004

Part IV

Department of Commerce

International Trade Administration

Notice of Preliminary Results of Countervailing and Antidumping Duty Administrative Reviews: Certain Softwood Lumber Products From Canada; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain softwood lumber products from Canada for the period May 22, 2002, through March 31, 2003. If the final results remain the same as these preliminary results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. (*See Public Comment* section of this notice.)

EFFECTIVE DATE: June 14, 2004.

FOR FURTHER INFORMATION CONTACT: James Terpstra at (202) 482–3965, Stephanie Moore at (202) 482–3692, or Robert Copyak at (202) 482–2209, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 2002, the Department published in the **Federal Register** (67 FR 36070) the amended final affirmative countervailing duty determination and countervailing duty order on certain softwood lumber products from Canada, as corrected (67 FR 37775, May 30, 2002). On May 1, 2003, the Department published a notice of ''Opportunity to Request Administrative Review of Certain Softwood Lumber Products from Canada'' (68 FR 23281, May 1, 2003). The Department received requests that it conduct an aggregate review from, among others, the Coalition for Fair Lumber Imports Executive Committee (petitioners) and the Government of Canada (GOC), as well as approximately 400 requests for review covering an estimated 290 individual companies. On July 1, 2003, we initiated the review covering the period May 22, 2002, through March 31, 2003 (68 FR 39055).

On July 25, 2003, the Department determined to conduct this administrative review on an aggregate basis consistent with section 777A(e)(2)(B) of the Tariff Act of 1930, as amended (the Act), and to the extent practicable, conduct a limited number of individual reviews between May 7 and May 11, 2004. The pool of companies considered for company-specific review was limited from the estimated 290 companies for which we received requests for individual review to those 148 companies claiming zero or *de minimis* rates. Section 351.213(k)(1) of the countervailing duty (CVD) Regulations provides that the Department will, to the extent practicable, conduct reviews of companies requesting and claiming either zero or *de minimis* rates if the Department conducts an administrative review upon an aggregate basis under section 777A(e)(2)(B) of the Act. For further discussion, *see* Memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration from Holly A. Kuga, Acting Deputy Assistant Secretary regarding ''Methodology for Conducting the Review,'' dated July 25, 2003, which is in the public file in the Central Records Unit (CRU), Room B–099, of the Department of Commerce.

On August 14, 2003, in accordance with section 351.301(d)(4)(i)(B) of the CVD Regulations, petitioners timely filed new subsidy allegations. Petitioners alleged that Canadian softwood lumber producers benefitted from twelve additional subsidy programs during the period of review (POR). Petitioners further alleged that the Canadian federal and provincial governments increased their subsidy programs, in some cases specifically in an effort to offset the effects of the countervailing and antidumping duties imposed by the Department. The Department determined that the petitioners had sufficiently supported their allegations, and initiated an investigation of the new programs. *See* Memoranda to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI through Eric B. Greynolds, Program Manager from Margaret Ward, Case Analyst regarding ''New Subsidy Allegations,'' dated February 6, 2004, and April 19, 2004, which are in the public file in the CRU.

On January 16, 2004, the Department extended the period for completion of these preliminary results pursuant to section 751(a)(3)(A) of the Act. *See Certain Softwood Lumber Products from Canada: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review,* 69 FR 2568 (January 16, 2004).

On March 15, 2004, the Department determined to conduct individual company-specific reviews of 11 companies. The Department selected these 11 companies from the already narrowed pool of 148 companies claiming zero/*de minimis* subsidies on the basis of (1) whether the company claimed to source all of its inputs from the United States, Maritime Provinces,[1] and/or Canadian private lands, or (2) the company acquired Crown logs from third parties and had quantities of either lumber inputs or Crown stumpage that could be considered insignificant when compared to overall volume and, therefore, ignored in any analysis. *See* Memorandum to James J. Jochum, Assistant Secretary for Import Administration, from Holly A. Kuga, Acting Deputy Assistant Secretary, regarding ''Conduct of Company-Specific Reviews,'' dated March 15, 2004, which is in the public file in the CRU.

On April 9, 2004, the Department sent questionnaires to the 11 companies. We received timely responses from all 11 companies, as well as a voluntary response from Commonwealth Plywood Co., Ltd.

From April 13 through May 4, 2004, we conducted verifications in Canada of the government questionnaire responses.

Due to the unexpected emergency closure of the main Commerce building on Tuesday, June, 1, 2004, the Department has tolled the deadline for these preliminary results by one day to June 2, 2004.

Period of Review

The POR for which we are measuring subsidies is May 22, 2002, through March 31, 2003. By memorandum dated July 31, 2003, the Department determined that any subsidy rate calculated during this review would be based on data from the Canadian fiscal year (April 1, 2002–March 31, 2003) and would apply to entries between May 22, 2002 (the date of the countervailing duty order), and March 31, 2003. *See* Memorandum from Holly A. Kuga, Acting Deputy Assistant Secretary for Group II, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, regarding the ''First Administrative Review of the Countervailing Duty Order on Softwood

[1] Nova Scotia, New Brunswick, Newfoundland, and Prince Edward Island.

Lumber Products From Canada—Period of Review.''

Extension of Time Limits for Final Results

Pursuant to section 19 CFR 351.213(h)(2) of the CVD Regulations, the Department finds that as a result of the complex nature of the issues in this case it is not practicable to complete the review within the normal time period allocated under 19 CFR 351.213(h)(1); therefore, we are extending the final results from 120 days to 180 days after the publication of these preliminary results. Therefore, the Department will issue its final results no later than 180 days after the publication of the preliminary results of this review, *i.e.*, on or about December 7, 2004.

Scope of the Review

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada,* 67 FR 15539 (April 2, 2002) (*see* comment 53, item D, page 116, and comment 57, item B–7, page 126), available at *http://www.ia.ita.doc.gov,* drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box-spring frame kits:* if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1'' in actual thickness or 83″ in length.

(3) *Radius-cut box-spring-frame components,* not exceeding 1″ in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS heading 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) the processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to the satisfaction of CBP that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits,*[2] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint.

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to CBP upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that CBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS

[2] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

subheadings 4418.90.45.90, 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I-joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge-glued wood, properly classified under HTSUS item 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non-subject status based on U.S. country of origin will be treated as non-subject U.S.-origin merchandise under the countervailing duty order, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[3] The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

Subsidies Valuation Information

Aggregation and Company-Specific Rates

In the countervailing duty investigation of softwood lumber from Canada, the Department solicited information from the GOC on an aggregate or industry-wide basis in accordance with section 777(A)(e)(2)(B) of the Act, rather than from individual producers and exporters, as a result of the large number of producers and exporters of softwood lumber in Canada. *See* page 7 of the April 23, 2001, Memorandum to the File from the Team, ''Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada,'' which is in the public file in the CRU. As noted above, in accordance with 19 CFR 351.213(b), the GOC and petitioners requested an administrative review of this countervailing duty order and both requested that this review be conducted on an aggregate basis. *See Initiation Notice.* The Department also received requests for company-specific reviews from a large number of individual Canadian producers/exporters pursuant to 19 CFR 351.213(b).

Because of the extraordinarily large number of softwood lumber producers in Canada, the Department is conducting this administrative review of the order on an aggregate basis and will calculate a single country-wide subsidy to be applied to all exports of subject merchandise. *See* section 777A(e)(2)(B) of the Act. As noted above in the ''Background'' section of this notice, the Department also determined to calculate company-specific rates for certain selected companies that claimed zero/*de minimis* rates. *See* the March 15, 2004, Memorandum to James J. Jochum, Assistant Secretary, for Import Administration, from Holly A. Kuga, Acting Deputy Assistant Secretary, Group II, (Company Selection Memorandum), which is in the public file in the CRU.

As noted in the ''Background'' section of this notice, the Department received questionnaire responses from the companies selected for individual review. Based upon our review of the questionnaire responses, the Department preliminarily has concluded that additional information will be needed in order to complete our analysis of these companies. Therefore, the Department intends to issue a decision memorandum related to subsidy rate calculations involving these companies prior to issuing the final results of this review in order to provide parties an opportunity to comment.

Allocation Period

In the underlying investigation and pursuant to 19 CFR 351.524(d)(2), the Department allocated, where applicable, all of the non-recurring subsidies provided to the producers/exporters of subject merchandise over a 10-year average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. *See Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Determination: Certain Softwood Lumber Products From Canada,* 66 FR 43186 (August 2001), and in the *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada,* 67 FR 15545 (April 2, 2002) (*Lumber IV*). No interested party challenged the 10-year AUL derived from the IRS tables. Thus, in this review, we have allocated, where applicable, all of the non-recurring subsidies provided to the producers/exporters of subject merchandise over a 10-year AUL.

Recurring and Non-Recurring Benefits

The Department has previously determined that the sale of Crown timber by Canadian provinces confers countervailable benefits on the production and exportation of the subject merchandise under 771(5)(E)(iv) of the Act because the stumpage fees at which the timber is sold is for less than adequate remuneration. For the reasons described in the program sections, below, the Department continues to have found that Canadian provinces sell Crown timber for less than adequate remuneration to softwood lumber producers in Canada. Pursuant to section 351.524(c)(1) of the CVD Regulations, subsidies conferred by the government provision of a good or service normally involve recurring benefits. Therefore, consistent with our regulations and past practice, benefits conferred by the provinces' administered Crown stumpage programs have, for purposes of these preliminary results, been expensed in the year of receipt.

In this review the Department is also investigating other programs that involve the provision of grants to producers and exporters of subject merchandise. Under section 351.524 of the CVD Regulations, benefits from grants can either be classified as providing recurring or non-recurring benefits. Recurring benefits are expensed in the year of receipt, while grants providing non-recurring benefits are allocated over time corresponding to the AUL of the industry under review. Specifically, under section 351.524(b)(2) of the CVD Regulations, grants which provide non-recurring benefits will also be expensed in the year of receipt if the amount of the grant under the program is less than 0.5 percent of the relevant sales during the year in which the grant was approved (referred to as the 0.5 percent test).

[3] *See* the scope clarification message (# 3034202), dated February 3, 2003, to CBP, regarding treatment of U.S. origin lumber on file in the CRU.

Benchmarks for Loans and Discount Rate

In selecting benchmark interest rates for use in calculating the benefits conferred by the various loan programs under review, the Department's normal practice is to compare the amount paid by the borrower on the government provided loans with the amount the firm would pay on a comparable commercial loan actually obtained on the market. *See* Section 771(5)(E)(ii) of the Act; 19 CFR 351.505(a)(1) and (3)(i). However, because we are conducting this review on an aggregate basis and with the exception of the company-specific reviews noted above we are not examining individual companies, for those programs requiring a Canadian dollar-denominated discount rate or the application of a Canadian dollar-denominated, short-term or long-term benchmark interest rate, we used for these preliminary results the national average interest rates on commercial short-term or long-term Canadian dollar-denominated loans as reported by the GOC.

The information submitted by the GOC was for fixed-rate short-term and long-term debt. For short-term debt, the GOC provided monthly weight-averaged short-term interest rates based on the prime business rate, SME rate, three-month corporate paper rate, and one-month bankers' acceptance rate, as reported by the Bank of Canada. For long-term debt, the GOC provided quarterly implied rates calculated from long-term debt and the interest payments made on long-term debt as reported by Statistics Canada (STATCAN). Based on these rates, we derived simple averaged POR rates for both short-term and long-term debt.

Some of the investigated programs provided long-term loans to the softwood lumber industry with variable interest rates instead of fixed interest rates. Because we were unable to gather information on variable interest rates charged on commercial loans in Canada, we have used as our benchmark for those loans the rate applicable to long-term fixed interest rate loans for the POR as reported by the GOC.

Regarding the selection of a discount rate for the purposes of allocating non-recurring subsidies over time, we are directed by 19 CFR 351.524(d)(3). Because we are conducting this review on an aggregate basis under section 777A(e)(2)(B) of the Act, we used as the discount rate, the average cost of long-term fixed-rate loans in Canada as reported by the GOC. *See* 19 CFR 351.524(d)(3)(i)(B).

Aggregate Subsidy Rate Calculation

As noted above, this administrative review is being conducted on an aggregate basis, with the exception of 11 individual company-specific reviews. We have used the same methodology to calculate the country-wide rate for the programs subject to this review that we used in the investigation.

1. Provincial Crown Stumpage Programs

For stumpage programs administered by the Canadian provinces subject to this review, we first calculated a provincial subsidy rate by dividing the aggregate benefit conferred under each specific provincial stumpage program by the total stumpage denominator calculated for that province. For further information regarding the stumpage denominator, *see* the ''Denominator Issues'' section, below. As required by section 777A(e)(2)(B) of the Act, we next calculated a single country-wide subsidy rate. To calculate the country-wide subsidy rate conferred on the subject merchandise from all stumpage programs, we weight-averaged the subsidy rate from each provincial stumpage program by the respective provinces' relative shares of total exports to the United States during the POR. As in *Lumber IV,* these weight-averages of the subject merchandise do not include exports from the Maritime Provinces. *See e.g.*, the April 25, 2002, Memorandum to Faryar Shirzad, Assistant Secretary for Import Administration, from Bernard T. Carreau, Deputy Assistant Secretary for Import Administration, ''Ministerial Error Allegations Filed by Respondents and Petitioners,'' a public document that is on file in the CRU. We then summed these weight-average subsidy rates to determine the country-wide rate for all provincial Crown stumpage programs.

2. Other Programs

We are also examining a number of non-stumpage programs administered by the Canadian Federal Government and certain Provincial Governments in Canada. These include programs previously investigated and programs newly alleged in this review. To calculate the country-wide rate for these programs, we have used a different methodology than that employed in the investigation. For federal programs that were found to be specific because they were limited to certain regions, we have calculated the countervailable subsidy rate by dividing the benefit by the relevant denominator (*i.e.*, total production of softwood lumber in the region or total exports of softwood lumber to the United States from that region), and then multiplying that result by the relative share of total softwood exports to the United States from that region. For Federal programs that were not regionally specific, we divided the benefit by the relevant sales (total sales of softwood lumber, total sales of the wood products manufacturing industry (which includes softwood lumber), or total sales of the wood products manufacturing and paper industries).

For provincial programs, we calculated the countervailable subsidy rate by dividing the benefit by the relevant sales amount for that province (*i.e.*, total exports of softwood lumber from that province to the United States, total sales of softwood lumber in that province, or total sales of the wood products manufacturing and paper industries in that province). That result was multiplied by the relative share of total softwood exports to the United States from that province.

Where the countervailable subsidy rate for a program was less than 0.005 percent, the program was not included in calculating the country-wide countervailing duty rate.

3. Excluded Companies

In the investigation, we deducted from the above-mentioned denominators sales by companies that were excluded from the countervailing duty order. The Department has since also concluded expedited reviews for a number of companies, pursuant to which a number of additional companies have been excluded from the countervailing duty order. *See,* Final Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada: Notice of Final Results of Countervailing Duty Expedited Reviews (68 FR 24436, May 7, 2003). Pursuant to our prior practice, we have deducted the sales of all companies excluded from the countervailing duty order from the relevant sales denominators used to calculate the country-wide subsidy rates, as discussed above.

On May 25, 2004, we requested sales data for the POR from the companies that were excluded from the countervailing duty order as a result of exclusion and expedited review process. Because of the timing, we have yet to receive any responses to our requests.

Lacking actual POR sales data from the excluded companies, we have estimated the companies' POR sales using sales data they supplied during the underlying investigation or expedited review. Specifically, we have indexed the sales data of the excluded companies to the POR using province-

specific lumber prices indices obtained from STATCAN. We then subtracted the indexed sales data of the excluded companies from the provincial and Canada-wide sales denominators.

Pass-Through

During the underlying investigation, the Canadian parties claimed that a portion of the Crown logs processed by sawmills were purchased by the mills in arm's-length transactions with independent harvesters. Canada further claimed that such logs must be excluded from the subsidy calculation unless the Department determines that the benefit to the independent harvester passed through to the lumber producers. In anticipation of a similar claim in this administrative review, we requested in the original questionnaire that each of the Canadian provinces report the volume and value of Crown logs sold by independent harvesters to unrelated parties during the POR. *See* September 12, 2003, Questionnaire.

In response to the Department's original questionnaire, and in more recent submissions, certain provinces have submitted information on the record of this proceeding that they claim demonstrate the volume of the provincial Crown logs harvested during the POR that were sold in arm's-length transactions, and for which a pass-through analysis must be performed. Our analysis and preliminary findings with respect to these claims are detailed, by province, below.

Alberta

The volumes of Crown timber sales claimed by Alberta to be at arm's-length and for which a pass-through analysis should be conducted is contained in its original November 12, 2003, questionnaire response and in two more recent submissions. In a letter dated May 18, 2004, at page 8, the GOA stated that ''at least 1.5 million cubic meters of wood were sold in arm's length transactions in the period of review'' and ''more than 2 million cubic meters of provincial Section 80/81 wood moved between unrelated parties.'' A letter submitted on May 24, 2004, on behalf of the Canadian parties further states that at least 1,724,826 cubic meters of Section 80/81 log volume was ''moved from unrelated parties'' during the POR and should therefore be removed from the subsidy rate calculation. *See* Respondent's May 24, 2004, letter ''First Administrative Review, Pass-Through of Benefit to Arm's Length Purchasers of Log and Lumber Inputs' dated May 24, 2004, at page 8. For the reasons described below, we preliminarily determine that Alberta has failed to substantiate its claim that logs entering sawmills during the POR included logs purchased in arm's-length transactions.

The GOA and the Canadian parties have failed to provide any evidence to support the claim that there were arm's length sales of logs. They have provided only vague assertions of ''transfers'' to ''unrelated parties'' that ''likely represent sales, and could include both cash and other forms of transactions.'' *Id.* at page 7 (emphasis added). Thus, they have only provided conjecture, not evidence, that these were, in fact, sales or that they were at arm's-length. In addition, with respect to volume, Alberta asserts that ''the Alberta numerator should be decreased by a substantial amount, *e.g.*, at least 1,724,826 cubic meters of log volume, to account for arm's-length transactions during the POR.'' Again, Alberta has failed to establish the basis for this claim. *Id.* at page 7 (emphasis added). In particular, Alberta's figures include logs from both Crown and private sources. Moreover, Alberta is basing its claim for its 1.5 million figure on data obtained for calendar year 2002, rather than the POR. *Id.; see also* the GOA's November 12 Questionnaire response, Exhibit 69, ''2003 Update'' at pages 5–6.

In addition, at verification, the Department obtained information that further undermines Alberta's claims. In Alberta, the GOA explained that it is common for sawmills to enter into agreements where a tenure-holding independent harvester will supply timber to the sawmill but the sawmill will pay the stumpage directly to the province. We examined three separate contracts between mills and harvesters of Crown timber that include this provision, which is known as ''delegation of signing authority'' (''submission authority''). We also reviewed the timber return associated with one of the contracts to confirm that the timber dues were made by the sawmill directly to the GOA. Under this type of agreement, the sawmill simply pays the tenure holder for harvesting and hauling services. In such cases, there is not an arm's length log sale—*i.e.*, there is no log sale at all between the sawmill and the harvester because the sawmill is paying the Crown directly for the timber. More importantly, any stumpage benefit goes directly to the sawmill paying the stumpage fee, just as if the sawmill were drawing from its own tenure and contracting out for harvesting and hauling services. Accordingly, because the GOA has failed to substantiate its claim that sawmills purchased Crown logs in arm's-length transactions during the POR, a pass-through analysis is not warranted.

British Columbia

The Canadian parties and the Government of British Columbia (GBC) claim that ''at least 25.7 percent of logs harvested from Crown lands and consumed in sawmills were purchased at arm's length during the POR,'' of which about 20 percent were logs sold by independent harvesters and 5.7 percent logs sold by tenure holders with sawmills. May 24, 2004, at 6; *see also* BC November 12, 2003, Questionnaire Response at BC–IV–26. In support of this claim, B.C. provided survey data on what were purported to be B.C.'s primary sawmills' arm's length log purchases. *See* the ''Norcon Forestry Ltd. Survey of Primary Sawmills' Arm's Length Log Purchases in the Province of British Columbia'' at Appendix I of the March 15, 2004, letter from Steptoe & Johnson, LLP. We have examined the transactions which the Canadian parties and the GBC claim involved arm's-length sales of logs harvested from Crown lands during the POR and preliminarily have determined that these sales were not conducted at arm's-length.

At verification, we learned that these transactions involved sales of Crown logs through Section 20 small business auction sales which are administered under the Small Business Forest Enterprise Program (SBFEP) and sales to mills by small ''woodlot'' tenureholders. Most of these transactions are structured under standard contracts called ''Log Purchase Agreements'' in which sawmills purchasing the Crown timber are billed for the Crown stumpage fee directly by the B.C. Ministry of Forests. *See* BC Verification Report. Although the terms of these agreements may vary, most also involve additional payments and services incurred by the sawmill purchasing the logs, including (1) payments to a contractor for logging and harvesting the logs; (2) cash advances or ''decking advance'' to the small business tenureholder or to the independent harvesters; and (3) providing equipment to the harvester to defray harvesting costs. As explained in the Alberta section, above, where the sawmill, not the tenure-holding harvester, pays the Crown directly for the stumpage fee of the harvested timber, there is no arm's-length sale of a log between the sawmill and the harvester. Under this arrangement, the stumpage benefit goes directly to the sawmill paying the stumpage fee, just as if the sawmill were drawing from its own tenure and contracting out for harvesting and hauling services. Moreover, the debtor/

creditor relationship and other aspects of the contractual relationships further call into question whether transactions between the parties are at arm's-length, even if log sales were to take place.

The log transactions which the GBC claims were at arm's-length also involve exchanges of logs between tenure holders with sawmills. These transactions are mostly volume based exchanges that occur because of domestic processing requirements under B.C. law. Under these provisions, major B.C. tenure holders may only dispose of unneeded logs harvested from their own tenure by swapping these with logs with other major tenure holders. *See* B.C. Verification Report. The contracts involving these logs demonstrate that they merely involve log exchanges necessitated by government restrictions; they are not freely negotiated, arm's-length sales of logs. *Id.*

For the reasons explained above, we preliminarily have concluded that the B.C. has failed to demonstrate that sawmills purchased Crown logs in arm's-length transactions during the POR. Therefore, a pass-through analysis is not warranted.

Ontario

The Canadian parties and the Government of Ontario (GOO) claim that about 42 percent of the total timber harvested from Crown lands during the POR, approximately 6.5 million cubic meters, was sold by independent harvesters in arm's-length transactions during the POR. May 24, 2004, letter at 8. They further state that the GOO provided detailed information at verification showing that the 25 largest sawmills in Ontario purchased 4,391,798 cubic meters of Crown softwood logs from unaffiliated tenure holders during the POR. *Id.* For the reasons described below, we preliminarily have determined that the Canadian parties and the GOO have not demonstrated that the volume of Crown logs sold by independent harvesters or the volume of Crown logs purchased by sawmills during the POR involved transactions conducted at arm's-length.

The GOO requires that the tenure holders in the province enter into a long-term wood supply agreement with a sawmill. This requirement is reflected in Section 25 of the Crown Forest Sustainability Act. *See* GOO November 12, 2003, Questionnaire Response at ON–59 and ON–60. In addition, sawmills are typically required also to enter into private agreements with tenure holders as a condition of entering into a formal Section 25 supply agreement. *Id.* The GOO also issues so-called ''commitment letters,'' which outline wood supply commitments with sawmills that independent harvesters must meet as a condition of holding the tenure. The record therefore demonstrates that the relationship between so-called ''independent'' harvesters and sawmills is not at ''arm's-length.'' Rather it is governed largely by provincial mandates to enter into various arrangements with the mills. Moreover, we have found once again that, similar to Alberta and B.C., contracts examined at verification demonstrate that the stumpage fees for the Crown timber are actually paid for by the sawmills and not the independent harvesters. *See* GOO Verification Report. The sawmills simply pay the harvester for harvesting and haulage costs. Again, in these transactions the stumpage benefit goes directly to the sawmill paying the stumpage fee and not the tenure holder. As explained above, under this type of arrangement, there is no arm's-length sale of a log between the sawmill and the harvester and we therefore preliminarily have determined that no pass-through analysis is required for the transactions reported by Ontario.

For the reasons explained above, we preliminarily have concluded that Ontario has failed to demonstrate that sawmills purchased Crown logs in arm's-length transactions during the POR. Therefore, a pass-through analysis is not warranted.

Manitoba and Saskatchewan

The claims by Manitoba and Saskatchewan and the Canadian parties in the May 24, 2004, letter that ''there is definitive record evidence demonstrating arm's-length transactions'' in both provinces during the POR are, in fact, merely vague and unsubstantiated assertions.

Manitoba asserts that independent ''loggers'' harvested 61,583.60 cubic meters of softwood timber during the POR, about 9.2 percent of the total softwood harvest. MB November 12, 2003, Questionnaire Response at MB–16. However, Manitoba also states that ''the province has no information on these harvesters' affiliations, if any.'' MB November 12, 2003, Questionnaire Response at MB–18. As such, we fail to see how Manitoba can claim that the reported volume of log sales in fact were arm's-length transactions.

Saskatchewan merely claims that many licensees without a licence to operate a sawmill harvested Crown timber during the POR. SK November 12, 2003, Questionnaire Response at SK–34. Saskatchewan reports that ''FPP licensees harvesting 173,766.981 m3 of Crown timber during the period of review did not have a license to operate a sawmill (or other type of treatment plant) during the period of review.'' SK November 12, 2003, Questionnaire Response at SK–35. Saskatchewan also provides a table listing the volume and value of Crown stumpage harvested by FPP licenses and indicates which licensees were not licensed to operate a sawmill or other treatment plant. However, this table provides no information about the harvesters' affiliations with any of the mills that ultimately purchased the harvesters' logs. SK November 12, 2003, Questionnaire Response at Exhibit SK–S–3.

For the reasons explained above, we preliminarily have concluded that Manitoba and Saskatchewan have failed to demonstrate that sawmills purchased Crown logs in arm's-length transactions during the POR. Therefore, a pass-through analysis is not warranted.

Denominator

As noted above, the Department is determining the stumpage subsidies to production of softwood lumber in Canada on an aggregate basis. The methodology employed to calculate the *ad valorem* subsidy rate requires the use of a compatible numerator and denominator. In the numerator of the calculation, the Department has included only the benefit from those softwood Crown logs that entered and were processed by sawmills during the POR (*i.e.*, logs used in the lumber production process). Accordingly, the denominator used for this calculation includes only those products that result from the softwood lumber manufacturing process.

Consistent with the Department's previously established methodology, we have included the following in the denominator: softwood lumber, including softwood lumber that undergoes some further processing (so-called ''remanufactured'' lumber), softwood co-products (*e.g.*, wood chips) that resulted from lumber production at sawmills, and residual products produced by sawmills that were the result of the softwood lumber manufacturing process, specifically, softwood fuelwood and untreated softwood ties.

During the course of this administrative review, we repeatedly sought information regarding the GOC's sales denominator data for each of the provinces under review. This includes actual shipment values for the POR for Quebec, Ontario, Alberta and British Columbia (B.C.), however, despite our requests that data was not provided for Saskatchewan and Manitoba.

Specifically, in our September 12, 2003 initial questionnaire, we requested the GOC to provide, by province, the total f.o.b. value of all lumber shipments and sales of co-products (such as wood chips and sawdust) produced during the softwood lumber manufacturing process during the POR. Further, in that initial questionnaire, we warned the GOC that failure to cooperate could result in the use of adverse facts available:

> If you do not act to the best of your ability to comply with our requests for information, we may use information that is adverse to your interests in conducting our analysis. Our decisions will be made on the basis of information received during this proceeding (including information from you), in light of applicable provisions of U.S. law.[4]

In its November 13, 2003, response to the Department's initial request for softwood lumber and softwood co-product shipment values, the GOC stated:

> As in the investigation, many of the provincial totals are confidential and cannot be disclosed by Statistics Canada. Those values, indicated by an ''X,'' are not included in the denominator totals in Attachment A. In limited circumstances, where the Statistics Canada data are confidential, Canada has used public Statistics Canada data to derive *estimates* for shipment values. *See* Exhibit GOC–GEN–5, Table 7 (estimates of Saskatchewan POR softwood lumber shipments and production, and Saskatchewan and Manitoba POR co-products shipments) * * *

In the case of lumber shipment values for Saskatchewan, the GOC used data from the underlying investigation to calculate average unit values that they projected to the POR using softwood lumber price indices. The GOC, in turn, multiplied the indexed average lumber unit values by actual POR volume data for Saskatchewan to arrive at an estimated POR lumber shipment value. In the case of softwood co-product shipment values for Saskatchewan and Manitoba, the GOC adopted a similar approach and estimated values for the two provinces using data from the underlying investigation. *See e.g.*, GOC–GEN–46 of the GOC's March 15, 2004, submission. In this manner, the GOC derived estimated POR shipment values for Saskatchewan and Manitoba.

In our February 6, 2004, supplemental questionnaire, we explained that if confidentiality restrictions prevent the GOC from providing the data requested, the GOC should contact the official in charge and also arrange for the affected producers to provide the necessary information directly to the Department, for release under administrative protective order, if necessary.

In its March 8, 2004, response, the GOC claimed that actual POR lumber shipment values, such as those requested for Saskatchewan and Manitoba, are confidential and cannot be disclosed under Canadian law. The GOC further stated that the Department's request that STATCAN contact companies for confidential information would require months, not weeks, and if the Department wanted Canada to attempt to collect such data, a lengthy extension would be necessary.

On March 24, 2004, the Department issued another supplemental questionnaire to the GOC, specifically related to this confidential data issue for Manitoba and Saskatchewan. In the supplemental questionnaire, we reiterated our request that the GOC provide the actual POR softwood lumber shipment and softwood co-product sales data for Saskatchewan and Manitoba. We further requested the GOC to provide a clear and specific explanation as to why it considers the actual POR shipment values of softwood co-products from Saskatchewan and Manitoba and actual POR shipment values of softwood lumber from Saskatchewan to be confidential.

In its April 1, 2004, response, the GOC explained that the actual values for Saskatchewan and Manitoba co-products shipments, and Saskatchewan POR softwood lumber shipments are confidential because disclosure of the data could reveal company-specific information. It stated that, with respect to Saskatchewan and Manitoba, there are very few producers. For example, it claimed that in Saskatchewan four Forest Management Agreement licenses (FMA's) operate only five sawmill establishments and those establishments use almost 93 percent of all Crown logs harvested in the province. *See* page 2 of the GOC's April 1, 2004, response and the GOS's November 12, 2003, response at SK–3. The GOC also claimed that disclosure of the provincial totals could potentially reveal the individual shipment information for all or some of the producers in the province, which would be a criminal violation of the Statistics Act. *See* page 2 of the GOC's April 1, 2004, submission.

Regarding Manitoba, the GOC similarly explained that the province has only four sawmill establishments accounting for 82 percent of all softwood sawlogs harvested in the province. *See* page 2 of the GOC's April 1, 2004, submission; *see* also the GOM's November 12, 2003, questionnaire response at MB–3 to MB–4. The GOC also claimed that disclosure of provincial totals could reveal the individual shipment information for some or all of those companies, which would be a criminal violation of the Statistics Act. *See* the GOC's April 1, 2004, submission at page 2.

During verification, we discussed with STATCAN, the GOC agency responsible for supplying the denominator data, its policies concerning the release of confidential data. According to STATCAN officials, the release of confidential data is permitted under section 17(2) of the Confidentiality Act provided that STATCAN obtains written consent from the individual or company that provided the information. *See* page 2 of the June 2, 2004, Memorandum to Eric B. Greynolds, Program Manager, from Margaret Ward, Import Compliance Specialist, ''Verification of the Questionnaire Responses Submitted by the Government of Canada and Statistics Canada,'' (STATCAN Verification Report). STATCAN officials stated that they have sought discretionary releases in the past. *See Id.* at 2, discussing STATCAN's attempt to obtain company-specific data from Canadian petroleum companies. We asked STATCAN officials whether they attempted to obtain permission for a discretionary release of the denominator data we requested. In particular, we asked whether they sought a discretionary release for the softwood lumber shipment data for Saskatchewan and the softwood co-product information for Saskatchewan and Manitoba. The GOC indicated that it made no effort to seek a waiver of disclosure from any softwood lumber producers, including those in Saskatchewan and Manitoba, even though that option was available to the GOC as detailed in the Canadian Statistics Act at 17 (2)(b). *See* page 2 and Exhibit 2 of the STATCAN Verification Report.

At the same time that it was refusing to provide the denominator information repeatedly requested by the Department, the GOC, working in conjunction with STATCAN and Canadian Customs, filed a three volume submission on March 15, 2004, containing confidential information from over 45 producers and importers of subject merchandise. During verification, officials from Canadian Customs described how, in the course of a ten to fifteen day period, they managed to contact and receive written consent to disclose confidential information from approximately 50 companies. *See* page 4 of the June 2, 2004, Memorandum to Eric B. Greynolds, Program Manager, from

[4] In the subsequent supplemental questionnaires issued to the GOC regarding denominator issues, we instructed the GOC to follow the filing requirements outlined in the Department's September 12, 2003, initial questionnaire.

Margaret Ward, Import Compliance Specialist, ''Verification of the Log Import Data Submitted by the Government of Canada, Statistics Canada, and Canada Border Services Agency'' (STATCAN and Customs Verification Report), of which a public version is on file in room B099 of the CRU. The GOC's March 15, 2004, filing was a voluntary submission filed on the final day of the new factual deadline purportedly to establish that log import data from STATCAN and Canadian Customs were inaccurate and, therefore, unuseable for benchmark purposes.

Furthermore, we note that the GOC released the log import data included in its March 15, 2004, submission pursuant to Canadian Customs' disclosure law. The law governing the release of Canadian Custom's data is similar to the Canadian Statistics Act in that both allow for the disclosure of confidential information when consent is received from the person or organization that provided the information. *See* section 107(9)(c) of the Canadian Customs Act provided at Log Import Exhibit 2 of the Log Import Verification report and section 17(2) of the Canadian Statistics Act, which is included in Exhibit 2 of the STATCAN Verification Report.

Section 776(a) of the Act requires the use of facts available when necessary information is not available on the record, an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. There can be no doubt but that the GOC, as the respondent in this aggregate review, is aware that full and complete lumber shipment value data for each province is required so that the Department can calculate the denominator. With respect to the lumber shipment value for Saskatchewan (*i.e.*, lumber shipments from sawmill establishments), we preliminarily determine that the GOC, in spite of the Department's explicit and repeated requests, withheld information requested by the Department. We similarly determine that, with respect to softwood co-products shipments for Manitoba and Saskatchewan (*i.e.*, softwood co-products produced during the softwood lumber manufacturing process by sawmill establishments), the GOC withheld information requested by the Department. The GOC has acknowledged that it is withholding the requested information under a claim of confidentiality and, instead, has provided the Department with estimates for the shipment values. Consistent with section 776(a) of the Act, in the absence of the requisite information on the record, we are resorting to the use of facts otherwise available to determine the shipment values of these products from Saskatchewan and Manitoba.

Section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. The Department has found that the GOC has failed to cooperate to the best of its ability by failing to make any effort to seek waivers from the small number of affected companies in Manitoba and Saskatchewan and that an adverse inference is warranted. The Federal Circuit recently addressed the issue of adverse facts available in *Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1379–84 (Fed. Cir. 2003) (Nippon Steel). In interpreting section 776(b) of the Act, the Federal Circuit held that ''the statutory mandate that a respondent act to ''the best of its ability'' requires the respondent to do the maximum it is able to do.'' 337 F.3d at 1382.

As noted above, there can be no doubt but that respondents are aware that full and accurate lumber value shipment data and co-products data are necessary for the Department's subsidy calculation. Indeed, obtaining accurate data to calculate the denominator is central to the Department's subsidy rate calculation and was an issue throughout the underlying investigation and the Department's subsequent remand redetermination.

We base our preliminary finding that the GOC failed to act to the best of its ability on the fact that the GOC failed to put forth its maximum efforts to obtain the requested information. Notably, the GOC expended considerably more effort to obtain information when it apparently viewed the information as favorable. Specifically, with respect to the STATCAN import data the GOC was able to contact approximately 50 firms and obtain confidentiality waivers from a majority of those firms within a period of ten to fifteen days. Despite the Department's repeated requests , however, the GOC made no effort to contact the very small number of companies in Manitoba or Saskatchewan to seek similar waivers. *See* page 2 of the STATCAN Verification Report.

Given the GOC's apparent ability to contact and obtain confidential import data from so many individual companies in such a short time frame, we reject the GOC's assertion that the Department's request for STATCAN to contact a limited number of companies for permission to release an aggregate value for confidential lumber and co-product shipment information was unreasonable because it would require months, not weeks, to collect such data, as well as a lengthy extension of any outstanding questionnaire responses.[5] The GOC's failure to make any effort to seek such waivers evidences its failure to put forth its maximum effort to obtain the requested information when juxtaposed with its effort to obtain waivers to submit confidential import data to the Department, *i.e.*, information that it deemed helpful to itself. Given the similarities in the confidentiality provisions of the Canadian Customs' disclosure law and the Canadian Statistics Act both of which permit the GOC to seek waivers permitting disclosure of confidential information, we reject the GOC's claim that the Canadian Statistics Act prohibited in all instances the release of the shipment value data requested by the Department. We therefore conclude that the GOC could have sought, at the very least, a confidentiality waiver from the major sawmills in the two provinces without undertaking any undue administrative burden or requiring any lengthy extension to respond to the Department's questionnaires. Moreover, during verification, we asked GOC officials to specify their rationale for labeling as confidential the lumber shipment data from Saskatchewan and the lumber and co-product shipment information from Manitoba (*e.g.*, whether the release of aggregate figures would effectively identify a dominant producer's production levels in a given province). They failed to provide a rationale, claiming that the rationale was itself confidential. *See* page 2 and 3 of the STATCAN Verification Report.

When employing an adverse inference in an administrative review, the statute indicates that the Department may rely upon information derived from (1) a final determination in a countervailing duty or an antidumping investigation; (2) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (3) any other information placed on the record. *See* section 776(b) of the Act; 19 CFR 351.308(c).

[5] Our initial request for the shipment values was made in our September 12, 2003, initial questionnaire and was reiterated repeatedly until the issuance of our March 24, 2004, questionnaire. Thus, the GOC had considerably more time to gather the actual POR shipment data, particularly the lumber and co-product shipment data for Saskatchewan and Manitoba, than the 10 to 15 day period it spent soliciting and collecting the company-specific log import data included in its March 15, 2004, voluntary filing.

As adverse facts available, we have relied upon information supplied by the GOC in its questionnaire responses. To determine the POR lumber shipment value for Saskatchewan, we are using the softwood lumber unit price for Manitoba during the POR. This is the lowest unit price reported in the Prairie Provinces [6] during the POR. *See* GOC–GEN–36 Table 7. We multiplied Manitoba's POR softwood lumber unit price, 137.52 C$/cubic meter, by Saskatchewan's actual POR lumber shipment volume, as found in Exhibit 45 Table 2 of the GOC's March 15, 2004, submission, to arrive at a POR softwood lumber shipment value for Saskatchewan of C$141,233,040.[7]

To determine the Saskatchewan POR co-products value, we are using the 2001 ASM proportion of softwood co-products to softwood lumber value, 10.28 percent. We note that the 10.28 percent reported for Saskatchewan represents the lowest ratio calculated for any of the provinces. We then applied this softwood co-product unit ratio to the revised POR softwood lumber shipment value for Saskatchewan, C$141,233,040, to arrive at a POR co-products value for Saskatchewan of C$14,518,756.51.

Similarly, to determine the Manitoba POR co-products value, we are using the 2001 ASM proportion of softwood co-products to softwood lumber value from Saskatchewan, 10.28 percent. We then multiplied the softwood co-product unit ratio by softwood lumber shipment value for Manitoba, C$95,883,000, to arrive at a POR co-products shipment value for Manitoba of C$9,856,772.4. We have found the use of Saskatchewan's 2001 ASM proportion of softwood co-products to softwood lumber value to be reasonable, given that Manitoba is a neighboring province of Saskatchewan.

The GOC has also requested that the Department include shakes and shingles in the denominator as residual products. The Department would have included softwood shakes and shingles in the denominator, given that they appear to have resulted from the softwood lumber manufacturing process, however, at verification, we learned from GOC officials that shakes and shingles are often treated with chemicals. *See* page 9 of the STATCAN Verification Report in which officials indicate that shakes and shingles are commonly chemically treated. Although untreated shakes and shingles result from the softwood manufacturing process, chemically treated shakes and shingles do not. At verification we learned that the GOC submitted shake and shingle data at the 5-digit level, in which the data consisted of a single sub-heading that contained both treated and untreated shakes and shingles. Thus, the manner in which the GOC presented the shakes and shingles data left no way of separating the chemically treated shakes and shingles values from those that were untreated. *See Id.* at page 9 where we confirmed that the ASM questionnaire from which the GOC derived the shake and shingle data does not solicit information for the category beyond the 5-digit level, making it impossible to run data queries that would separate chemically treated and untreated shakes and shingles. As we have no way separately to determine the values of treated and untreated shakes and shingles in the residual products category, the Department has not included any shakes and shingles products in the denominator of the subsidy rate calculations.

In this review, the GOC argues that the denominator used by the Department should be expanded to include ''other softwood products'' produced by non-sawmill wood product producers using inputs obtained from sawmills. As explained above, the Department's denominator methodology was designed to include only those products that directly result from the softwood lumber manufacturing process, and not everything that simply uses lumber as an input. We have determined that the products listed by the GOC in the ''other softwood products'' category should not be included in the denominator because the products are outputs of non-sawmill wood product manufacturers that may use lumber as an input, but are not the direct result of the softwood lumber manufacturing process. Inclusion of such products is inappropriate because it is inconsistent with the methodology used to calculate the numerator. As noted above, allocation of the total subsidy requires that the numerator and denominator be calculated on a consistent basis.

Concerning softwood co-products produced by non-sawmill establishments, we would have included in the denominator those softwood co-products produced by lumber remanufacturers that resulted from the softwood lumber manufacturing process. However, the GOC failed to separate softwood co-products that resulted from the softwood lumber manufacturing process of lumber remanufacturers from those resulting from the myriad of other production processes performed by establishments in the non-sawmill category that have nothing to do with the production of subject merchandise. Lacking the information necessary to determine the value of softwood co-products that resulted from the softwood lumber manufacturing process produced by lumber remanufacturers during the softwood lumber manufacturing process, we have preliminarily determined not to include any softwood co-product values from the non-sawmill category.

Analysis of Programs

I. Programs Preliminarily Determined To Confer Subsidies

A. Provincial Stumpage Programs

In Canada, the vast majority of standing timber that is sold originates from lands owned by the Crown. Each of the reviewed Canadian provinces, *i.e.*, Alberta, B.C., Manitoba, Ontario, Quebec and Saskatchewan,[8] has established programs through which they charge certain license holders ''stumpage'' fees for standing timber harvested from these Crown lands. These programs, the sole purpose of which is to provide lumber producers with timber, are described in detail in the province-specific sections of these preliminary results.

Legal Framework

In accordance with section 771(5) of the Act, to find a countervailable subsidy, the Department must determine that a government provided a financial contribution and that a benefit was thereby conferred, and that the subsidy is specific within the meaning of section 771(5A) of the Act. As set forth below, no new information or argument on the record of this review has resulted in a change in the

[6] The Prairie Provinces are defined as Alberta, Manitoba, and Saskatchewan.

[7] During verification, STATCAN officials presented a packet containing the minor corrections they found in the course of preparing for verification. Officials explained that they discovered that the softwood lumber production and shipment volume information originally reported in Exhibit 45, table 2 of the GOC's March 15, 2004, submission contained confidential data regarding Saskatchewan, Prince Edward Island, and the Yukon Territories. STATCAN submitted a corrected version of the submission in which it redacted the volume information for the territory and provinces. *See* Exhibit 1 of the STATCAN Verification Report. We note that, prior to verification, the volume figures in question were already in the public domain, as the GOC had included the figures as part of a submission that was placed on the public file of the Central Records Unit and served to all interested parties on the public service list by the GOC.

[8] In this review, we did not examine the stumpage programs with respect to the Yukon Territory, Northwest Territories, and timber sold on Federal land because the amount of exports to the U.S. is insignificant and would have no measurable effect on any subsidy rate calculated in this review.

Department's determinations from *Lumber IV* that the provincial stumpage programs constitute financial contributions provided by the provincial governments and that they are specific. However, there is new information on the record of this review that was not on the record in the underlying investigation that has resulted in our preliminary decision to use different benchmarks against which to measure the adequacy of remuneration, *i.e.*, to measure the benefit conferred.

Financial Contribution and Specificity

In *Lumber IV,* the Department determined, consistent with section 771(5)(B)(iii) of the Act, that the Canadian provincial stumpage programs constitute a financial contribution because the provincial governments are providing a good to lumber producers, and that good is timber. The Department noted that the ordinary meaning of ''goods'' is broad, encompassing all ''property or possessions'' and ''saleable commodities.'' *See* Issues and Decision Memorandum at 29. The Department found that ''nothing in the definition of the term 'goods' indicates that things that occur naturally on land, such as timber, do not constitute 'goods.' '' To the contrary, the Department found that the term specifically includes ''* * * growing crops and other identified things to be severed from real property.'' *Id.* The Department further determined that an examination of the provincial stumpage systems demonstrated that the sole purpose of the tenures was to provide lumber producers with timber. Thus, the Department determined that regardless of whether the provinces are supplying timber or making it available through a right of access, they are providing timber. *See* Issues and Decision Memorandum, at 29–30. No new information has been placed on the record of this review warranting a change in our finding that the provincial stumpage programs constitute a financial contribution in the form of a good, and that the provinces are providing that good, *i.e.*, timber, to lumber producers. Consistent with *Lumber IV,* we continue to have found that the stumpage programs constitute a financial contribution provided to lumber producers within the meaning of section 771(5)(B)(iii) of the Act.

In *Lumber IV,* the Department determined that provincial stumpage subsidy programs were used by a ''limited number of certain enterprises'' and, thus, were specific in accordance with section 771(5A)(D)(iii)(I) of the Act. More particularly, the Department found that stumpage subsidy programs were used by a single group of industries, comprised of pulp and paper mills, and the saw mills and remanufacturers that produce the subject merchandise. Issues and Decision Memorandum, at 51–52. This is true in each of the reviewed provinces. No information in the record of this review warrants a change in this determination and, thus, the Department continues to have found that the stumpage programs are specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Benefit

Section 771(5)(E)(iv) of the Act and section 351.511(a) of the CVD Regulations govern the determination of whether a benefit has been conferred from subsidies involving the provision of a good or service. Pursuant to section 771(5)(E)(iv) of the Act, a benefit is conferred by a government when the government provides a good or service for less than adequate remuneration. Section 771(5)(E) further states that the adequacy of remuneration

> shall be determined in relation to prevailing market conditions for the good or service being provided * * * in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of * * * sale.

Section 351.511(a)(2) of the CVD Regulations sets forth the hierarchy for selecting a benchmark price to determine whether a government good or service is provided for less than adequate remuneration. The hierarchy, in order of preference, is: (1) Market-determined prices from actual transactions within the country under investigation or review; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles.

Under this hierarchy, we must first determine whether there are actual market-determined prices for timber sales in Canada that can be used to measure whether the provincial stumpage programs provide timber for less than adequate remuneration. Such benchmark prices could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. *See* 19 CFR 351.511(a)(2)(i).

The Preamble to the Regulations provides additional guidance on the use of market-determined prices stemming from actual transactions within the country. *See* ''Explanation of the Final Rules'' *Countervailing Duties, Final Rule,* 63 FR 65348, 65377 (November 25, 1998) (the Preamble). For example, the Preamble states that prices from a government auction would be appropriate where the government sells a significant portion of the good or service through competitive bid procedures that are open to everyone, that protect confidentiality, and that are based solely on price. The Preamble also states that the Department normally will not adjust such competitively-bid prices to account for government distortion of the market because such distortion will normally be minimal as long as the government involvement in the market is not substantial. *See* 63 FR at 65377.

The Preamble also states that ''[w]hile we recognize that government involvement in the marketplace may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.'' [9]

The guidance in the Preamble reflects the fact that, when the government is the predominant provider of a good or service there is a likelihood that it can affect private prices for the good or service. Where the government effectively determines the private prices, a comparison of the government price and the private prices cannot capture the full extent of the subsidy benefit. In such a case, therefore, the private prices cannot serve as an appropriate benchmark.

In *Lumber IV,* the Department determined that there were no useable in-country market-determined prices to use to assess the adequacy of remuneration under tier one of the regulatory hierarchy. *See* Issues and Decision Memorandum at 36–40. Hence, the Department resorted to the second tier in the hierarchy, *i.e.*, world market prices. Under the second tier, the Department compared Crown stumpage prices to timber prices in certain United States border states. *Id.* at 40–45.

For the reasons discussed below, the Department has determined that there are no private market prices in the provinces under review that can serve as benchmarks. Unlike the investigation, however, in this review we have

[9] *Preamble,* 63 FR 65377–78 (emphasis added); *see also Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 20259.

additional information on private timber prices in Canada. Specifically, we have private stumpage prices from New Brunswick and Nova Scotia (the Maritimes). We preliminarily have determined that those prices are an appropriate benchmark, consistent with the first tier of our regulatory hierarchy. Consequently, for the reasons discussed below, we have used the private Maritimes' timber prices to measure the benefit conferred on softwood lumber producers from Crown stumpage programs.[10]

There Are No Useable First-Tier Benchmarks Other Than the Maritimes

In this administrative review Manitoba and Saskatchewan have not reported prices for private stumpage sales; B.C., Alberta, and Ontario provided no usable prices for private stumpage sales; Quebec provided private stumpage prices charged in its province. However, as discussed in detail below, although the private prices reported in Quebec are based upon actual transactions in Canada, record evidence demonstrates that these prices are not suitable for use as a benchmark within the meaning of section 351.511(a)(2)(i) of the CVD Regulations.

Provinces of Manitoba and Saskatchewan

With respect to Manitoba and Saskatchewan, there is no province-specific data upon which to base a first tier benchmark arising from those provinces.

Province of British Columbia

As noted above, B.C. did not provide private stumpage prices for the record of this proceeding. Instead, the Province provided prices from auctions the government administers under the Small Business Forest Enterprise Program (SBFEP). The Preamble to the CVD Regulations notes that actual sales prices from government-run competitive bidding would be appropriate where the government sells a significant portion of the goods or services through competitive bid procedures that are open to everyone, that protect confidentiality, and that are based solely on price. *See* Preamble at 65377. The SBFEP auction is only open to small businesses that are registered as small business forest enterprises.[11] As noted above, prices from a government auction are an appropriate benchmark only if the government sells a significant portion of the good or service through competitive bid procedures that are open to everyone. In *Lumber IV,* following the guidelines laid out in section 351.511 of our regulations, we did not rely on these prices as we found that they were not competitively run because they were not open to all bidders.

Province of Alberta

The private market prices that the GOA submitted cannot serve as an adequate benchmark. In accordance with section 351.511(a)(2)(i), we examined Alberta's private price data and government competitive bid data reported in Alberta's Timber Damage Assessment (TDA) 2003 update. *See* GOA's November 12, 2003, response at Exhibit AB–S–69. Based on the evidence on the record, Alberta's private timber market prices are in fact administratively set and do not reflect market determined prices as required by the CVD Regulations. Thus, we are unable to use these transactions as benchmark prices.

The TDA prices proffered by Alberta are guidelines established by the government for the purpose of determining the compensation due to tenure holders that have had portions of their allocated public forest felled due to the infrastructure development activities of energy and mining companies. To compensate for timber which has been felled as a result of such activities, the energy and mining companies are required to pay TDA to the tenure holders. The TDA is administratively set compensation that does not represent a price paid by a harvester for standing timber. This timber is not harvested for commercial purposes. In fact, the trees that are cleared by these energy and mining companies are often left on the ground where they were cut.

Additionally, energy and mining companies have no means to negotiate this price, which is administratively set by the GOA, on a transaction-specific basis,[12] nor are they in the business of harvesting trees for use as a raw material in lumber production and many of these trees are not put to any kind of economic use. *See* GOA's November 12, 2003, response at Exhibit AB–S–5 and Alberta Verification Report at page 18. Thus, we determine that the TDA prices do not reflect a market price for timber in Alberta.

Moreover, prices derived from an analysis of Commercial Timber Permit (CTP) and Timber Quota Certificates (CTQ) prices cannot serve as benchmark prices. Here, the CTP and CTQ benchmark prices are not prices between private parties, but are prices for Crown timber administratively set by the GOA. We verified that most CTPs are sold directly by the government to a small select group of operators or local loggers rather than through open auctions to any potential buyer. *Id.,* at page 2. Thus, the price of CTPs reflect no real competition for the right to harvest timber. Although CTQs, which also confer the right to harvest, are sold by auction, the actual stumpage fee levied on the harvested timber is set through adherence to the Timber Management Regulations (TMR). In addition, the GOA has acknowledged that it has not allocated any quotas on a competitive basis since October 1995. *See* GOA's November 12, 2003, response, Volume 4, Table 25, at Exhibit AB–S–50. Thus, neither CTPs or CTQs are market-based.

Based on all of this information, we reject private market prices in Alberta for use as a benchmark in the preliminary results for this administrative review. Our decision not to use private prices in Alberta is guided by the Preamble, our regulations, and a reasonable analysis of the facts on the record.

Province of Ontario

In its November 12, 2003, submission, Ontario provided a survey of private prices prepared by Demers Gobeil Mercier & Accocies Inc. (DGM). This pricing data was prepared for the sole purpose of responding to the Department's questionnaire in this administrative review which highlights the need to verify the reliability of the data. Moreover, in Ontario, the private market constitutes only 7 percent of the overall harvest, with Crown timber accounting for the remaining 93 percent of the harvest. Where the government dominates the market for a good it is likely that the government's prices can

[10] In the current review, petitioners allege that a ban on the export of logs also provides a countervailable benefit. We did not address this allegation in the underlying investigation, or in this review, because any benefit provided through an export log ban would already be included in the calculation of the stumpage benefit based upon our selected market-based benchmark prices for stumpage. *See* the ''Provincial Stumpage Programs Determined to Confer Subsidies'' section of the Issues and Decision Memorandum, at page 26, footnote 5.

[11] Timber harvested under section 20 of the SBFEP accounts for 8.7 percent of the total provincial softwood harvest and 8.3 percent of the provincial Annual Allowable Cut (AAC) during POR.

[12] The damage assessment fee was developed through meetings between tenure holders, the energy and mining companies, and the GOA. During these meetings, the timber price (*i.e.*, compensation) which this damage assessment fee is based on was negotiated by the parties involved. However, once the system was set in place, no further negotiations have taken place on the topic of price.

affect private prices for those goods. For these reasons, it is important for the Department to examine closely whether the private prices submitted by the province are, in fact, market-determined prices in accordance with the CVD Regulations. Examining potential benchmark prices, the Department attempts to ensure the reliability of such information including the independence of the data and the methodology used to compile it.

At verification, we attempted to examine the survey methodology, including the pool and nature of the survey respondents. Ontario, however, was unable to provide certain underlying data requested by the Department that goes directly to the independence and reliability of the survey. *See* Ontario Verification Report at page 10. Because the Department was unable to verify the private pricing data to determine its reliability and accuracy, the data cannot serve to establish a market benchmark.

Province of Quebec

Throughout the conduct of this proceeding respondents have argued that the private provincial standing timber market in Quebec is a competitive market unaffected by the prices charged on Crown lands and, therefore, can serve as an appropriate benchmark under the first tier of the adequate remuneration hierarchy. However, based on the Department's analysis in this administrative review, we have found that private prices for standing timber in Quebec are unsuitable for use as a benchmark because the incentives that tenure holders face vis-a-vis the private market are distorted by a combination of the Government of Quebec's (GOQ's) administered stumpage system, the relative size of public and private markets, feed back effects between the private and public markets, and a non-binding annual allowable cut (AAC).

In this administrative review, the GOQ reported that there were 818 mills (*i.e.*, 78.5 percent of the mills in Quebec) in the ''exclusively private'' category during the POR.[13] In isolation, this statistic seems significant; however, as discussed in detail below, there are two related facts that limit its significance. First, sawmills without access to Crown timber account for a small volume of the total harvest from private forests. Second, sawmills with access to Crown timber also dominate the private market.

Sawmills Without Access to Crown Timber Account for Small Harvest Volume in the Private Forest

The 818 mills that source exclusively from private lands accounted for only 13.87 percent of the total softwood stumpage sourced from private wood lots and 1.73 percent of the total softwood processed during the POR. Although there are a large number of mills in this category, these mills process relatively minuscule volumes and make up a limited percentage of the total softwood lumber market in Quebec. On an individual mill basis, each of the 818 mills, on average, sourced only 705.5 cubic meters (M^3) of softwood stumpage from private forests during the POR. Therefore, on average, each of the 818 mills from the ''exclusively private'' category accounted for only 0.50 percent of the total average softwood stumpage harvested by a single mill in the ''exclusively public'' category (*i.e.*, 140,370 M^3) during the POR.

Sawmills With Access to Crown Timber Dominate the Private Market

Apart from the 818 mills, there are 172 mills that source stumpage from public, private, and ''other'' sources.[14] These 172 mills have tenure and harvest from provincial Crown lands, but they also source a portion of their stumpage from private, federal, and ''other'' lands. These 172 mills sourced 86.13 percent of the total private stumpage harvested in Quebec during the POR. Therefore, 86.13 percent of the total private stumpage harvested in Quebec during the POR was sourced by mills that also source stumpage from public and/or ''other'' sources.

At the same time, the 94 mills from the ''public/private'' category and the 78 mills from the ''public/private/other'' category, obtained only a small percentage of their total harvest during the POR from private lands. Specifically, the 94 mills from the ''public/private'' category harvested 87.78 percent of their stumpage from public sources and 11.70 percent of their stumpage from private sources. The 78 mills from the ''public/private/other'' category harvested 42.55 percent of their stumpage from public sources, 39.10 percent of their stumpage from ''other'' sources, and 18.35 percent of their stumpage from private sources. Thus, the remaining 172 mills in Quebec's private stumpage market made up the majority of the private stumpage purchases during the POR (*i.e.*, 86.13 percent), but, more importantly, these purchases of private stumpage represent less than 19 percent of their total stumpage sourcing during the POR. The data, therefore, indicate that the public stumpage market is a much more important sourcing component of mills in the ''public/private'' and ''public/private/other'' categories, and, not surprisingly, the market on which these mills focus the majority of their interests and operations.

The ratios above indicate that, on a sawmill-specific basis, the mills in the ''public/private'' and ''public/private/other'' categories even though they source only a small percentage of their total harvest from the private market, that they dominate this market. This dominance is pronounced when analyzed on both a corporate and a regional basis.

At a corporate level, we obtained information from the GOQ regarding the volume of logs that each sawmill in Quebec is authorized to consume.[15] Next, using information obtained from the GOQ, we grouped the sawmills according to their corporate parent. We found that the GOQ has authorized six corporations, Compagnie Abitibi-Consolidated du Canada (Abitibi), Tembec Industries Inc. (Tembec), Domtar Inc. (Domtar), Kruger Inc. (Kruger), Bowater Produits forestiers du Canada Inc. (Bowater), and Uniforet Scierie-Pate Inc. (Uniforet), to consume approximately 60 percent of all standing timber in Quebec in 2002. All of these corporations operate tenure holding sawmills, many of which are in the ''public/private'' and ''public/private/other'' categories. Further, five out of six of these corporations operate at least one of the ten largest sawmills that were authorized to process standing timber from public and private lands. *See, e.g.*,

[13] *See Quebec Private Price Documentation Memo* illustrating the data worksheets used to derive these ratios.

[14] These 172 mills come from two different categories: (1) 94 mills that source stumpage from public and private forests in Quebec; and (2) 78 mills that source stumpage from public, private, and ''other'' forests. ''Other'' equals sourcing from provinces outside of Québec. *See* Exhibit 119 for further discussion.

[15] As explained above, we requested actual consumption volume data for each of the mills that source stumpage exclusively from the private forest, but the GOQ claimed it was not able to provide data for every mill. Instead, the GOQ provided the largest mills from each of the four sourcing categories. However we also have actual consumption data on those sawmills sourcing from public and private forests. *See* GOQ's November 12, 2003, response at Exhibit 102 (Exhibit 102). Therefore, in sections of these preliminary results, we are either using authorized consumption as a proxy for each sawmill/corporation's or its actual consumption during the POR if the data was included in Exhibit 102. For purposes of illustrating the dominant role certain sawmills/corporations play in Quebec, we find that the use of authorized consumption data, where necessary, is a conservative proxy.

GOQ's November 12, 2003 response at Exhibit 48.

At the regional level, even the limited information the GOQ provided concerning actual consumption by individual sawmills indicates that within each administrative region, the majority of private stumpage is processed by one to four tenure holding corporations. For example, in region 2, Abitibi harvests more private standing timber than all of the top five sawmills from the ''exclusively private'' category combined. *See* also, Exhibit 102 and 171 of the GOQ's questionnaire responses and *Quebec Private Price Documentation Memo.*

The Feed Back Affect

As we have explained in our description of the GOQ's administered stumpage system, the GOQ's parity technique [16] is a partial function of the prices paid by private forest contractors for standing timber on private lands within the province. Under this system, the MRNFP conducts surveys regarding the private prices paid by these forest contractors to derive what it refers to as the Market Value of Standing Timber (MVST) in the private forest. The GOQ then plugs the MVST into the parity technique formula to determine the stumpage price for softwood harvested on Crown lands. Thus, under this arrangement, the lower the price paid for private stumpage in Québec by the forest contractors, the lower the rate charged for public stumpage.

According to the GOQ, the private forest contractors included in the MVST survey are individuals that harvest and take title of private standing timber.[17] GOQ officials further stated that the forest contractors do not necessarily own sawmills. At verification we found that any prices directly paid for private stumpage by tenure holding sawmills are not captured in the MVST survey and are therefore not included in the parity system directly.

Although not directly included in MVST survey data, the GOQ's administered pricing system does have a significant impact on the private market. The survey data is based on the prices that private forest contractors pay to the landowners, which, in turn, reflect the price that the contractors' customers are willing to pay. Because of the dominant role that tenure holders in Quebec play in harvesting timber on private lands, it is reasonable to conclude that tenure holders exert a disproportionate influence on the price that contractors pay land owners. This conclusion is consistent with statements on the record from private wood-lot owners protesting the GOQ's administration of the public forests. In statements made by the Federation of Wood Producers of Québec (FPBQ), an association of private forest landowners in Quebec, in a presentation before Quebec's National Assembly, the FPBQ criticized many aspects of the GOQ's stumpage technique and its negative impact on private land owners that sell standing timber. Among the FPBQ's complaints was the manner in which the GOQ conducted its survey of private prices. In addition to complaining about the sample size used in the survey, the FPBQ urged the GOQ to include other forms of transactions in the survey, such as ''significant volumes of timber auctioned on public land.''[18] Regarding its call for public auctions, the FPBQ stated that it:

> * * * will make it possible to reduce a prejudice caused by the current system to private forest producers. Indeed, the forest industry has an interest in maintaining a low value of standing trees in private forests, as the determination of this value provides the basis for calculating forest user fees.

Thus, as pointed out by the FPBQ, the market dominance of the small number of tenure corporations in the ''public/private'' and ''public/private/other'' categories ultimately has an indirect effect on the prices charged in the public forest.[19] What the FPBQ's petition highlights is the fact that, from the private timber market's perspective, the MRNFP's system for administering the public forests adversely affects its ability to do business. The Crown presence in the market negatively impacts the price at which private wood-lot owners can expect to sell their stumpage and the White Paper is their attempt to address and mitigate these issues. It also illustrates the non-market driven priorities which the GOQ's system propagates. In particular, it is interesting to note that one of the members of the commission actually directly states that without the GOQ's intervention, the northern mills' commercial existence would be in jeopardy. The GOQ's system for administering the public forests places a high priority on its typical concerns of job creation, retention of communities, etc. rather than letting the market determine what forest resources in the province are commercially viable. Thus, the GOQ's administered pricing system effectively determines the market price for private standing timber.

Sawmills With Access to Crown Timber Can Avoid Sourcing in the Private Forest

Further distorting the incentives that Tenure holders face vis-a-vis the private timber market is the fact that AAC on public lands is not binding. Thus, tenure holders do not enter the private market primarily motivated by the need to secure timber supplies. The AAC is not binding for the following three reasons:

1. Tenure holders can rollover unused AAC allocation to the next year;

2. Tenure holders are allowed to exceed their AAC allocation in a given year; and

3. Tenure holders can shift unused portions of their AAC allocations to other sawmills within the same corporate family.

Data from the GOQ indicates that tenure holding sawmills, on average, are allotted more public stumpage than they can process in a given year. For example, for fiscal years 2000–2001

[16] The parity technique system is the process by which the Ministere des Ressources naturelles de la Faune et des Parcs (MRNFP) determines what it will charge for stumpage harvested on Québec's Crown lands—*See* the Department's June 2, 2004, Quebec Verification Report (Quebec Verification Report) at p. 4.

[17] *See* Quebec Verification Report at p. 5–6.

[18] *See* Quebec Verification Report at Exhibit 16, p. 163.

[19] The evidence, which supports the argument that the GOQ's administration of the public forests negatively affect those who work in Quebec's private stumpage markets due to the MRNFP's system for administering the stumpage programs on Crown lands, includes excerpts from a transcript of a meeting that took place before the *Commission Permanente de L'economie et de Travail* (the Commission) in the National Assembly of Quebec on September 2000. This transcript records the parliamentary proceeding between the FPBQ and the Commission. Specifically, representatives of the FPBQ were presenting an August 2000, Brief on Bill 136, and Act amending the Forest Act and other legislative provisions (*i.e.*, White Paper—*see* Quebec Verification Report at Exhibit 16, pages 8–45 and 158–193). The proceedings and White Paper are the result of petitions which were circulated among those who are part of the private forests in Quebec and had nearly 5,000 signatures. The petitions indicated that there were complaints regarding the concept of residual supply limits, the parity technique, mill to market adjustments, the access that private forest owners have to their markets, etc. While one of the petitions addressed the concerns of those who deal primarily with hardwood markets, the other petition did not distinguish between hard or softwood markets. Moreover, the sections of the parliamentary proceedings (*i.e.*, hearing transcripts) and the White Paper on the record focus on the MRNFP's administration of the public forests, the topic of residual volume, the parity technique, and mill to market adjustments. These areas of concern are common to both hardwood and softwood markets. Additionally, with respect to these broad bureaucratic and government run aspects of the MRNFP's administration of the public forests there is no difference between how the MRNFP manages the public's hard and softwood stumpage markets (*i.e.*, the parity technique uses the same methodology for both hard- and soft-wood species). Also, a number of the signatories of the petition are organizations that we know have interests in the softwood markets (*see* Quebec Verification Report at Exhibit 16, pages 3–5).

through 2002–2003, TSFMAs in Quebec harvested, on a weight-average basis, 95.95, 87.34, and 92.46 percent, respectively, of the stumpage allotted under the tenure agreements. This trend is also reflected at the mill level. During verification, we collected information concerning specific mills consumption from public, private, and other sources of supply. The information we reviewed indicated that there were several years in which mills did not process all of the Crown stumpage they were allocated. *See, e.g.*, Quebec Verification Report at Exhibit 20, pages 10, 40, 48, 54, and 84.[20]

The softwood stumpage volume that is assigned to mills in the ''public/private'' and ''public/private/other'' categories is not sequential nor is it mandatory. This means that these mills are not required by law to purchase stumpage from the private market at any time during the year. In reality, the system relies on the theory that the MRNFP will be able to accurately estimate a mill's actual needs, production capacity, and business strategy for purposes of estimating a mill's residual volume (*i.e.*, AAC). Thus, hypothetically, if the MRNFP estimates correctly and a mill chooses to only use its public stumpage allocation (*i.e.*, residual volume/AAC) for a particular year, the mill will not have enough stumpage supply to meet its production needs for the year and will have to shut down once it had used up its public stumpage supply.

Record evidence indicates that even if the MRNFP were to correctly estimate a company's allocated tenure/AAC in a given year, there are aspects of Quebec's tenure system that lessens a mill's need to harvest from private lands. For example, during verification GOQ officials stated that if an individual mill did not use all of its allocated tenure in a given year it could ''rollover'' any unused volume to the next year (*see* Quebec Verification Report). Moreover, if a corporate family of mills did not use up or wanted to shift the annual amount of residual volume/AAC allocated to them for a given year or any other period of time, the mills have the ability to ''roll-over'' any unused public stumpage for use during the next year or, if applicable, assign it to another mill within its corporate family should they choose to do so (*see* Quebec Verification Report). During verification, we reviewed documents which showed that sawmills within the same corporation could and did shift unused tenure allocation amounts to mills with large production capacities that were in need of additional standing timber. *See, e.g.*, *see* verification exhibit 20 at pages 34A, 68A, 69A, 70A, 72A, 73A, 74A, 77A, and 79A).

Another important factor to consider with regard to the MRNFP's system for allocating AAC is the fact that a mill with tenure can request revisions to its allocated volume based on numerous factors that could arise between the regular 5 year review periods. Based on the statements of GOQ officials and documents we collected during verification, the MRNFP's non-periodic review of a mill's residual volume often involves a mill's request for increasing its residual volume (*see* Quebec Verification Report). An example of the type of change that the MRNFP would consider include a mill's addition of more, improved, or new technology, additional shifts, etc. This change, according to GOQ officials, is typically effected through correspondence between the MRNFP and the mill management (*see* Quebec Verification Report at Verification Exhibit 20, pages 59A, 61A, 68A, 69A, 70A, 72A, 73A 76A, 77A and 79A). While a number of the documents included in verification exhibit 20 discuss tenure allocation amounts on a corporate level, they all illustrate the MRNFP's ability to adjust residual volume allocations when requests and/or evidence is provided to effect these changes. Thus, if a mill is able to present the appropriate argument, it will be able to persuade the MRNFP to change to its AAC allocation prior to the typical allocation review period which occurs every 5 years.

Benchmark Characteristics and Price Setting in a Normal Functioning Market

A true benchmark price for stumpage should reflect bidding by sawmills that are motivated primarily by the need to secure long-term timber supplies. When this is the case, sawmills have an incentive to bid up prices to competitive levels. However, given the timber market structure and pricing situation in Quebec described above, tenure holders with sawmills have no such incentive. The desire to secure timber suppliers is not what primarily motivates them to bid on private timber because they have access to more timber than they want on public lands. In fact, because of the GOQ's administration of the parity technique system and the indirect market feed-back effect described above, bidding up the price for private timber actually hurts tenure holders by increasing the price they pay for timber on public lands, timber that accounts for the vast majority of their total input and therefore of their total timber costs. As we stated above, the 172 mills from the ''public/private'' and the ''public/private/other'' categories in Québec's private stumpage market made up the majority of the private stumpage purchases during the POR (*i.e.*, 86.13 percent), but, more importantly, these purchases of private stumpage represent less than 19 percent of their total stumpage sourcing during the POR. Therefore, tenure holders not only have no incentive to bid up prices for timber on private lands, the GOQ has given them a clear incentive to bid down those prices to reduce the price they pay for timber on public lands. This incentive structure, which results from a combination of the GOQ's administration of the parity technique system, the relative size of public and private timber markets, the non-binding AAC, and the pricing formula used to calculate stumpage for provincial timber, undermines the private market price as a benchmark.

We must emphasize that our conclusion is independent of the relative price of public and private timber. In the POR, the private price happened to be slightly higher than the public price, which could mean that tenure holders bid down prices to the reservation levels of timber stand owners. But downward price pressure on private timber prices could also force them below prices on public lands. In any event, a combination of the indirect market feed-back effect and the relative size of the public and private timber markets combine to create a strong incentive for tenure holders to bid down private timber prices as far as they can, and where public and private timber prices end up relative to each other is not material. The strong inter-relationship between the government and private prices, with the government pricing system creating downward pressure on private prices, makes the private prices an inappropriate benchmark because they would not capture the full amount of any benefit from the Crown stumpage system.

Based on all of this information, we preliminarily have found that prices of private standing timber are effectively determined by the Crown prices and are not suitable for use as benchmarks in determining whether the GOQ sells Crown stumpage for less than adequate remuneration.

Private Stumpage Prices in New Brunswick and Nova Scotia

Private stumpage prices for New Brunswick and Nova Scotia (together, the Maritimes) were submitted on the record of this review by the Government of New Brunswick and petitioners,

[20] The details concerning these exhibits contain business proprietary information.

respectively. These prices are contained in separate price surveys prepared by AGFOR, Inc. Consulting for each of the Maritimes' governments. *See* Exhibit 2 New Brunswick's February 28, 2004, submission (New Brunswick Report) and Exhibit 135, Volume 8 of petitioners' March 5, 2004, submission (Nova Scotia Report).

Private prices from the Maritime Provinces were not on the record during the investigation. Therefore, these prices were not considered by the Department in assessing the adequacy of remuneration from the provincial stumpage programs in that segment of the proceeding. *See* Issues and Decision Memorandum at 38–39. Because private price data for the Maritimes are on the record of this administrative review, we have closely examined these prices to determine whether they constitute market-determined in-country prices under the first tier of our adequate remuneration hierarchy. *See* section 351.511(a)(2)(i) of the CVD Regulations.

Determination of Whether Maritimes' Prices are Market-Determined Prices

In determining whether the Maritimes' price data are usable in our benefit analysis, we examined the price data reports that contained these prices. As an initial matter, these reports were prepared by AGFOR Inc. Consulting on behalf of the Maritimes' governments to establish the bases for their administered stumpage rates and not to respond to any allegations raised in this proceeding. Record evidence indicates that in establishing their Crown stumpage rates, the Maritimes consider the prevailing prices for stumpage in the private market and the calculations for the Crown stumpage rates are thus directly linked to actual market-based transactions in the private market. This private supply constitutes a significant portion of the overall market in the Maritimes, accounting for 49.7 percent of the total harvest in New Brunswick and over 91 percent in Nova Scotia. *See* New Brunswick questionnaire response, NB Volume 1 at page 4. *See* also, Nova Scotia supplemental questionnaire response dated April 5, 2004, at page 4.

The New Brunswick Report contains price data for the period July 1, 2002, to November 30, 2002, which coincides with the period covered by this review. While the Nova Scotia Report contains price data from 1999, we preliminarily determine that this data can be indexed to the POR using a lumber-specific index reported for the Atlantic Region by Statistics Canada. *See* Benchmark Calculation Memorandum dated June 2, 2004, at page 2. Moreover, the survey data appear to be representative of the private timber markets in the respective provinces. Both provinces require that Crown stumpage rates be based on the ''fair market value'' of standing timber, which is determined by a survey of agreements reflecting stumpage prices on private forest lands. A new survey is conducted every five years, and in each of the intervening years the price survey data is adjusted using forest products industrial indices. The consultants that collected the prices in these provinces conducted a wide range of interviews with organizations and individuals with direct and indirect involvement with the forest sector to ensure broad coverage of the entire province. For the Nova Scotia Report, this included interviews with contractors, landowners, group ventures, and mills with and without Crown tenure allocations. In addition, the consultants held meetings with the Regional and Provincial Nova Scotia Department of Natural Resources to gain a broad perspective of the stumpage situation in the province. The data contained in the New Brunswick Report—''Assessment of Market Stumpage Values on Private Lands''—was also collected by consultant interviews as well as a review of stumpage sale agreements. *See* New Brunswick Report. In particular, data is collected from each of the forest products marketing boards in the province, as well as individual contractors and woodlot owners. Nothing contained in either the Nova Scotia or New Brunswick Reports indicates that the private price data survey were not representative of those prices within the respective provinces, or that the data do not reflect private, market-determined prices.[21]

Petitioners claim that the private stumpage prices in the Maritimes are not suitable benchmark prices to assess the adequacy of remuneration from the provincial stumpage programs examined in this administrative review. *See* petitioners' March 15, 2004, submission. First, petitioners argue that because the price data contained in the Nova Scotia Report are from 1999, which is not contemporaneous with the POR, they cannot be used to measure the benefit from the provincial stumpage programs. Petitioners also argue that the prices contained in the New Brunswick Report are not market-determined prices, because, similar to the situation in Quebec, these prices are tied to, and distorted by public timber sales in that province. Finally, petitioners assert that log export restraints operate to suppress log prices in the Maritime Provinces. For the reasons detailed below, we disagree with each of petitioners' arguments.

With respect to the Nova Scotia price data, we have already noted above that this data can be indexed to the POR. When comparing data from different periods, the Department often has had to index data, and we have preliminarily determined that it is appropriate to do so here. Petitioner advances no other bases for objecting to the private prices in Nova Scotia.

Second, petitioners' argument that the private prices contained in the New Brunswick Report are not market-determined prices because they are distorted by public timber sales is based on mere assertions and is not substantiated by record evidence. Petitioners assert that the Crown lands constitute the majority of forest tenures in New Brunswick and therefore play a significant role in setting the private timber price. *See* petitioners' March 15, 2004, at pages 36–37. Nothing in the record cited by petitioners supports such a conclusion. First, the forest in New Brunswick is essentially evenly split between private hands and the Crown. Thus, unlike the situation in Quebec where 83 percent of the timber is Crown-owned, the evidence does not indicate that Crown timber necessarily dominates the market, as petitioners asserts.

The record evidence indicates that the administered stumpage prices in New Brunswick are based upon private stumpage prices that are market-determined. *See* New Brunswick Report. Petitioners argue that a few large industrial users in New Brunswick, which lease 97.3 percent of Crown land in New Brunswick, negatively influence private woodlot owners' ability to charge market prices because they also control about 27 percent of the private timber harvested in the province. *Id.* at page 37. Although petitioners imply that the situation in the Maritimes is like that in Quebec, the record does not support such a conclusion. As discussed above, as a result of certain aspects of the provincial tenure system in Quebec, the private timber prices are effectively determined by the government system, and statements by private timber owners in Quebec support that conclusion. *See Quebec Private Prices,* above. The facts concerning the Maritimes differ in key respects from those in Quebec and there is no evidence to support petitioners' allegations. Based on the record facts,

[21] Information on the record indicates that the Nova Scotia and New Brunswick Reports stand in sharp contrast to the DGM Survey submitted by Ontario. As discussed above, the DGM Survey was prepared solely for the purpose of this proceeding, could not be verified, and does not reflect market-determined prices in Ontario. *See* the section above, discussing Ontario's private prices.

therefore, we find petitioners' assertions do not provide a sufficient basis to reject private prices in the Maritimes as a benchmark.

With respect to petitioners' log export allegations, they have not specified any log export restraints on Maritimes' log sales nor is there any record evidence that would support such an allegation.

For the reasons described above, we preliminarily determine that the Maritimes' private prices are market-determined prices in Canada, and are therefore usable under the first tier of our adequate remuneration hierarchy. 19 CFR 351.511(a)(2)(i).

Application of Maritimes Prices

Having preliminarily found that these prices are in-country, market-determined prices, we next considered how to apply these prices in our benefit calculations. As an initial matter, we noted that harvesters of private timber in Nova Scotia are required to pay C$3.00 per m3 into a Forest Sustainability Fund. Therefore, we added this cost to the indexed stumpage prices to obtain the average stumpage price for SPF sawlogs from Nova Scotia. *See* June 2, 2004, Memorandum to The File through James Terpstra, Program Manager, concerning Benchmark Calculation Memorandum (Benchmark Calculation Memorandum).

Alberta, Manitoba, Ontario, Quebec, and Saskatchewan

The Nova Scotia and New Brunswick Reports contain prices for the general timber species category of eastern SPF.[22] The species included in eastern SPF are also the primary and most commercially significant species reported in the SPF groupings for Quebec, Ontario, Manitoba, Saskatchewan and a portion of Alberta, accounting for over 90 percent of the entire timber harvest across these provinces. [23] Although there is some minor variation of the relative concentration of individual species across provinces, these do not affect comparability for benchmark purposes. The provinces themselves do not generally differentiate between these species; rather, they tend to group all eastern SPF species into one category for data collection and pricing, *e.g.*, Quebec charges one stumpage price for ''SPF.'' For these reasons, we have preliminarily determined that the Maritimes'' prices for eastern SPF are comparable to Crown stumpage prices for the SPF species groupings in Quebec, Ontario, Manitoba, Saskatchewan and a portion of Alberta. Accordingly, in our benefit calculations we have compared these prices to the Crown stumpage prices in each of the provinces to determine whether the Crown prices were for less than adequate remuneration. Where appropriate, we also compared prices of certain non-SPF species for which price data is available in the Maritimes. The actual calculations are discussed in the province-specific sections, below.

British Columbia and Western Alberta

With respect to British Columbia and a small portion of western Alberta, the most important commercial timber species is western SPF, where it accounts for more than 68 percent of the harvest in B.C. Two other commercially significant softwood species groups in B.C. are douglas fir-larch (fir-larch) and hemlock-amabilis fir (hem-fir), which account for 22 percent of the B.C. harvest.[24] In assessing the comparability of these species to those contained in the Maritimes' Reports, we note that the majority of all Canadian lumber production is marketed and sold as one generally recognized and commercially interchangeable product, ''SPF''. Indeed, in the antidumping duty investigation on softwood lumber from Canada a major Canadian lumber company, Abitibi-Consolidated, Inc., told the Department:

> While the precise species mix of a stand of SPF timber in say British Columbia can vary from that in Quebec (different species do predominate in the different provinces), it is equally true that species mix may vary in different parts of B.C. and different parts of Quebec. The point is that because SPF is defined and recognized as a mix of any of the above-named species, there is no physical difference between Eastern and Western SPF. A customer ordering SPF from our Western mills might on one day receive all Alpine Fir, as might a customer from our Eastern mills. The next day, the same customer in the West might get a mix of red spruce and lodgepole pine, while in the East it might be alpine fir and jack pine. The precise mix will always vary, both in the East and in the West since SPF is sold as a combination of species.[25]

Commercial interchangeability is thus an important factor in assessing the comparability of our benchmark prices to those Crown stumpage prices that account for the predominant species located in B.C. and western Alberta. On this basis, we have preliminarily determined that a comparison of the Maritimes' prices to those in B.C. and Western Alberta is appropriate for benchmark purposes. However, record evidence also indicates that there are differences in values between eastern and western SPF because trees in the West are generally larger, and yield more and better quality lumber. Therefore, we have adjusted the benchmark prices to account for the higher value trees in B.C. and western Alberta.[26]

Specifically, to account for these differences, we derived ratios estimating the value differences between eastern SPF and the predominant western timber, *i.e.*, western SPF, fir-larch and hem-fir. Lacking market-determined prices for these commercially significant species, we accounted for these value differences by using a ratio of market-determined stumpage prices in the United States of eastern SPF and the predominant western timber.[27] Stumpage is the best measure of this difference because it reflects both the relative value of the wood and the relative harvesting cost; thus, to the extent that there are different values and harvesting conditions and costs between harvesting regions for eastern and western timber, they would be reflected in market-determined stumpage prices.

Additional record evidence reflects the same general magnitude of this difference between the value of eastern and western timber species. Specifically, we examined the ratio of stumpage charges for eastern SPF in Quebec and charges for western SPF in B.C. as well as the ratio between Maritimes' eastern SPF stumpage prices and those charged under the B.C. small business auction program.[28] Each of these ratios are detailed in the Benchmark Calculation Memorandum, which is in the public file in the CRU.[29]

Description of Provincial Stumpage Programs

Below, we describe the stumpage programs for each of the provinces and

[22] This category includes, among other species, white spruce, black spruce, red spruce, jack pine, and balsam fir which represents the vast majority of the species harvested in the Maritimes.

[23] 98% for Quebec, 95% for Ontario, 99% for Saskatchewan, 99% for Manitoba, and 80% for Alberta (*see* separate discussion of Alberta western SPF harvest.)

[24] Western SPF generally includes lodgepole pine, subalpine fir (true fir), and englemann spruce. November 12, 2003, GBC Questionnaire Response (Exhibit 1). SPF volume data for Alberta is based on Verification Exhibit GOA–3. Included in these species categories are pine, spruce, and spruce and pine.

[25] Letter from Arnold & Porter LLP to Department of Commerce, No. A–122–838, B–8 (July 23, 2001), app. to Letter from Dewey Ballantine LLP to Department of Commerce, No. C–122–839 (July 27, 2001), Att. 4.

[26] In addition to this cited record evidence, there are various measures of the greater diameter of western trees. See Calculation Memorandum for B.C. at Appendix 2.

[27] *See* Benchmark Calculation Memorandum, which contains the actual ratios applied to the benchmark prices.

[28] *Id.*

[29] *Id.*

provide the calculated preliminary *ad valorem* subsidy rate for these programs.

1. Province of Alberta

The province of Alberta provides stumpage under three main tenure arrangements: (1) Forest Management Agreements (FMAs), (2) Timber Quota Certificates (quotas), and (3) Commercial Timber Permits (CTPs). FMAs are mainly used by integrated and larger timber companies, quotas are mainly used by medium-sized companies, and CTPs are primarily used by smaller companies.

An FMA is a long-term (20 years and renewable) agreement between the Government of Alberta (GOA) and a company. The terms and conditions are fully negotiated and approved by the provincial cabinet. FMA holders gain the right to harvest timber with the approval of an annual operating plan. An FMA is an area-based agreement which includes the obligation to manage, on a sustained yield basis, the timber within the agreement area. There were no new FMAs issued during the POR. Existing FMAs accounted for 62 percent of the billed volume in Alberta during the POR.

FMAs are provided to companies that require the security of a long-term tenure. In addition to paying stumpage fees, FMA holders are responsible for a number of in-kind services, including construction and maintenance of roads, reforestation of all areas harvested, management and planning, holding and protection, environmental protection, inventory costs, and any other obligations required by the Department of Alberta Sustainable Resource Development (ASRD). Under the FMA tenure arrangement, negotiations have led to an agreement to use regulation rates on many FMAs (*i.e.*, the rates set out in the Timber Management Regulation (the TMR)). Since 1994, dues for coniferous timber harvested under the authority of an FMA and consumed in sawmills usually are paid at the general rates of timber dues as set out in the TMR. FMAs generally have agreed to pay regulation rates for pulpwood as well. The timber dues paid by FMA holders can also be negotiated between the ASRD and the FMA holder.

A quota certificate is a long-term (up to 20 years and renewable) right to harvest a share of the annual allowable cut (AAC) as established by the ASRD. A timber license is required for a quota holder to harvest the timber. Quota holders are responsible for road construction and maintenance, reforestation (basic and levy), environmental protection costs, and operational planning. In addition, quota holders are responsible for preparing General Development Plans (GDPs) and Annual Operating Plans (AOPs) for ASRD approval, including road layout and reforestation plans. Quotas are sold by public tender or at an auction to the highest bidder. The charge for competitively sold quotas includes the timber dues as set out in the TMR, holding and protection charges, and a bonus price. The quota provides the allocation of timber to be harvested and the underlying coniferous timber license (CTL) provides the actual cutting authority for the quota. The quota gives the holder license to harvest specific species and maintain utilization standards. There were 9 quotas issued during the POR. The next renewal of quotas will occur during 2006 based on the 20 year cycle. Quotas accounted for 26 percent of the billed volume for the POR.

A CTP is a short-term (averaging 2–3 years) tenure arrangement used to allocate smaller volumes of timber. CTPs are sold either directly or at a public auction. Non-competitively sold CTPs must pay the timber dues as set out in the TMR. There are two types of competitively sold CTPs. The first type includes a bid price on top of the upset price, which is the lowest price a seller will accept, as well as other costs related to in-kind services. The second type of competitively-sold CTP includes a bid price on top of the minimum auction price, other costs related to in-kind services, and the TMR rate for timber dues. A CTP holder must also pay annual holding and protection charges. If the CTP holder does not also hold another major tenure (*i.e.*, an FMA or a quota), the CTP holder must pay a reforestation levy. In addition, a CTP holder must provide an annual operating plan, which includes harvesting and road construction and maintenance. There were 410 CTPs issued during the POR, of which 141 CTPs were sold competitively.

The administered price for non-negotiated FMAs and quota tenure holders is set by using the TMR timber dues and in-kind cost adjustments. Timber dues, as established in Schedule 3 of the TMR, describe the method of calculation of the rates of dues payable for coniferous timber used to make lumber products in a given month based on an average price for lumber in that month. This average is calculated by taking the weekly price for 1,000 board feet of kiln-dried, 2x4, Standard and Better, western SPF for the last week ending in the month preceding the payment month and for the three immediately preceding weeks, as shown in the publication *Random Lengths Lumber Report.* These four weekly prices are converted to Canadian funds and then averaged. This amount is found in Schedule 3, Table Part A and Part B, Column 1.[30] Schedule 3 provides the general rate of timber dues for coniferous timber used to make lumber, pulp, or roundwood timber products. The figures provided in Schedule 3 are the same for pulpwood and sawlogs.[31] Column 1 provides a range of C$/1,000 board feet; the averaged amount as noted in Column 1 has a corresponding cubic meter value in Column 2. Column 2 represents the timber dues that an FMA tenure holder pays for billed volume of softwood timber. The timber dues are determined after the product has been produced. In addition, Schedule 6 covers the timber dues for timber used to make veneer.

To derive Alberta's administratively-set stumpage rate that we used in our calculations, we divided the total timber dues charged to FMA, quota, CTP, DTA (Deciduous Timber Agreement), and DTP (Deciduous Timber Permit) tenure holders, during the POR for each species by the total softwood stumpage billed under each tenure for each species. In this manner, we obtained a weighted-average stumpage price per species that was paid by tenure holders during the POR.

Fees and Associated Charges, Silviculture and Adjustments

The provinces reported certain fees and associated charges with their tenures (*e.g.*, process facility license fees and ground rent), where applicable. As the ultimate price paid for the harvested timber reflects these fees and associated charges, we are including them in the provincial stumpage price, where appropriate.

Silviculture

As discussed above, the Maritimes' benchmark is inclusive of silviculture charges. Therefore, we consider it appropriate to compare a provincial price inclusive of silviculture costs and charges, where applicable.

Adjustments

Based on information in the New Brunswick and Nova Scotia reports, we determined that there are certain

[30] Table Part A covers the first 107,296 m^3 of roundwood, while Part B covers excess over 107,296 m^3 of roundwood. Roundwood products include posts and poles.

[31] We note that under FMAs, prices charged for timber used in pulp production are the same as timber dues charged for roundwood and chips. The GOA has indicated that sawlogs and pulplogs are indistinguishable prior to processing; the distinction in name relates exclusively to their ultimate mill destination.

obligatory costs associated with Crown tenures that are above or beyond those incurred by the private Maritime stumpage harvesters that comprise our benchmark (*e.g.*, certain planning and primary road building activities).[32] For these preliminary results, we have granted certain adjustments to provincial stumpage prices for those activities that evidence on the record indicates: (1) Were not incurred by Maritime private stumpage holders; and (2) were legally obligated costs associated with the tenure in the comparison province.

We preliminarily have found that certain adjustments to the derived basic stumpage rate for Alberta are appropriate. Specifically, we calculated each of the expenses on a per unit basis. We then summed each of the expenses and added the total unit expenses to the weighted-average unit stumpage price per species that was paid by TSFMA holders during the POR. In this manner, we arrived at an adjusted weighted-average stumpage price per species. Consistent with the methodology explained above, we made adjustments to Crown stumpage prices in Alberta for basic reforestation, forest management planning, holding and protection charges, environmental protection costs, forest inventory costs, reforestation levy, and primary road construction and maintenance cost.

Calculation of the Benefit

As explained above, we preliminarily have determined to measure the benefit from the provincial stumpage programs by comparing the administered stumpage prices in each of the provinces (after accounting for the province-specific cost-adjustments) to the private stumpage prices in the Maritime provinces of New Brunswick and Nova Scotia. For further information on the applicability of this benchmark, *see* the ''Private Stumpage Prices in New Brunswick and Nova Scotia'' section of these preliminary results. Because the benchmark prices were higher than the administered prices in Alberta during the POR, we preliminarily have determined that the sale of timber in Alberta was provided for less than adequate remuneration in accordance with 771(5)(E)(iv) of the Act.

To calculate the benefit under this program, we first determined the per unit benefit for each timber species by subtracting from the benchmark price the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific per unit benefit by the total species-specific softwood timber harvest in Alberta during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province. To calculate the province-specific subsidy rate, we divided the total stumpage benefit by Alberta's POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, *see* the ''Denominator'' section of these preliminary results. As explained in the ''Aggregate Subsidy Rate Calculation'' section of these preliminary results, we weight-averaged the benefit from this provincial subsidy program by Alberta's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in the ''Country-Wide Rate for Stumpage'' section of these preliminary results.

2. Province of British Columbia

In B.C., the provincial government owns 94 percent of the land, in contrast to the 5 percent that is privately owned. The GBC's administrative system that authorizes the granting of rights to harvest Crown timber in B.C. is set forth in the Forest Act. Under the Forest Act, access to Crown timber is provided in exchange for paying stumpage dues and performing certain forestry obligations through the 11 forms of agreements (eight are in the form of licences and three provide harvesting rights in the form of permits). There are three main types: (1) Tree Farm Licenses, (2) Forest Licenses, and (3) Timber Sale Licenses. These three licenses accounted for 68 percent of the Crown timber harvested during the POR.

Tree Farm Licenses (TFLs) are area-based tenures. Licensees occupy and continuously manage forests in a specific area. Each TFL specifies a term of 25 years and describes the Crown and private lands included within the license. The licensees are responsible for costs associated with planning and inventories. These would include forest development plans, management plans, various resource inventories and assessments, as well as other costs including road building, harvesting, basic silviculture, stumpage, and annual rent.

Forest Licenses are volume-based tenures in that they confer the right to harvest a certain amount of timber each year within a given Timber Supply Area, without designating a specific area of land. A Forest License has a maximum duration of 20 years. Approval to harvest specific timber under a Forest License is accomplished through the issuance of Cutting Permits. The licensees are responsible for costs associated with planning, road building, harvesting, basic silviculture, payment of stumpage, and annual rent.

Timber Sale Licenses grant the right to harvest timber within a specific Timber Supply Area or TFL Area. Timber Sale Licences have a maximum term of 10 years. Section 20 and 23 sales typically have a one-year term; Section 21 sales have terms averaging 4 or 5 years. Section 20 and 21 are under the Small Business Forest Enterprise Program (SBFEP). Section 20, auction sales, licenses are awarded to the bidder with the highest bonus bid, which is the amount the bidder is willing to pay on top of the upset rate (minimum rate). Section 21 bidders compete on the basis of a set of criteria which includes bonus bids, employment, new capital investment, existing plant, proximity of the plant to the timber supply, the value added through the manufacturing process, and similar criteria. Section 23 sales involve very small volumes harvested for salvage purposes.

The timber pricing system for all tenures is generally determined by two appraisal systems, the Comparative Value Pricing (CVP) system and the Market Pricing System (MPS). The CVP system is used to set stumpage for all tenures except (1) competitive Timber Sale Licenses issued under sections 20 and 21 of the SBFEP, and (2) those qualifying under the ''Coast Hemlock Pilot.'' Under these exceptions, the MPS is used. The CVP is a means of charging specific stumpage rates according to the relative value of each stand of timber being sold. Comparative value prices are established so that the average rate charged will equal a pre-set target rate per cubic meter, given certain assumptions. The relative value of each stand depends upon estimates of the selling price and the cost of producing the end products. Two base rates are established for the province, one for the Coast average market value zone (the Coast), and the other for the remainder of the province (the Interior).

The MPS, established in January, 1999, is a site-specific econometric model that uses results of the SBFEP section 20 auction sales of timber to calculate the ''upset'' (minimum) stumpage rate for upcoming ''competitive'' timber sales under sections 20 and 21. The resulting estimate is then discounted to set the upset price, and the winning bidder

[32] Final Report: Review and Recommendations on the Valuation, Allocation and Sale of Crown Timber Resources in Nova Scotia, AGFOR Inc., December 7, 2000, pp. 24–25. Also, Final Report: Assessment of Market Stumpage Values on Private Lands, AGFOR Inc., February 28, 2003, p. 5.

typically adds a bonus bid to determine the total stumpage charge. In addition, section 21 is not only awarded to the highest bidder; other factors such as employment, new capital investment, existing plant, proximity of the plant to the timber supply, and the value added through the manufacturing process are taken into account.

Because the government provides stumpage at administratively-set prices that, even after accounting for differences in forest management and harvesting obligations (as described below), are lower than the benchmark stumpage prices, we preliminarily have determined that the GBC is providing stumpage for less than adequate remuneration.

Fees and Associated Charges Silviculture and Adjustments

As discussed above in the ''Province of Alberta'' section of this notice, we preliminarily have found that there are certain costs incurred by Crown tenure holders that are appropriate to add to the provincial stumpage price. Therefore, we are making certain adjustments to the derived basic stumpage rate for B.C. Specifically, we calculated each of the expenses on a per unit basis. We then summed each of the expenses and added the total unit expenses to the weighted-average unit stumpage price per species that was paid by B.C. major tenure holders during the POR. In this manner, we arrived at an adjusted weighted-average stumpage price per species. Consistent with the methodology explained above, we made adjustments to Crown stumpage prices in B.C. for ground rent, primary road and bridge building and maintenance costs, deactivation of primary road costs, basic silviculture, and sustainable forest management costs.

Calculation of the Benefit

As explained above, we preliminarily have determined to measure the benefit from the provincial stumpage programs by comparing the administered stumpage prices in each of the provinces (after accounting for the province-specific cost-adjustments) to the private stumpage prices in the Maritime provinces of New Brunswick and Nova Scotia. For further information on the applicability of this benchmark, see the ''Private Stumpage Prices in New Brunswick and Nova Scotia'' section of these preliminary results. Because the benchmark prices were higher than the administered prices in B.C. during the POR, we preliminarily have determined that the sale of timber in B.C. was provided for less than adequate remuneration in accordance with 771(5)(E)(iv) of the Act.

To calculate the benefit under this program, we first determined the per unit benefit for each timber species by subtracting from the benchmark price the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific per unit benefit by the total species-specific softwood timber harvest in B.C. during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province. To calculate the province-specific subsidy rate, we divided the total stumpage benefit for B.C. by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, see the ''Denominator'' section of these preliminary results. As explained in the ''Aggregate Subsidy Rate Calculation'' section of these preliminary results, we weight-averaged the benefit from this provincial subsidy program by B.C.'s relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in the ''Country-Wide Rate for Stumpage'' section of these preliminary results.

3. Province of Manitoba

The Government of Manitoba (GOM) states that the province owns 94 percent of the forest lands and the federal government owns one percent. The remaining 5 percent is private.

The GOM makes standing timber available to those parties that have purchased harvesting rights. These rights entitle the purchaser to acquire timber at a price set by the Forestry Branch of the Department of Conservation, the agency responsible for administering the sale of standing timber of Crown lands.

In Manitoba, there are three ways to acquire timber cutting rights: (1) A Forest Management License (FML); (2) a Timber Sales Agreement (TSA); or (3) a Timber Permit (TP). An FML is a long-term (up to 20 years) license, which may be renewed every five years, to harvest a stated volume of timber in a particular area. Licensees must manage their area to ensure the sustained yield, the achievement of the maximum growth potential, a mandated standard of environmental quality, and the public right of access for recreational and other uses of the forest. The licensee must submit an annual operating plan and additional harvesting reports to the Forestry Branch.

The TSA is a short-term (up to five years) right to harvest a stated volume of timber in a specific area generally issued to small and medium sized operators. There were 185 such agreements in effect during the POR. Similar to the FMLs, the TSA holders must have an annual operating plan, and the stumpage must be paid within 30 days of the end of each quarter in which the timber is cut and scaled.

The TPs are short-term (up to one year) licenses where license holders can only harvest a very small amount of timber. Stumpage must be paid when the permit is issued. There were 2,902 permits in effect during the POR.

Manitoba also has a quota system. The quota is a five-year renewable fixed allocation of timber, whereas a TSA or TP provides direct access to the timber. The GOM states that all but a few quota holders also have timber sale agreements.

Tenure holders pay stumpage fees at either the standard provincial rate or a rate negotiated with the province. The Forestry Service has divided the province into eight different forest regions. The standard provincial rate varies depending on which of the forest regions the timber is harvested from and whether the wood type is Aspen/Poplar or all wood other than Aspen/Poplar. Otherwise, the rates do not vary by species or grade. The GOM used an administratively-set base rate for calculating the stumpage price for TSA holders and TP licensees.

Fees and Associated Charges, Silviculture and Adjustments

As discussed above in the ''Province of Alberta'' section of this notice, we preliminarily have found that there are certain costs incurred by Crown tenure holders that are appropriate to add to the provincial stumpage price. Therefore, we are making certain adjustments to the derived basic stumpage rate for Manitoba. Specifically, we calculated each of the expenses on a per unit basis. We then summed each of the expenses and added the total unit expenses to the weighted-average unit stumpage price per species that was paid by major tenure holders in Manitoba during the POR. In this manner, we arrived at an adjusted weighted-average stumpage price per species. Consistent with the methodology explained above, we made adjustments to Crown stumpage prices in Manitoba for forest renewal charges, primary road costs, and obligated silviculture costs that were not credited.

Calculation of the Benefit

As explained above, we preliminarily have determined to measure the benefit from the provincial stumpage programs by comparing the administered stumpage prices in each of the provinces (after accounting for the province-specific cost-adjustments) to the private stumpage prices in the Maritime provinces of New Brunswick and Nova Scotia. For further information on the applicability of this benchmark, *see* the ''Private Stumpage Prices in New Brunswick and Nova Scotia'' section of these preliminary results, above. Because the benchmark prices were higher than the administered prices in Manitoba during the POR, we preliminarily have determined that the sale of timber in Manitoba was provided for less than adequate remuneration in accordance with 771(5)(E)(iv) of the Act.

To calculate the benefit under this program, we first determined the per unit benefit for each timber species by subtracting from the benchmark price the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific per unit benefit by the total species-specific softwood timber harvest in Manitoba during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province. To calculate the province-specific subsidy rate, we divided the total stumpage benefit for Manitoba by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, see the ''Denominator'' section of these preliminary results. As explained in the ''Aggregate Subsidy Rate Calculation'' section of these preliminary results, we weight-averaged the benefit from this provincial subsidy program by Manitoba's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in the ''Country-Wide Rate for Stumpage'' section of these preliminary results.

4. Province of Ontario

The Government of Ontario (GOO) reported 93 percent of the softwood harvest comes from Crown lands in Ontario, with 7 percent of softwood harvest doming from privately owned lands.

In Ontario, lumber producers obtain wood for use in their mills in five ways: (1) They pay the Government of Ontario stumpage dues and harvest timber directly from their tenure areas on Crown lands; (2) they obtain logs from a company that harvested the timber from its tenure area on Crown lands; (3) they pay stumpage dues and harvest timber from private timber owners; (4) they purchase logs from a company that harvested timber from private lands; and (5) they import logs from the United States.

The Crown forest area, which the GOO refers to as the Area of the Undertaking, is divided into 54 management units. The GOO makes standing timber on Crown land available to parties that purchase harvesting rights. These rights, often referred to as stumpage rights, apply to a particular area of Crown land and entitle the purchaser to harvest standing timber at prices set by the GOO's Ministry of Natural Resources (OMNR), the agency responsible for administering the sale of standing timber on Crown lands.

Under the Crown Forest Sustainability Act (CFSA), the GOO allocates timber harvesting rights in these management units through two main types of tenure arrangements: (1) Section 26 Sustainable Forest Licenses (SFLs) and (2) Section 27 Forest Resource Licenses (FRLs). A section 26 SFL typically covers all of the Crown forest area in a management unit and conveys the right to harvest all species of tress found in the tenure area. A section 26 SFL is set for an original 20-year term, and is extendable indefinitely every five years. Section 27 FRLs are issued for terms up to five years and can be extended for one year. The GOO reported that section 26 SFL or section 27 FRL does not convey a right of ownership in land or standing timber, a right to a secure price for harvested timber, or the right to sell or unilaterally transfer the license.

The GOO reported that of the 49 section 26 SFLs, 34 are held by single entity companies and 15 are held by entities comprised of multiple shareholders, *e.g.*, a combination of timber harvesters and mill owners. The single entity company or shareholder arrangement which holds a section 26 SFL is obligated to conduct forest management planning, information gathering, monitoring, road building, and the basic silviculture cost (many of which the GOO reimburses) in the management unit.

The GOO reported that, a section 26 SFL typically covers the whole management unit and the timber amounts and species to be harvested are determined through the development of a five-year plan, whereas a section 27 FRL covers only part of the area of a management unit and timber amounts and species are specified. Usually, the coverage area of a section 27 FRL ''overlaps'' with the area covered by section 26 SFL, and each license holder has the right to harvest particular stands and/or species. The GOO reported that, of the 919 section 27 FRLs in Ontario, 878 are of the ''overlapping'' variety. The remaining 41 section 27 FRLs are issued for harvesting the timber located in the few management units for which the GOO has not issued section 26 SFLs, but rather maintains the forest management responsibilities.

The GOO stated that it does not distinguish between saw logs and pulp logs. Therefore, the timber harvest data it reported is based on whether the harvested timber was destined for saw mills or for pulp and paper mills. The value data reported does not include ''in-kind'' services provided by tenure holders, however, the GOO has provided certain estimates of the total value of services that tenure holders are obligated to provide.

The GOO reported that integrated and non-integrated firms pay the same price for stumpage. Stumpage fees are charged after measurement has occurred, which can occur at the logging site or, most often, at the destination mill. The mills conduct the actual scaling (measurement), OMNR conducts scaling audits to ensure accuracy, and the licensee pays the scaling costs.

The GOO reported that the overall provincial price for stumpage on Crown lands that it charges is calculated according to four component charges: (1) The minimum charge, (2) the forest renewal charge, (3) the forest futures charge, and (4) the residual value charge. Ontario reports that some of these component charges differ depending on end product market prices. Ontario contends that prices paid for stumpage represent only a portion of the value received by the province from tenure holders, with the additional value coming from ''in-kind'' payments, which are discussed in the Ontario adjustments section below.

The minimum charge is set administratively every year depending on the species and the destination of the harvested timber, *i.e.*, whether it is destined for a saw mill or a pulp and paper mill. The GOO states that the primary reason for this charge is to generate a secure source of revenue regardless of market conditions. During the POR, the minimum charge for 97 percent of Crown timber was set at C$3.44 per cubic meter, and the minimum charge for three percent of

Crown timber was set at C$0.59 per cubic meter.

The GOO reported that the forest renewal charge generates funds necessary to cover costs of renewing harvest area. This charge covers silviculture costs, and, since 1997, has been determined annually for each management unit and each species within the unit. According to GOO, the monies collected from each management unit go into the Forest Renewal Trust Fund for use for forest renewal costs within that specific management unit.

The third component of the overall provincial stumpage price is the forestry futures charge, which is the same for all management units and species within the province and is set annually. Money collected from this charge is paid into the Forestry Futures Trust Fund and is to be used for costs relating to pest control, fire, natural disaster, stand management, and the silviculture expenses of insolvent licensees. During the POR, the charge was C$0.48 per cubic meter.

The fourth component of the stumpage charge is the residual value charge, which is assessed when the price of end-forest products produced with timber reaches a certain level determined by the OMNR. For softwood lumber, the RV charge is assessed when the estimated price a softwood mill receives for lumber exceeds C$364.85 per thousand board feet. This charge is determined on a monthly basis according to a formula.

Fees and Associated Charges, Silviculture and Adjustments

As discussed above in the ''Province of Alberta'' section of this notice, we preliminarily have found that there are certain costs incurred by Crown tenure holders that are appropriate to add to the provincial stumpage price. Therefore, we are making certain adjustments to the derived basic stumpage rate for Ontario. Specifically, we calculated each of the expenses on a per unit basis. We then summed each of the expenses and added the total unit expenses to the weighted-average unit stumpage price per species that was paid by major tenure holders in Ontario during the POR. In this manner, we arrived at an adjusted weighted-average stumpage price per species. Consistent with the methodology explained above, we made adjustments to Crown stumpage prices in Ontario for road construction and maintenance costs and forest management planning.

Calculation of the Benefit

As explained above, we preliminarily have determined to measure the benefit from the provincial stumpage programs by comparing the administered stumpage prices in each of the provinces (after accounting for the province-specific cost-adjustments) to the private stumpage prices in the Maritime provinces of New Brunswick and Nova Scotia. For further information on the applicability of this benchmark, *see* the ''Private Stumpage Prices in New Brunswick and Nova Scotia'' section of these preliminary results, above. Because the benchmark prices were higher than the administered prices in Ontario during the POR, we preliminarily have determined that the sale of timber in Ontario was provided for less than adequate remuneration in accordance with 771(5)(E)(iv) of the Act.

To calculate the benefit under this program, we first determined the per unit benefit for each timber species by subtracting from the benchmark price the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific per unit benefit by the total species-specific softwood timber harvest in Ontario during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province. To calculate the province-specific subsidy rate, we divided the total stumpage benefit for Ontario by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, *see* the ''Denominator'' section of these preliminary results. As explained in the ''Aggregate Subsidy Rate Calculation'' section of these preliminary results, we weight-averaged the benefit from this provincial subsidy program by Ontario's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in the ''Country-Wide Rate for Stumpage'' section of these preliminary results.

5. Province of Quebec

In Quebec, the provincial government owns approximately 86 percent of accessible productive forest land, in contrast to private woodlot owners who own 13 percent of accessible productive forest land. Crown lands (*e.g.*, government-owned lands) account for approximately 75.5 percent of the total volume of the softwood timber harvest while private forests account for approximately 14 percent. The remaining amount of the timber harvest is primarily obtained from lands outside of Quebec. An additional amount, less than one percent, is procured from Federal lands located within the Province.

The GOQ's administrative system for granting rights to harvest stumpage from Crown lands is defined under the legal framework of the Forest Act, enacted in 1996. Under the Forest Act, access to Crown timber is provided in exchange for paying stumpage dues and performing silviculture and other obligations through five types of licenses, as explained below. The Ministere des Ressources naturelles de la Faune et des Parcs (MRNFP) is the provincial agency responsible for administering Quebec's stumpage program and allocating volumes of timber to be harvested from public lands to tenureholders.

Once the MRNFP has determined the amount of stumpage available for harvest by a TSFMA holder, the next step is for the MRNFP to calculate the amount of stumpage dues owed by a TSFMA holder. The price that the MRNFP charges for stumpage rights varies depending on where the timber stand is located. In previous years, the MRNFP divided the Crown lands into 28 zones and charged different prices for each zone. According to the GOQ, these zones, or tariffing zones, delineated areas that were similar in terms of climate, tree size, topography, species mix, etc. Until 1999, the tariffing zones contained both Crown and private lands. However, in 1999 the GOQ amended the Forestry Act, the legislation that governs the sale of standing timber on Crown land. Pursuant to this amendment, in April 2000, the GOQ expanded the number of tariffing zones to 161 to ensure maximum homogeneity in each zone. Further, as a result of the amendment, privately-owned forests were no longer located within any of the tariffing zones.

In Quebec, there are five ways through which the MRNFP sells stumpage rights: Timber Supply Forest Management Agreements (TSFMAs), Forest Management Contracts (FMCs), Forest Management Agreements (FMA), Annual Forest Management Permits (AFMPs), and public auctions.

TSFMA licences account for virtually all standing timber harvested on Crown lands. During the POR, TSFMAs accounted for 98 percent of the softwood Crown timber harvested. As provided by section 42 of the Forestry Act, a TSFMA allows the holder to obtain an annual management permit to supply a wood processing plant or mill.

A TSFMA also authorizes the volume at which particular species can be harvested. To obtain a TSFMA, the applicant must own a wood processing mill. In return for the stumpage rights, the holder of the TSFMA must carry out certain types of silviculture treatments, as specified in the agreement with the MRNFP, and as mandated by section 42 of the Forest Act, required to achieve a pre-established annual yield. The GOQ credits a portion of these silviculture costs towards the payment of the stumpage fees owned under the TSFMA. In addition, the Forest Act mandates the holder of the TSFMA to submit five-year and annual forest plans for required silviculture activities. TSFMA holders are also required to contribute to the forest fire protection agency *Société de protection des forêts contre le feu* (SOPFEU), the insect and disease protection agency *Société de protection des forêts contre le insectes et les maladies* (SOPFIM), and the Forestry Fund. The overall term of the TSFMA is 25 years. However, every five years from the effective date of the agreement, the term of a TSFMA can be renewed for an additional 25 years provided that the holder of the TSFMA has fulfilled its obligations under the agreement. During the POR, the GOQ reported 237 TSFMA holders with rights to access softwood timber.

FMCs are similar to TSFMAs in that they are also subject to the stumpage prices charged by the MRNFP. In addition, holders of FMCs are responsible for the same types of silviculture activities as those covered by TSFMAs. The MRNFP usually enters into FMCs with non-profit organizations or municipalities. FMCs normally cover relatively small forest areas. During the POR, FMCs accounted for less than one percent of the softwood Crown timber harvest.

The FMA type of tenure was introduced in June 2001. Under this type of agreement, the MRNFP may enter into a contract with any legal entity that does not hold a wood processing plant operating permit and that is not related to the holder of such permit. Criteria for an FMA is that forest production is significant in the area under the FMA and the MRNFP deems the granting of the FMA to be in the public's interest. The FMA holder is granted the right to harvest timber but is required to sell the timber to a sawmill. FMA holders have similar obligations like the TSFMA holder; however, the FMA term is only ten years. Both FMCs and FMAs are required to sell the timber harvested under their tenure arrangements to companies with wood processing operating permits or to apply for authorization to ship the timber outside of Quebec.

Standing timber on Crown lands is also available through AFMPs. Pursuant to sections 79, 93, 94, 95, and 208 of the Forest Act, AFMPs permit the harvest of less desirable forms of timber, often referred to as slash and cull, for use in energy production and metallurgical purposes. The MRNFP issues AFMPs provided that it deems the production of the applicant sufficient and that the slash and cull harvest promotes the growth of stands in a particular forest area. Very little standing timber is harvested under the AFMPs.

The fifth method involves the sale of standing timber on public reserves through public auctions. Public reserves are forest areas in which no timber supply and forest management agreement is in force. However, while these public auctions are permissible under GOQ law, the MRNFP has yet to sell any publicly-owned timber under this method.[33]

Aside from managing the sale of standing timber on Crown lands, the MRNFP collects information on the price of standing timber in private forests. Private market prices for standing timber are obtained through a survey of forest contractors [34] that purchase standing timber from private forests. The MRNFP contracts with three forest consultants, who conduct a census of all purchases of privately-held timber every three years. Between censuses, the MRNFP conducts a sample from private purchasers, selected at random representing about 75 percent of the total population. These surveys are based on actual transactions of timber from private forest lands of forest contractors and mainly cover the purchase of trees in the spruce, pine, and fur species group. The most recent analysis of private stumpage prices in Quebec took place in 2000. Of the 175 companies that purchase standing timber from private lands, 116 responded to the survey. At verification, we learned that to be eligible as a survey respondent, a forest contractor had to have purchased a total of 4000 m^3 in the last four years and have purchased at least 1000 m^3 in the year prior to the survey being conducted.

The GOQ states that the survey used to derive administered stumpage prices during the POR covered the private forest in its entirety as well as all 15 territories managed by private wood producers' syndicates and marketing boards.[35] Once the survey is complete, the Institute Statistique Quebec compiles a value for each private forest territory covered by a syndicate or wood producer's marketing board. The Institute Statistique Quebec then weights these values by the volume of timber purchased by each respondent. The GOQ explains that the purpose of this step is to improve the statistical accuracy in the calculation of the average market value of standing timber in private forests. The Institute then obtains a single, province-wide average of the survey respondents, referred to as the Market Value of Standing Timber (MVST), by attributing a weight corresponding to the total volume for each wood producers' association territory.

The GOQ, as required by the Forestry Act, uses a system called the parity technique to determine the stumpage value the MRNFP charges to TSFMA and FMC licences. Under the parity technique, the MRNFP employs a complex formula which adjusts the private MVST to account for relative differences that exist between the private MVST and the tariffing zone to be appraised. The MRNFP then calculates an individual stumpage rate that will be charged in each tariffing zone.

As explained above, the MRNFP calculates an administered stumpage price for each tariffing zone. To arrive at the unadjusted administered stumpage rates used in our stumpage calculations, we divided the total softwood stumpage fees paid by TSFMA permit holders during the POR, which accounts for virtually all of the Crown timber harvest in Quebec, for each species by the total softwood stumpage harvested under TSFMAs during the POR for each species. In this manner, we obtained an unadjusted weighted-average stumpage price per species that was paid by TSFMA permit holders during the POR. According to information submitted by the GOQ, the softwood stumpage harvested under

[33] The GOQ states that timber sales by auction has never been used in Quebec although authorized by section 96 of the Forest Act. *See* Government of Quebec's November 12, 2003, submission at QC–24.

[34] A forest contractor is an enterprise that regularly harvests on private lands and sells the harvested timber to sawmills. These enterprises specialize in harvesting operations and usually are not sawmills. Although a sawmill could technically respond to the survey, respondents have almost entirely been forestry contractors, joint management organizations, a forestry consultant and two hardwood sawmills.

[35] There are 15 wood producers' syndicates and marketing boards in Quebec. Membership is voluntary. Their task is to represent their members in dealings with Federal and local governments on matters related to silviculture, forest management, forest policies, laws, environmental certification, registration of forest producers, resource sustainability, and tax issues.

TSFMAs is equal to the total timber harvested for tenure holding lumber processing plants (*i.e.*, processing plants that produce the subject merchandise). Therefore, we have not incorporated the stumpage fees paid by FMC permit holders into the province-wide administered stumpage rate.

Fees and Associated Charges, Silviculture and Adjustments

As discussed above in the ''Province of Alberta'' section of this notice, we preliminarily have found that there are certain costs incurred by Crown tenure holders that are appropriate to add to the provincial stumpage price. Therefore, we are making certain adjustments to the derived basic stumpage rate for Quebec. Specifically, we calculated each of the expenses on a per unit basis. We then summed each of the expenses and added the total unit expenses to the weighted-average unit stumpage price per species that was paid by TSFMA holders during the POR. In this manner, we arrived at an adjusted weighted-average stumpage price per species. Consistent with the methodology explained above, we made adjustments to Crown stumpage prices in Quebec for contributions to the Forestry Fund, administrative forest planning costs, and obligated silviculture costs that were not credited. We also made a negative adjustment for silviculture credits that were for voluntary activities.

Calculation of the Benefit

As explained above, we preliminarily have determined to measure the benefit from the provincial stumpage programs by comparing the administered stumpage prices in each of the provinces (after accounting for the province-specific cost-adjustments) to the private stumpage prices in the Maritime provinces of New Brunswick and Nova Scotia. For further information on the applicability of this benchmark, *see* the ''Private Stumpage Prices in New Brunswick and Nova Scotia'' section of these preliminary results, above. Because the benchmark prices were higher than the administered prices in Quebec during the POR, we preliminarily have determined that the sale of timber in Quebec was provided for less than adequate remuneration in accordance with 771(5)(E)(iv) of the Act.

To calculate the benefit under this program, we first determined the per unit benefit for each timber species by subtracting from the benchmark price the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific per unit benefit by the total species-specific softwood timber harvest in Quebec during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province. To calculate the province-specific subsidy rate, we divided the total stumpage benefit for Quebec by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, see the ''Denominator'' section of these preliminary results. As explained in the ''Aggregate Subsidy Rate Calculation'' section of these preliminary results, we weight-averaged the benefit from this provincial subsidy program by Quebec's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in the ''Country-Wide Rate for Stumpage'' section of these preliminary results.

6. Province of Saskatchewan

In Saskatchewan, the northern half of the province is designated as Forest Crown land. According to the Government of Saskatchewan (GOS), only the lower third of this land contains harvestable timber. This harvestable area where commercial forestry activities occur is referred to as the Commercial Forest Zone (CFZ). The CFZ comprises approximately 11.7 million hectares. Of this amount, the GOS states that 52 percent is considered productive or harvestable land. The GOS states that there are no private lands within the CFZ. In Saskatchewan, all private lands are generally located south of the CFZ. According to information submitted by the GOS, Crown lands accounted for approximately 94 percent of the softwood sawlogs harvested in Saskatchewan during the POR. Private and federal lands accounted for five and one percent of the softwood sawlog harvest, respectively.

The right to harvest timber on Crown lands, or stumpage, can only be acquired by a license pursuant to Saskatchewan's Forest Resources Management Act. These licenses come in three forms: Forest Management Areas (FMAs), Forest Product Permits (FPPs), and Term Supply Licenses (TSLs). The Saskatchewan Environment and Resource Management Department (SERM) is the government agency responsible for the administration of provincial timber programs, which includes setting the price of stumpage in the province.

FMAs grant the licensee the right to harvest Crown timber for a term not exceeding 20 years. At every fifth year of the FMA, the term may be extended for an additional five years. According to the GOS, the FMAs set out the rights and responsibilities of the licensee which, in particular, focus on the long-term sustainable use of Crown land covered by the agreement. The GOS negotiates the terms of FMAs with each licencee. Thus, no standard terms or conditions apply to FMAs.

All FMAs, however, must pay certain charges. FMA licensees are charged forest management fees. These fees vary across the province in relation to the preponderance of timber types within the FMA and the costs associated with reforestation of the species that exist there. Forest management fees, also referred to as forest renewal fees, are used to conduct the province's basic silviculture programs, which include surveys, site preparation, mechanical brushing, cone collection, chemical brushing, planting, fertilizer, spacing, administrative costs, seedlings, and other miscellaneous costs.

Four FMAs were in effect during the POR: The Mistik Management FMA, the L&M Wood Products FMA, the Weyerhaeuser Prince Albert FMA, and the Weyerhauser Pasquia-Porcupine. The four FMA licensees operate five different sawmill establishments. Of the four FMAs in Saskatchewan, the GOS indicates that only one has a facility that includes both a sawmill establishment and another type of processing plant at the same location. Specifically, L&M Wood Products FMA at Glaslyn includes both a sawmill and a treatment plant. According to information submitted by the GOS, these four FMAs accounted for approximately 93 percent of the Crown logs that were harvested during the POR. The GOS states that its policy is to grant FMAs to large mills requiring large volumes of timber and that it requires FMA licensees to operate their facilities on a regular basis. Failure to do so could result in the termination of the FMA and the loss of the licensee's tenure. The GOS states that the requirement relates to the province's responsibilities as a landowner as well as to good forest management practices.

FPPs are the second type of stumpage license issued by the GOS. FPPs are annual licenses that confer the right to harvest specified forest products. Each FPP expires on either the date specified on the permit or at the end of the GOC's fiscal year, whichever comes first. FPPs cannot be renewed. The GOS stated that during the POR, 795 FPPs were issued with a total volume of 909,691 m^3. During the POR, FPPs accounted for

approximately five percent of the province's softwood sawlog harvest. The terms and conditions of FPPs vary in accordance with the type of forest product harvested. The GOS states that it allows FPP licensees to operate in FMA areas. In those instances, the FPPs must pay forest management fees to the FMA licensee. The rates charged to the FPPs are equal to those charged to the FMAs by the GOS. The FMAs then forward these fees to the GOS. FPPs operating on lands not covered by a FMA are required to pay forest management fees directly to the province.

TSLs are similar to FMAs, but have a term of 10 years. TSLs may be area or volume based. As is the case with FMAs, TSLs must pay processing facility and forest management fees. According to the GOS, only one TSL was issued during the POR but there was no harvest under the authority of the TSL. The only TSL in effect during the POR was North West Communities.

The SERM also charges licensees stumpage dues on harvested trees. There are two steps to the SERM's method of setting stumpage rates. These steps apply to all tenure arrangements. The first part is a base rate of dues which applies to each cubic meter harvested during the year. The second part is an incremental rate which applies to a percentage of product value above a threshold trigger price. Information from the GOS indicates that the incremental rates for softwood sawlogs are a partial function of lumber prices as reported in *Random Lengths Lumber Report,* an industry trade publication. With respect to the stumpage dues paid by FMAs, the GOS states that while each FMA uses the same basic structure, each FMA has individually negotiated its base and incremental stumpage rates with the province. These negotiated dues vary among FMAs according to tree size and species. The GOS states that these negotiated rates reflect the relative value of the timber included in the FMA license and that the licenses are negotiated in an arm's-length transaction.

Payments of stumpage dues vary according to license. FMA licensees submit their base dues on a monthly basis. Incremental dues are paid either monthly or quarterly in accordance with the terms of the particular FMA. FPP licensees have three payment options. FFP licensees may pay stumpage dues: (1) When the permit is issued, (2) in equalized payments for a maximum of three equalized payments throughout the year, or (3) monthly, based on the timber scaled during that period. Up-front payment and equalized payment options are calculated based on the total volume of timber included in the FPP. The amount of dues payable is determined through scaling the amount of timber harvested. The GOS states that scaling is conducted by licensed scalers.

To derive Saskatchewan's administratively-set stumpage rate, we divided the species-specific stumpage value by the volume harvested to derive the specie-specific per unit stumpage price. To this stumpage price we added per unit adjustment costs, in order to derive Saskatchewan's administratively-set stumpage rate (the total tenure-related expenses).

Fees and Associated Charges, Silviculture and Adjustments

As discussed above in the ''Province of Alberta'' section of this notice, we preliminarily have found that there are certain costs incurred by Crown tenure holders that are appropriate to add to the provincial stumpage price. Therefore, we are making certain adjustments to the derived basic stumpage rate for Saskatchewan. Specifically, we calculated each of the expenses on a per unit basis. We then summed each of the expenses and added the total unit expenses to the weighted-average unit stumpage price per species that was paid by tenure holders in Saskatchewan during the POR. In this manner, we arrived at an adjusted weighted-average stumpage price per species. Consistent with the methodology explained above, we made adjustments to Crown stumpage prices in Saskatchewan for road costs, processing facilities license fees, FBP application fees, and forest management.

Calculation of the Benefit

As explained above, we preliminarily have determined to measure the benefit from the provincial stumpage programs by comparing the administered stumpage prices in each of the provinces (after accounting for the province-specific cost adjustments) to the private stumpage prices in the Maritime provinces of New Brunswick and Nova Scotia. For further information on the applicability of this benchmark, *see* the ''Private Stumpage Prices in New Brunswick and Nova Scotia'' section of these preliminary results. Because the benchmark prices were higher than the administered prices in Saskatchewan during the POR, we preliminarily have determined that the sale of timber in Saskatchewan was provided for less than adequate remuneration in accordance with 771(5)(E)(iv) of the Act.

To calculate the benefit under this program, we first determined the per unit benefit for each timber species by subtracting from the benchmark price the cost-adjusted weighted-average stumpage price per species. Next, we calculated the species-specific benefit by multiplying the species-specific per unit benefit by the total species-specific softwood timber harvest in Saskatchewan during the POR. We then summed the species-specific benefits to calculate the total stumpage benefit for the province. To calculate the province-specific subsidy rate, we divided the total stumpage benefit for Saskatchewan by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, see the ''Denominator'' section of these preliminary results. As explained in the ''Aggregate Subsidy Rate Calculation'' section of these preliminary results, we weight-averaged the benefit from this provincial subsidy program by Saskatchewan's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in the ''Country-Wide Rate for Stumpage'' section of these preliminary results.

Country-Wide Rate for Stumpage

The preliminary countervailable country-wide subsidy rate for the provincial stumpage programs is 8.86 percent *ad valorem.*

II. Other Programs Determined to Confer Subsidies

Programs Administered by the Government of Canada

1. Federal Economic Development Initiative in Northern Ontario (FEDNOR)

FEDNOR is an agency of Industry Canada, a department of the GOC, which encourages investment, innovation, and trade in Northern Ontario. A considerable portion of the GOC assistance under FEDNOR is provided to Community Futures Development Corporations (CFDCs), non-profit community organizations providing small business advisory services and offering commercial loans to small and medium enterprises (SMEs).

In *Lumber IV,* the Department found that the loans provided by the CFDCs were made on commercial terms and, therefore, did not provide a countervailable benefit. However, the Department found that FEDNOR grants provided directly to certain entities

during the AUL period provided a countervailable subsidy to the softwood lumber industry. Those grants were all expensed in the year of receipt. *See,* Issues and Decision Memorandum. In this review, the GOC reports additional loans given since the investigation and outstanding during the POR, as well as one new grant disbursed during the POR.

Consistent with *Lumber IV,* we preliminarily have determined that the FEDNOR program is specific within the meaning of section 771(5A)(D)(iv) of the Act, because assistance under this program is limited to certain regions in Ontario. Furthermore, we preliminarily have found that FEDNOR provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act, and confers a countervailable benefit as set forth under 19 CFR 351.504, through a grant provided directly to a softwood lumber producer.

With regard to the CFDC loans given since the POI in *Lumber IV,* we preliminarily have determined that two loans were given at interest rates below the benchmark rate and, therefore, confer a benefit within the meaning of section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a). Our benchmark interest rates are described in the ''Benchmarks for Loans & Discount Rates'' section of this notice.

Consistent with our treatment of FEDNOR grants in *Lumber IV,* we have treated the grant received during the POR as non-recurring. In accordance with 19 CFR 351.524(b)(2), we have determined that the approved amount of the grant is less than 0.5 percent of total sales of softwood lumber for Ontario during the POR. Therefore, we have expensed the benefit from this grant in the year of receipt.

To calculate the countervailable subsidy provided under this program, we summed the amount of the grant disbursed during the POR and the interest savings on the loans, and divided the combined amount by the f.o.b. value of total sales of softwood lumber for Ontario during the POR. Next, as explained in the ''Aggregate Subsidy Rate Calculation'' section of this notice, we multiplied this amount by Ontario's relative share of total exports to the United States. Using this methodology, we determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem.*

2. Western Economic Diversification Program Grants and Conditionally Repayable Contributions (WDP)

Introduced in 1987, the WDP is administered by the GOC's Department of Western Economic Diversification headquartered in Edmonton, Alberta, whose jurisdiction encompasses the four western provinces of B.C., Alberta, Saskatchewan and Manitoba. The program supports commercial and non-commercial projects that promote economic development and diversification in the region. In *Lumber IV,* the Department found recurring and non-recurring grants provided to softwood lumber producers under the WDP to be countervailable subsidies and, because of the small amounts involved, expensed each grant to the year of receipt.

During the current POR, the WDP provided grants to softwood lumber producers or associations under two ''sub-programs.'' Under the International Trade Personnel Program (ITPP), companies were reimbursed for certain salary expenses. According to the GOC, certain portions of these grants were expressly dedicated to export promotion in Asian markets; therefore, the GOC excluded those portions from the reported disbursement amounts, consistent with *Lumber IV.* Under the heading of ''Other WDP Projects,'' the GOC responded that no additional disbursements were made during the current POR for certain non-recurring grants examined in *Lumber IV.* However, one new grant was made to a softwood lumber producer or association during the POR.

Consistent with *Lumber IV,* we preliminarily have determined that the WDP is specific under section 771(5A)(D)(iv) of the Act, because assistance under the program is limited to designated regions in Canada. The provision of grants constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confers a benefit as set forth under 19 CFR 351.504.

In accordance with 19 CFR 351.524(c), we are treating the ITPP grants as recurring benefits. Because the GOC expressly excluded grants supporting exports to non-U.S. markets, we have attributed the reported grants to U.S. exports of softwood lumber from the regions eligible for assistance under this program, *i.e.*, B.C., Alberta, Saskatchewan and Manitoba.

Consistent with our treatment of ''Other WDP Projects'' in the investigation, we are treating this grant as non-recurring. In accordance with 19 CFR 351.524(b)(2), we have determined that this grant is less than 0.5 percent of total sales of softwood lumber from the regions eligible for assistance under this program. Therefore, we are expensing the benefit from this grant in the year of receipt.

To calculate the countervailable subsidy rate for this program, we have summed the rates for the ITPP and other WDP sub-projects. Next, as explained in the ''Aggregate Subsidy Rate Calculation'' section of this notice, we multiplied this amount by the four provinces' relative share of total exports to the United States. Using this methodology, we determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem.*

3. Natural Resources Canada (NRCAN) Softwood Marketing Subsidies

In May 2002, the GOC approved a total of C$75 million in grants to target new and existing export markets for wood products and to provide increased research and development to supplement innovation in the forest products sector. This total was allocated to three sub-programs under the administration of NRCAN, a part of the Canadian Forest Service.

Funding in the amount of C$29.7 million was allocated to the Canada Wood Export Program (Canada Wood), a five-year effort to promote Canadian wood exports to offshore markets other than the United States. Another C$15 million was allocated to the Value to Wood Program (VWP), a five-year research and technology transfer initiative supporting the value-added wood sector, specifically through partnerships with academic and private non-profit entities. In particular, during the POR, NRCAN entered into research contribution agreements with Forintek Canada Corp. (Forintek) to do research in better resource use, manufacturing process improvements, product development, and product access improvement. The GOC reports that only a portion of the funds allocated for VWP was disbursed during the POR and the funds were used solely for research relating to value-added wood products, not softwood lumber.

Finally, C$30 million was allocated to the National Research Institutes Initiative (NRII), a two-year program to provide salary support to three national research institutes: Forintek, the Forest Engineering Research Institute of Canada (FERIC) and the Pulp & Paper Research Institute of Canada (PAPRICAN). The GOC reports that neither PAPRICAN nor FERIC conducts research regarding softwood lumber production.

Based on our review of the information provided in the responses, we preliminarily have determined that any assistance provided under the Canada Wood program would be tied to export markets other than the United

States. Therefore, in accordance with 19 CFR 351.525(b)(4), we preliminarily have determined that the Canada Wood program does not confer a countervailable subsidy.

With regard to VWP, we have reviewed the projects funded during the POR and have found that certain of them appear to be related to softwood lumber. We preliminarily have determined that the grants provided under the VWP constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confer a benefit as set forth under 19 CFR 351.504. Because the VWP grants were limited to Forintek, which conducted research related to softwood lumber and manufactured wood products, we preliminarily have determined that they are specific within the meaning of section 771(5A)(D)(i) of the Act. Therefore, we preliminarily have determined that the VWP provided a countervailable subsidy to the softwood lumber industry.

With regard to the NRII, because PAPRICAN's work is limited to pulp and paper, we preliminarily have determined that none of the funding PAPRICAN received conferred a countervailable subsidy on the softwood lumber industry. However, based on our review of the record, we preliminarily have determined that research undertaken by FERIC benefits commercial users of Canada's forests. Specifically, FERIC's research covers harvesting, processing and transportation of forest products, silviculture operations, and small-scale operations. Thus, government-funded R&D by FERIC benefits, *inter alia,* producers of softwood lumber. Similarly, we have found that Forintek's NRII operations, which pertain to resource utilization, tree and wood quality, and wood physics, also benefit, *inter alia,* softwood lumber.

We preliminarily have determined that NRII grants to FERIC and Forintek constitute financial contributions within the meaning of section 771(5)(D)(i) of the Act and provide benefits as set forth under 19 CFR 351.504. We also preliminarily have determined that the grants are specific within the meaning of section 771(5A)(D)(i) of the Act because they are limited to FERIC and Forintek, which conduct research related to the forestry and logging industry, the wood products manufacturing industry, and the paper manufacturing industry. Therefore, we preliminarily have determined that FERIC's and Forintek's NRII funding provided a countervailable subsidy to the softwood lumber industry.

To calculate the countervailable subsidy rate for this program, we first examined whether these non-recurring grants should be expensed to the year of receipt. *See,* 19 CFR 351.524(b)(2). We summed the funding approved for Forintek during the POR under the VWP and NRII components, and divided this sum by the total sales of the wood products manufacturing industry during the POR. We also divided the funding approved for FERIC during the POR by the total sales of the wood products manufacturing and paper industries during the POR. Combining these two amounts, we preliminarily have determined that the benefit under the NRCAN softwood marketing subsidies program should be expensed in the year of receipt.

We then calculated the countervailable subsidy rate during the POR by dividing the amounts received by Forintek during the POR under the VWP an NRII components by the total sales of the wood products manufacturing industry during the POR. We also divided the funding received by FERIC during the POR by the total sales of the wood products manufacturing and paper industries during the POR. Combining these two amounts, we preliminarily have determined the countervailable subsidy from the NRCAN softwood marketing subsidies program to be 0.01 percent *ad valorem.*

4. Payments to the Canadian Lumber Trade Alliance (CLTA) & Independent Lumber Remanufacturers Association (ILRA)

In March 2003, the GOC Department of Foreign Affairs and International Trade (DFAIT) approved a total of C$15 million in grants under separate agreements with the CLTA and ILRA to underwrite the administrative and communications costs incurred by these forest products industry associations as a result of the Canada-U.S. softwood lumber dispute. The GOC reports that the CLTA is composed of companies located in Alberta, B.C., Ontario and Quebec, which produce not only lumber but all types of forest products, while the membership of the ILRA is made up entirely of value-added wood product manufacturers in B.C. Of the approved sums, the DFAIT disbursed C$14.85 million to the CLTA and C$75,000 to the ILRA during the POR.

We preliminarily have determined that this program provided a financial contribution in the form of a grant within the meaning of section 771(5)(D)(i) of the Act and conferred a benefit as set forth under 19 CFR 351.504. Because the program provided grants to two associations, CLTA and ILRA, we preliminarily have determined that it is specific within the meaning of section 771(5A)(D)(i) of the Act. Therefore, we preliminarily have determined that the GOC grants to CLTA and ILRA provide a countervailable subsidy to the softwood lumber industry.

To calculate the countervailable subsidy rate for this program, we first examined whether this non-recurring grant should be expensed to the year of receipt. *See,* 19 CFR 351.524(b)(2). Because these grants underwrote these associations' costs related to the softwood lumber dispute, we preliminarily have determined that the benefit is tied to anticipated exports to the United States. *See,* 19 CFR 351.514(a). Therefore, we divided the amount approved by total exports of softwood lumber to the United States during the POR. *See,* 19 CFR 351.525(b)(4). Because the resulting amount was less than 0.5 percent, the benefit is being expensed in the year of receipt.

We then calculated the countervailable subsidy rate during the POR by dividing the amount received by CLTA and ILRA during the POR by total exports of softwood lumber to the United States during the POR. On this basis, we preliminarily have determined the countervailable subsidy from this program to be 0.23 percent *ad valorem.*

Programs Administered by the Province of British Columbia

1. Forest Renewal B.C. Program

The Forest Renewal program was enacted by the GBC in the Forest Renewal Act in June 1994 to renew the forest economy of B.C. by, among other things, improving forest management of Crown lands, supporting training for displaced forestry workers, and promoting enhanced community and First Nations involvement in the forestry sector. To achieve these goals, the Forest Renewal Act created Forest Renewal B.C., a Crown corporation. The corporation's strategic objectives were implemented through three business units: the Forests and Environment Business Unit, the Value-Added Business Unit, and the Communities and Workforce Business Unit.

This program provided grants directly to softwood lumber producers in two ways: (1) as part of *ad hoc* arrangements between Forest Renewal B.C. and softwood lumber companies, and (2) as part of established grant programs to support activities such as business development, industry infrastructure, training, and marketing. Because direct grant assistance is provided only to

support the forest products industry, in *Lumber IV,* the Department determined that these grants are specific under section 771(5A)(D) of the Act. The Department also determined that provision of these grants constituted a financial contribution within the meaning of section 771(5)(D)(i) of the Act. *See* Issues and Decision Memorandum. No new information or evidence has been submitted in this review to cause us to reconsider these findings.

The Forest Renewal B.C. program also provided funds to community groups and independent financial institutions, which may in turn provide loans and loan guarantees to companies involved in softwood lumber production. In *Lumber IV,* the Department found that the lumber producers received no benefit, within the meaning of section 771(5)(E)(ii), from the loans without guarantees and the guaranteed loans during the POI because the reported interest rates charged on those loans were equal to or higher than the interest rate charged on comparable commercial loans. *See* Issues and Decision Memorandum.

Effective March 31, 2002, the B.C. legislature terminated the Forest Renewal B.C. program. In the winding-up of operations of the Value-Added Business Unit under the Forest Renewal B.C. program, certain disbursements and other ''true-up'' value-added commitments were made during the POR. These disbursements were made pursuant to Contribution Agreements that had been entered into prior to the termination of the program.

As noted in the ''Recurring and Non-recurring Benefits'' section of this notice, all grants provided under this program are expensed in the year of receipt. To calculate the benefit provided under this program, we summed the amount of grants provided to all producers/exporters of softwood lumber during the POR and divided that amount by the f.o.b. value of total sales of B.C. softwood lumber for the POR. Next, as explained in the ''Subsidy Rate Calculation'' section of this notice, we weight-averaged the benefit from this provincial subsidy program by the province's relative share of total U.S. exports. Using this methodology, we preliminarily have determined the countervailable subsidy from this program to be 0.01 percent *ad valorem.*

During the POR, there were Forest Renewal B.C. directed loans and loan guarantees to softwood lumber producers outstanding under this program. With respect to these loans and loan guarantees, we preliminarily have determined that no benefit is provided within the meaning of section 771(5)(E)(ii) and 771(5)(E)(iii) of the Act because the reported interest rates charged on each of these loans is equal to or higher than the interest rate charged on comparable commercial loans, described in the ''Benchmark for Loans and Discount Rate'' section, above.

Many of the land-based activities under the Forest and Environment Business Unit of the Forest Renewal B.C. program have been continued by the Forest Investment Account (FIA), which came into effect on April 1, 2002. For further discussion, *see* the ''Land Base Investment Program'' section below. As part of the winding-up operations under the Forest Renewal B.C. program, in March 2002, the GBC allocated Cn$35 million to establish the Coast Sustainability Trust. The purpose of the Trust is to mitigate the adverse effects of government land use planning decisions that have reduced the annual harvest in the Central Coast, North Coast, and Queen Charlotte Islands regions. Thus, the Department will continue to review this program.

2. Forestry Innovation Investment Program (FIIP)

The Forestry Innovation Investment Program came into effect on April 1, 2002. On March 31, 2003, FIIP was incorporated as Forestry Innovation Investment Ltd. (FII). FII funds are used to support the activities of universities, research and educational organizations, and industry associations producing a wide range of wood products. FII's strategic objectives are implemented through three sub-programs addressing: research, product development and international marketing.

In its response, the GBC reports funding it provided to support product development and international marketing projects connected with the subject merchandise. The GBC claims that other spending under these sub-programs did not relate to softwood lumber or to exports to the United States.

We preliminarily have determined that the FII grants provided to support product development and international marketing are countervailable subsidies. The FII grants constitute financial contributions within the meaning of section 771(5)(D)(i) of the Act and provide benefits as set forth in 19 CFR 351.504. The grants are specific because they are limited to institutions and associations conducting projects related to wood products generally and softwood lumber, in particular. *See*, section 771(5A)(D)(i).

Regarding the research sub-program, the GBC reports that it funded approximately 141 research projects during the POR. The GBC claims that this research is not specific to softwood lumber and, moreover, that it involves the government purchase of services.

According to information submitted in the response, investments made through the research program ''are expected to provide a positive contribution to the government goal of having a leading edge forest industry that is globally recognized for its productivity, environmental stewardship and sustainable forest management practices.'' Given the focus of this research, we preliminarily have determined that this research benefits commercial users of B.C.'s forests and, *inter alia*, producers of softwood lumber.

Therefore, we preliminarily have determined that the FII grants provided to support research are countervailable subsidies. These FII grants constitute financial contributions within the meaning of 771(5)(D)(i) of the Act and provide benefits as set forth in 19 CFR 351.504. The grants are specific within the meaning of section 771(5A)(D)(i) of the Act because they are limited to institutions and associations conducting research related to the forestry and logging industry, the wood products manufacturing industry, and the paper manufacturing industry.

To calculate the benefit from this program, we first determined whether these non-recurring subsidies should be expensed in the year of receipt. *See* 19 CFR 351.524(b)(2). For grants given to support product development for softwood lumber, we divided the amounts approved by total sales of softwood lumber for B.C. during the POR. For grants to support international marketing, we divided the grants approved by exports of softwood lumber from B.C. to the United States during the POR. (As explained above, the GBC did not report grants tied to other export markets.) *See* 19 CFR 351.525(b)(4). For research grants, we divided the grants approved by total sales of the wood products manufacturing and paper industries from B.C. during the POR. Combining these three amounts, we preliminarily have determined that the FII benefit should be expensed in the POR.

We then calculated the countervailable subsidy rate during the POR by dividing the amounts disbursed during the POR. For grants given to support product development for softwood lumber, we divided the amounts disbursed by total sales of softwood lumber for B.C. during the

POR. For grants to support international marketing, we divided the amounts disbursed by exports of softwood lumber from B.C. to the United States during the POR. For research grants, we divided the amounts disbursed by total sales of the wood products manufacturing and paper industries for B.C. during the POR. We combined these three amounts and, as explained in the ''Aggregate Subsidy Rate Calculation'' section of his notice, we multiplied this total by B.C.'s relative share of total exports to the United States. On this basis, we preliminarily have determined the countervailable subsidy from the FIIP to be 0.13 percent *ad valorem.*

Programs Administered by the Province of Quebec

1. Private Forest Development Program

The Private Forest Development Program (PFDP) promotes the development of private forest resources in Quebec. Specifically, the PFDP provides silviculture support to private woodlot owners through payments, either made directly to forest engineers or via reimbursement to the woodlot owner, for silviculture treatments executed on private land. This program is funded by both the provincial government through the MRNFP and by sawmill operators. The majority of the program funds come from the MRNFP. However, under the authority of the MRNFP, wood processing plant operators are charged a fee of C$1.45 for each cubic meter of timber acquired from private land. This fee provides partial funding for the PFDP.

According to the GOQ's response, there are approximately 13,000 registered forest landowners that receive financial assistance each year under the PFDP. The average financial assistance received by a producer is less than C$3,000 in any given year. According to the GOQ response, there are approximately 50 sawmills that receive assistance from the program every year.

In *Lumber IV*, we found that this program conferred a countervailable subsidy within the meaning of section 771(5) of the Act. Consistent with *Lumber IV*, we preliminarily have determined that assistance provided under this program is specific under section 771(5A)(D)(i) of the Act because assistance is limited to private woodlot owners. In addition, we preliminarily have determined that payments by PFDP constitute a financial contribution under section 771(5)(D)(i) of the Act, providing benefits as set forth in 19 CFR 351.504.

The GOQ argues that no benefit is provided under this program to sawmill operators because they are required to make contributions to PFDP for lumber harvested on private land. The GOQ states that the sawmill operators' contributions were greater than the amount of silviculture reimbursements the mills received under this program during the POR.

We have not accepted this claim. Every holder of a wood processing plant operating permit must pay the fee of C$1.20 for every cubic meter of timber acquired from a private forest. These fees fund, in part, the PFDP. The recipients of payments under the PFDP are owners of private forest land. Thus, the sawmill operators that received assistance under the PFDP received assistance because they owned private forest land. Therefore, consistent with *Lumber IV*, we preliminarily have determined that the fees paid to harvest timber from private land do not qualify as an offset to the grants received under the PFDP pursuant to section 771(6) of the Act. Section 771(6) of the Act specifically enumerates the only adjustments that can be made to the benefit conferred by a countervailable subsidy and fees paid by processing facilities do not qualify as an offset against benefits received by private woodlot owners.

Consistent with *Lumber IV*, we have treated these payment as recurring. *See*, 19 CFR 351.524(c). Thus, to calculate the countervailable subsidy provided under this program, we summed the reported amount of grants provided to producers of softwood lumber during the POR and divided that amount by total sales of softwood lumber from Quebec for the POR. Next, as explained in the ''Aggregate Subsidy Rate Calculation'' section of this notice, we multiplied this amount by Quebec's relative share of exports to the United States. On this basis, we preliminarily have determined the countervailable subsidy from this program to be less than 0.005 percent *ad valorem.*

III. Programs Determined To Be Not Countervailable

Program Administered by the Government of Canada

1. Human Resources & Skills Development Worker Assistance Programs (HRSD)

Pursuant to Canada's Employment Insurance Act (EIA), the GOC provides ''Part I'' unemployment compensation to workers and ''Part II'' retraining and rehiring assistance to workers, employers and third parties. This support is administered by HRSD (formerly Human Resources Development Canada), which delegates the delivery of Part II assistance to the regional authorities. The EIA account is funded by contributions from workers and employers. The GOC reports that, although it is authorized to cover any shortfalls in the program, the EIA account is currently enjoying a surplus.

In April 2002, in recognition of the increased number of unemployed workers there, HRSD budgeted C$13 million for the British Columbia-Yukon Region (BC-Yukon). The GOC states that no funds went to any employers as a result of this. Instead, these funds were to assist unemployed workers find new work, *i.e.*, to provide Part II assistance. According to the GOC, Part II assistance is available to all unemployed workers across Canada. Moreover, the C$13 million did not represent new funds; these funds were from the EIA account.

In October 2002, the GOC announced that it would provide C$71 million to assist communities and workers affected by the economic downturn caused by the U.S. imposition of duties on softwood lumber. This aid package had three components: the Work Sharing While Learning Initiative (WSWLI), the Increased Referrals to Training Initiative (IRTI), and the Older Workers Pilot Projects Initiative (OWPPI). Both WSWLI and IRTI provide Part I payments in regions with at least 10% unemployment. WSWLI is available for workers scheduled for lay-off but retained by firms under a restructuring plan. IRTI allows workers to quit in advance of a scheduled lay-off, and still receive unemployment compensation if they enroll in retraining programs. OWPPI, which provides assistance for retraining older unemployed workers, is a pre-existing program that was slated to end in March 2003. Under the October 2002 package, it was extended through March 2004.

The GOC reports that no WSWLI funding was actually provided during the POR, because the only applicant was determined to be ineligible. Regarding IRTI, the GOC reports that 168 workers were referred for training, but that only two workers in Nova Scotia were approved to leave their jobs prior to their layoff dates in order to pursue retraining. With regard to OWPPI, the GOC indicates that there were several projects during the POR, but reported only one that possibly related to softwood lumber. This project involved 18 older logging industry workers in Newfoundland.

In the investigation, the Department exempted softwood lumber products from the Maritime Provinces of New Brunswick, Nova Scotia, Prince Edward

Island, and Newfoundland. *See Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada*, 67 FR at 36071 (May 22, 2002) (CVD Order). Accordingly, any benefits provided to softwood lumber producers located in those provinces are not subject to this review. Therefore, we have made no finding of countervailability with respect to the benefits provided to the two workers in Nova Scotia and the OWPPI project in Newfoundland.

With respect to the retraining assistance provided in the April 2002 package and any retraining assistance that was funded by the October 2002 package, the petitioners have alleged that this retraining relieved softwood lumber producers of obligations to retrain workers that were being laid off. The GOC responds that employers in Canada face no statutory or regulatory requirements to provide retraining for workers whose employment is being terminated. Such obligations, if any, would exist in the contracts negotiated between the companies and their employees, though it is not customary to include such retraining obligations in these contracts.

For purposes of these preliminary results, we have accepted the GOC's statement that it is not customary for companies to include mandatory retraining for laid off employees as an element of their labor contracts. Therefore, we preliminarily have determined that softwood lumber producers do not have an obligation to retrain laid off workers and, consequently, that softwood lumber producers have not been relieved of an obligation by virtue of the GOC's retraining programs.

For the final results, we intend to seek further information to confirm the GOC's claim regarding the retraining obligations that softwood lumber producers have assumed.

2. Litigation-Related Payments to Forest Products Association of Canada (FPAC)

In May 2002, the DFAIT allocated C$17 million in grant money to FPAC in support of FPAC's Canada-U.S. Awareness Campaign (CUSAC). CUSAC was a public relations campaign in the United States regarding the softwood lumber dispute between the two nations. The program was expanded in November 2002 to include advocacy activities such as lobbying of U.S. legislators. Of the allotted sum, a total of C$14 million was disbursed during the POR.

We preliminarily have determined that this program does not confer a countervailable subsidy on the production, sale or exportation of softwood lumber from Canada. The nature of the public relations campaign was to influence decision makers in the United States government, not to advertise Canadian lumber or promote sales of Canadian lumber in the United States. This campaign was an extension of the advocacy activities undertaken by the GOC on behalf of the industry.

We preliminarily have determined that this type of action does not confer a benefit on the production or exportation of the subject merchandise and, therefore, does not result in a countervailable subsidy.

Program Administered by the Province of Alberta

1. Timber Damage Compensation for Forest Management Agreement (FMA) Holders

The petitioners allege that the GOA grants FMA holders the right to compensation from any person who causes loss or damage to any of the timber or any improvements created by the holder. The petitioners explain that energy companies damage large quantities of timber while drilling oil wells, engaging in exploration, or building pipelines on an FMA territory, and are then required by law to compensate the FMA holder for the value of the timber damaged. The petitioners argue that FMA holders do not pay the GOA for the property rights to the standing timber and, therefore, the compensation is a grant that the GOA has entrusted or directed the energy companies and others to pay to FMA holders.

The GOA states that FMA holders are required to pay for all wood cut within their designated FMA area. This requirement exists even if the timber is destroyed by industrial operators such as mining or oil and gas operations. Therefore, according to the GOA, FMA holders are entitled to compensation from industrial operators that damage the FMA holders' timber because the FMA holders must pay the GOA for that timber.

The record evidence indicates that an FMA holder is required to pay the GOA for the timber within the FMA holder's area regardless of whether the FMA holder harvests the timber itself or the timber is damaged or destroyed by a third party. Specifically, section 91(1) of the Timber Management Regulation states that ''the holder of a forest management agreement is liable to pay timber dues in respect of timber for which the holder is, under the terms of the forest management agreement, entitled to compensation from persons other than the Crown.'' *See* GOA's November 12, 2003, submission at Exhibit 12, page 26. Moreover, the Surface Rights Act establishes that industrial operators are to pay compensation for damage they cause. Finally, there is no evidence to indicate that industrial operators have been entrusted or directed to provide a financial contribution to FMA holders.

Therefore, we preliminarily have found that this program does not provide a financial contribution within the meaning of section 771(5)(D) of the Act and, thus, is not countervailable.

Programs Administered by the Province of British Columbia

1. Job Protection Commission

The B.C. Job Protection Commission (the Commission) was created in 1991, pursuant to The Job Protection Act (JPA), to minimize job loss, particularly in one-industry communities, and to reduce the negative effect on regional and local communities when companies encounter financial difficulties.

In *Lumber IV*, the Department stated that although some benefits were provided under the Economic Plans during the POI, we were unable to quantify the benefits. We also stated that we would further consider this issue in the context of any administrative review. *See* Issues and Decision Memorandum.

Sections 1–19 of the JPA, were terminated by Order In Council of the GBC on May 2, 2002. However, Section 20 of the Act, which was not repealed, allows Sections 1–19 to remain in effect ''to the extent necessary'' to give any remaining Economic Plans force and effect after the repeal. The JPA ''analyzed and coordinated'' funding under the Credit Enhancement Emergency Fund (CEEF), which was a temporary program, lasting from 1996 through 1998, through which several independent lending institutions made loans to companies that were adversely affected by the insolvency of Evans Forest Products and the restructuring of Skeena Cellulose Inc. During the POR, there were no outstanding loans under the CEEF.

There were eight Economic Plans involving subject merchandise producers, which included commitments that continued after the repeal of the JPA. The GBC provided information regarding these Economic Plans, including copies of each such plan that contained outstanding government loans or loan guarantees

during the POR, but did not provide loan repayment information. The GBC states that it was unable to provide loan repayment information because these are individual loans that are handled directly by the lending institutions.

Consistent with section 777A(e)(2)(B) of the Act, we are conducting this review on an aggregate basis because of the extraordinarily large number of Canadian producers. Given the nature of this program, and the limited number of potential subsidy recipients (*i.e.*, eight companies), any benefits under this program are unlikely to have an impact on the overall rate. Therefore, we preliminarily have determined that it is not necessary to analyze this program in this aggregate review.

IV. Programs Determined Not To Confer a Benefit During the POR

Program Administered by the Province of Manitoba

1. Timber Damage Compensation for Timber Licensees

The petitioners allege that the GOM, under the Manitoba Forest Act (MFA), provides its tenure holders (or licensees) with compensation for the value of all timber cut, damaged, or destroyed in making roads, or boring or operating any salt, oil, or gas wells, in working quarries or mines, or as a result, directly or indirectly, of any such operation or work. The petitioners claim that this extra revenue provided to timber-licensees is a benefit because the licensees do not pay for this right to compensation.

The GOM acknowledges that section 20(2) of The Forest Act authorizes compensation to be paid to timber licensees for damage to timber incurred as a consequence of boring or operating any salt, oil, or gas wells, or in working any quarries or mines. However, the GOM claims that no compensation has ever been paid for such damages to a timber licensee. Moreover, given the significant amount of the annual allowable cut that is uncommitted, no licensee in any area that might be damaged by industrial users would be unable to access its harvest volume.

Because there is no evidence that timber licensees in Manitoba receive compensation for damaged timber, we preliminarily have determined that this program did not confer a benefit, as defined in section 771(5)(E) of the Act, during the POR and, thus, provides no countervailable subsidy.

Programs Administered by the Province of Quebec

1. Assistance From the Societe de Recuperation d'Exploitation et de Developpement Forestiers du Quebec (Rexfor)

SGF Rexfor, Inc. (Rexfor) is a corporation all of whose shares are owned by the Societe Generale de Financement du Quebec (SGF). SGF is an industrial and financial holding company that finances economic development projects in cooperation with industrial partners. Rexfor is SGF's vehicle for investment in the forest products industry.

Rexfor receives and analyzes investment opportunities and determines whether to become an investor either through equity or participative subordinated debentures. Debentures are used as an investment vehicle when Rexfor determines that a project is worthwhile, but is not large enough to necessitate more complex equity arrangements. Consistent with *Lumber IV*, we have not analyzed equity investments by Rexfor because (1) there was no allegation that Rexfor's equity investments were inconsistent with the usual investment practice of private investors, and (2) there is no evidence on the record indicating that Rexfor's equity investments conferred a benefit.

Also, consistent with *Lumber IV*, we examined whether Rexfor's participative subordinated debentures, *i.e.*, loans, conferred a subsidy. Because assistance from Rexfor is limited to companies in the forest products industry, we preliminarily have determined that this program is specific under section 771(5A)(D)(i) of the Act. The long-term loans provided by Rexfor qualify as a financial contribution under section 771(5)(D)(i) of the Act. To determine whether the single loan outstanding to a softwood lumber producer during the POR provided a benefit, we compared the interest rates on the loan from Rexfor to the benchmark interest rates as described in the ''Benchmarks for Loans and Discount Rates'' section of this notice. *See*, 771(5)(E)(ii) of the Act. Using this methodology, we preliminarily have determined that no benefit was provided by this loan because the interest rates charged under this program were equal to or higher than the interest rates charged on comparable commercial loans.

In *Lumber IV*, the Department noted that one of the loans provided by Rexfor was to a company that subsequently entered bankruptcy negotiations with Rexfor and other creditors. As the settlement with the creditors was subsequent to the POI in *Lumber IV*, the Department did not examine this issue and did not determine whether this debt elimination conferred a countervailable subsidy.

In order for the Department to make such a determination, it is our practice to analyze the subject country's bankruptcy law and procedures to determine if bankruptcy protection is available to all types of companies and if the company in question received special or differential treatment during the bankruptcy proceeding. *See, Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 55808 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comments 6 and 8. In this administrative review, the record contains no information on Canada's bankruptcy law or the specific bankruptcy proceeding involving the company in question. Therefore, we are not able to determine from the information on the record whether the process followed in eliminating this debt conferred a subsidy.

Lacking this information, we have also examined whether the debt forgiveness would confer a benefit during the POR. To do this, we divided the amount forgiven by the total sales of softwood lumber from Quebec during the POI. We used the POI denominator because it was the most contemporaneous with the time of the bankruptcy settlement, which was prior to the POR. Because the amount of the debt forgiveness was smaller than 0.5 percent of the value of sales of softwood lumber for Quebec in the POI, any benefit would be expensed prior to the POR. *See* 19 CFR 351.524(b)(2).

On this basis, we preliminarily have found that the debt forgiveness by Rexfor did not confer a benefit in the POR and, thus, provides no countervailable subsidy.

2. Assistance Under Article 28 of Investissement Quebec

Assistance under Article 28 is administered by Investissement Quebec, a government corporation. In *Lumber IV,* the Department investigated assistance from the GOQ under Article 7, which was administered by the Societe de Developpement Industriel du Quebec (SDI). Article 28 supplanted Article 7 in 1998. Under Article 7, SDI provided financial assistance in the form of loans, loan guarantees, grants, assumption of interest expenses, and equity investments to projects that would significantly promote the development of Quebec's economy.

According to the GOQ's response, prior to authorizing assistance, SDI would review a project to ensure that it had strong profit potential and that the recipient business possessed the necessary financial structure, adequate technical and management personnel, and the means of production and marketing required to complete the proposed project. The Article 28 program operates fundamentally in the same manner as Article 7.

During the POR, there was one outstanding loan under Article 28. There were no outstanding loans under Article 7. No other assistance was provided to softwood lumber companies under Article 7 or Article 28.

To determine whether this loan provided a benefit to the softwood lumber industry, in accordance with section 771(5)(E)(ii) of the Act, we compared the interest rates charged on the Article 28 loan to the benchmark interest rates described in the ''Benchmarks for Loans and Discount Rates'' section of this notice. Using this methodology, we preliminarily have determined that no benefit was provided by this loan because the interest rates and fees charged under this program were equal to or higher than the interest rates charged on comparable commercial loans.

V. Other Programs

Program Administered by the Province of British Columbia

1. ''Allowances'' for Harvesting Beetle-Infested Timber

The petitioners allege that the GBC provides cash to, or offsets the costs of, Canadian lumber producers through ''allowances'' made for the harvesting of beetle-infested timber.

The GBC stated in it's response that it's does not maintain a separate program that provides countervailable subsidies to tenure-holders harvesting Crown timber in areas affected by the mountain pine bark beetle infestation. According to the GBC, the B.C. stumpage system merely accounts for certain additional costs incurred in logging beetle-infested stands. For those interior tenure-holders incurring such additional costs, as specified in Section 4.1.1 of the Interior Appraisal Manual, the Ministry of Forests, Revenue Branch, estimates the incremental costs and adds those to the standard (*i.e.,* industry average) cost estimates that otherwise apply.

In the Memorandum to Melissa G. Skinner, ''New Subsidy Allegations,'' dated February 6, 2004 (on file in the CRU), we stated that during the course of this proceeding, we would investigate whether this allegation should be examined as a separate program or whether it should be included in our analysis of the Provincial Governments' stumpage programs. Based on our analysis of the record, we preliminarily have determined that any ''allowances'' provided in regard to harvesting beetle-infested timber are included in the Department's stumpage subsidy rate calculations.

2. Land Base Investment Program (LBIP)

In April 2002, the GBC enacted the Forest Investment Account (FIA) to develop a globally recognized and sustainable managed forest industry resource. To achieve this goal, the FIA created the LBIP, with the main purpose of promoting strategic investments to maintain and improve the B.C. forest resource. The LBIP's strategic objectives are implemented through projects undertaken in seven component areas: Strategic Resource Planning, Stand Establishment and Treatment, Infrastructure, Restoration and Rehabilitation, Information Gathering and Management, Gene Resource Management, and Training and Extension.

According to the GBC's response the LBIP is focused on land-base activities that are materially identical to the land-base activities of Forest Renewal B.C. The GBC further points out that the Department determined not to investigate the land-base activities of Forest Renewal BC in *Lumber IV.*

The Department confirmed at verification the GBC's claim regarding the similarity of the two programs. Therefore, we are not including the LBIP in this administrative review.

VI. Programs Determined Not To Be Used

Program Administered by the Government of Canada

1. Canadian Forest Service Industry, Trade & Economics Program (CFS–ITE)

Program Administered by the Province of British Columbia

1. Payments Associated With Tenure Reclamation Protected Area Forest Compensation Act

Program Administered by the Province of Quebec

1. Export Assistance Under the Societe de Developpement Industrial du Quebec/Investissement Quebec (''SDI'')

Preliminary Results of Review

In accordance with 777A(e)(2)(B) of the Act, we have calculated a single country-wide subsidy rate to be applied to all producers and exporters of the subject merchandise from Canada, other than those producers that have been excluded from this order. This rate is summarized in the table below:

Producer/exporter	Net subsidy rate
All Producers/Exporters	9.24% *ad valorem*

If the final results of this review remain the same as these preliminary results, the Department intends to instruct CBP to assess countervailing duties as indicated above. The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties of 9.24 percent of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than seven days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Please note that an interested party may still submit case and/or rebuttal briefs even though the party is not going to participate in the hearing.

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary results. Any requested hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department

of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs.

This administrative review is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: June 2, 2004.

John J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–13072 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Notice of Preliminary Results of Antidumping Duty Administrative Review and Postponement of Final Results: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Constance Handley or James Kemp, Office 5, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0631 or (202) 482–5346, respectively.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on Certain Softwood Lumber Products from Canada for the period May 22, 2002, to April 30, 2003 (the POR). We preliminarily determine that sales of subject merchandise by Abitibi-Consolidated Company of Canada (Abitibi), Buchanan Lumber Sales Inc. (Buchanan), Canfor Corporation (Canfor), Slocan Forest Products Ltd. (Slocan), Tembec Inc. (Tembec), Tolko Industries Ltd. (Tolko), West Fraser Mills Ltd. (West Fraser), and Weyerhaeuser Company (Weyerhaeuser), have been made below normal value (NV). In addition, based on the preliminary results for these respondents selected for individual review, we have preliminarily determined a weighted-average margin for those companies that requested, but were not selected for, individual review. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the export price (EP) and constructed export price (CEP), and the NV. Interested parties are invited to comment on these preliminary results.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2003, the Department of Commerce (the Department) published a notice of opportunity to request the first administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 68 FR 23281 (May 1, 2003). On May 30, 2003, in accordance with 19 CFR 351.213(b), the petitioner [1] requested a review of producers/exporters of certain softwood lumber products. Also, between May 7, and June 2, 2003, Canadian producers requested a review on their own behalf or had a review of their company requested by a U.S. importer.

On July 1, 2003, the Department published a notice of initiation of administrative review of the antidumping duty order on certain softwood lumber products from Canada, covering the period May 22, 2002, through April 30, 2003. *See Notice of Initiation of Antidumping Duty Administrative Review,* 68 FR 39059 (July 1, 2003).

The Department received requests for review from more than 400 companies. Accordingly, on July 9, 2003, in advance of issuing antidumping questionnaires, the Department issued a letter to the largest 25 producers of softwood lumber from Canada, as identified in a survey of Canada's top 30 softwood lumber producers by volume in 2002.[2] This letter requested export and production volume information from each company, including all affiliates. Companies were required to submit their responses to the Department by July 16, 2003. In addition, we received comments from interested parties on the respondent selection process, which included proposed methodologies.

Upon consideration of the information received with respect to respondent selection, on August 1, 2003, the Department selected as mandatory respondents the eight largest exporters/producers of subject merchandise during the POR: Abitibi, Buchanan, Canfor, Slocan, Tembec, Tolko, West Fraser, and Weyerhaeuser. *See* Memorandum from Keith Nickerson and Amber Musser, International Trade Compliance Analysts, to Holly Kuga, Acting Deputy Assistant Secretary, regarding Selection of Respondents (August 1, 2003). *See also Selection of Respondents* section below.

On this same date, August 1, 2003, the Department issued Section A of the antidumping duty questionnaire to the selected respondents. Sections B and C of the questionnaire were issued on September 5, 2003; [3] Sections D and E were issued on September 22, 2003.[4] Subsequently, the respondents submitted their initial responses to the antidumping questionnaire from September through December of 2003. After analyzing these responses, we issued supplemental questionnaires to the respondents to clarify or correct the

[1] The petitioner in this case is the Coalition for Fair Lumber Imports Executive Committee. We note that during the review, submissions have been made interchangeably by the petitioner itself and by the Coalition for Fair Lumber Imports, a domestic interested party. For ease of reference, we will use the term ''petitioner'' to refer to submissions by either, although we recognize that the Coalition for Fair Lumber Imports is not the actual petitioner.

[2] *See* Canada's Top 30 Softwood Lumber Producers: 2002'', a survey by R.E. Taylor & Associates of Canada. The information in this survey was summarized in Appendix 1 to the Memorandum from Keith Nickerson and Amber Musser, International Trade Compliance Analysts, to Holly Kuga, Acting Deputy Assistant Secretary, regarding Selection of Respondents (August 1, 2003). The largest 25 producers on this survey included one company which was not included in the initiation notice in this administrative review. Therefore, the letters requesting export information were sent to only 24 companies.

[3] We note that we limited the reporting requirements in this review to sales of dimension lumber of all species, (including sales of finger-jointed dimension lumber) and sales of all decking products. We also excluded sales of treated lumber. *See* Memorandum from Amber Musser, International Trade Compliance Analyst, to Gary Taverman, Director, regarding Reporting Requirements for Sections B and C of the Questionnaire (September 5, 2003).

[4] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home-market sales, or, if the home-market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under review. Section E requests information on the cost of further manufacture or assembly performed in the United States.

initial questionnaire responses. We received timely responses to these questionnaires.

Due to the unexpected emergency closure of the main Commerce building on Tuesday, June 1, 2004, the Department has tolled the deadline for these preliminary results by one day to June 2, 2004.

Postponement of Final Results

Section 351.213(h)(1) of the regulations requires the Department to issue the final results of an administrative review within 120 days after the date on which notice of the preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limit, section 351.213(h)(2) allows the Department to extend the 120-day period to 180 days.

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended, and section 351.213(h)(2) of the regulations, the Department has determined that it is not practicable to complete the final results of this administrative review within 120 days from the date of publication of these preliminary results. The Department must address complex issues unique to this first administrative review of the antidumping duty order on lumber from Canada. The complicating factors include the use of value-based cost allocations and the treatment of sales made on a random-lengths basis.[5] Therefore, the Department is extending the deadline for completion of the final results of the administrative review of the antidumping duty order on certain softwood lumber products from Canada by 60 days. The final results of the review will now be due no later than 180 days from the date of publication of these preliminary results.

Scope of the Review

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Softwood lumber products excluded from the scope:

- Trusses and truss kits, properly classified under HTSUS 4418.90;
- I-joist beams;
- Assembled box spring frames;
- Pallets and pallet kits, properly classified under HTSUS 4415.20;
- Garage doors;
- Edge-glued wood, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- Properly classified complete door frames.
- Properly classified complete window frames;
- Properly classified furniture.

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- *Box-spring frame kits:* if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1'' in actual thickness or 83'' in length.
- *Radius-cut box-spring-frame components,* not exceeding 1'' in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
- *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1'' or less in actual thickness, up to 8'' wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.
- *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) the processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to CBP's satisfaction that the lumber is of U.S. origin.
- *Softwood lumber products contained in single family home packages or kits,*[6] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

(A) The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

(B) The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

(C) Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

[5] For the purposes of this review, we are defining a random-length sale as any sale which contains multiple lengths, for which a blended (*i.e.,* average) price has been reported.

[6] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

(D) The whole package must be imported under a single consolidated entry when permitted by CBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;

(E) The following documentation must be included with the entry documents:

- A copy of the appropriate home design, plan, or blueprint matching the entry;
- A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
- A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
- In the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that CBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non-subject status based on U.S. country of origin will be treated as non-subject U.S.-origin merchandise under the countervailing duty order, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[7] The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to review either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in this proceeding (including the various companies' operations relating to a wide range of products, sales processes, locations, and cost factors; and the number of outstanding issues that remain unresolved from the investigation such as possible product matching issues and the calculation of value-based cost), as well as the resources available to the Department, we determined that it was not practicable in this review to examine all known exporters/producers of subject merchandise. We found that given our resources, we would be able to review the eight exporters/producers with the greatest export volume, as identified above. For a more detailed discussion of respondent selection in this review, *see* Memorandum from Keith Nickerson and Amber Musser, International Trade Compliance Analysts, to Holly Kuga, Acting Deputy Assistant Secretary, regarding Selection of Respondents (August 1, 2003). Following the issuance of this Memorandum, we received written requests from five companies to be included as voluntary respondents in this review.[8] On August 20, 2003, the Department notified each of the companies requesting voluntary respondent status that the Department would not be able to review voluntary respondents unless one of the mandatory respondents failed to answer the antidumping questionnaire or additional resources became available.

The Department received timely responses to the antidumping questionnaire from three of the companies requesting to be included as voluntary respondents: Lignum Ltd., J.D. Irving, Limited, and Weldwood of Canada Limited. On December 8, 2003, the Department issued a letter to each of these companies stating that, as indicated in the August 20, 2003, letters, because none of the mandatory respondents failed to respond, the Department would not be able to examine any voluntary respondents.

Collapsing Determinations

The Department's regulations provide for the treatment of affiliated producers as a single entity where: (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) the Department concludes that there is a significant potential for the manipulation of price or production.[9] In identifying a significant potential for the manipulation of price or production, the Department may consider such factors as: (i) The level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.[10] These factors are illustrative, and not exhaustive.

In this review, we determined that Canfor was to be collapsed with affiliate Skeena Cellulose (Skeena) on the date its agreement with Skeena went into effect. *See* Memorandum from Amber Musser, International Trade Compliance Analyst, to Holly Kuga, Acting Deputy Assistant Secretary, regarding Collapsing of Respondent Canfor Corporation with Skeena Cellulose (December 30, 2003). In addition, respondents reported the sales of certain affiliated companies. Specifically, in its questionnaire response, Abitibi reported the sales of subject merchandise produced by its affiliates Produits

[7] *See* the scope clarification message (3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the Central Records Unit, Room B–099 of the main Commerce Building.

[8] In this proceeding, we received five written requests to be accepted as a voluntary respondent as listed in chronological order: Lignum Ltd. (May 30, 2003, this request was contained in its request for administrative review; it reiterated this request on July 16, 2003, and August 1, 2003), Weldwood of Canada Limited (July 30, 2003), J.D. Irving, Limited (August 6, 2003), Welco Lumber Corporation (August 6, 2003), and Dunkley Lumber (August 11, 2003).

[9] *See* 19 CFR 351.401(f)(1).

[10] *See* 19 CFR 351.401(f)(2).

Forestiers Petit Paris, Inc., Produits Forestiers La Tuque, Inc., and Societe en Commandite Scierie Opticiwan. Buchanan reported the sales of its affiliates Atikokan Forest Products Ltd., Long Lake Forest Products Inc., Nakina Forest Products Limited, Buchanan Distribution Inc., Buchanan Forest Products Ltd., Great West Timber Ltd., Dubreuil Forest Products Ltd., Northern Sawmills Inc., McKenzie Forest Products Inc., and Solid Wood Products Inc. Canfor reported the sales of its affiliates Lakeland Mills Ltd. and The Pas Lumber Company Ltd. Tembec reported the sales of its affiliates Les Industries Davidson, Inc., Marks Lumber Ltd., Temrex Limited Partnership, and Excel Forest Products in its questionnaire response. Tolko reported the sales of its affiliates Gilbert Smith Forest Products Ltd. and Pinnacle Wood Products Ltd. West Fraser reported the sales of its affiliates West Fraser Forest Products Inc. (WFFP) and Seehta Forest Products Ltd. in its questionnaire response. Weyerhaeuser reported the sales of its affiliate Weyerhaeuser Saskatchewan Ltd. in its questionnaire response. Upon review of the questionnaire responses, we determined that these affiliates were properly collapsed with the respective respondent companies for the purposes of this review.

The Department also excused individual respondents from reporting the sales of specific merchandise or sales by certain affiliates during this review. These specific reporting exemptions were granted to the companies because the sales were determined to be a relatively small percentage of total U.S. sales, burdensome to the company to report and for the Department to review, and would not materially affect the results of this review. *See* Memorandum from Keith Nickerson and Amber Musser, International Trade Compliance Analysts, to Gary Taverman, Director, regarding Individual Reporting Exemption Requests of Certain Respondent Companies (October 7, 2003).

Treatment of Sales Made on a Random-Lengths Basis

All of the respondents made a portion of their sales during the POR on a random-length (also referred to as a mixed-tally) basis. Information on the record indicates that the respondents negotiate a single per-unit price for the whole tally with the customer, but that they take the composition of lengths in the tally into account when quoting this price. The price on the invoice is the blended (*i.e.* average) price for the tally. Therefore, the line-item price on the invoice to the customer does not reflect the value of the particular product, but rather the average value of the combination of products.

Sections 772(a) and (b) and 773(a)(1)(B)(i) of the Act direct the Department to use the price at which the product was sold in determining EP, CEP, and NV. In this case, the price at which the products were sold is the total amount on the invoice. The respondents' choice to divide that price evenly over all products on the invoice represents an arbitrary allocation which is not reflective of the underlying value of the individual products within the tally. However, with the exception of West Fraser, the respondents do not keep track of any underlying single-length prices in such a way that they can ''deconstruct'' or reallocate the prices on the invoice to more properly reflect the relative differences in the market value of each unique product that were taken into account in determining the total invoice price.

For all companies except West Fraser, for purposes of these preliminary results, we reallocated the total invoice price of sales made on a random-lengths basis, where possible, using the average relative values of company-specific, market-specific single-length sales sold within a two-week period (*i.e.* one week on either side) of the tally whose price is being reallocated. If no such sales were found, we looked in a four-week period (*i.e.* two weeks on either side of the sale). We note that a single-length-sale match must be available for each line item in the tally in order to perform a reallocation based on relative price. If there were not single-length sales for all items in the tally within a four-week period, we continued to use the reported price as neutral facts available, pursuant to section 776(a)(1) of the Act. For West Fraser, we used the reported length-specific prices from its sales system. For further discussion of this issue, *see* Memorandum from Constance Handley, Program Manager, to Jeffrey May, Deputy Assistant Secretary, regarding Treatment of Sales Made on a Random-Lengths Basis for Determining Export Price, Constructed Export Price and Normal Value (June 2, 2004).

Fair Value Comparisons

We compared the EP or the CEP, as applicable, to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales in the U.S. and comparison markets of products that were identical with respect to the following characteristics: product type, species, grade group, grade, dryness, thickness, width, length, surface, trim and processing type. Where we were unable to compare sales of identical merchandise, we compared products sold in the United States with the most similar merchandise sold in the comparison markets based on the characteristics of grade, dryness, thickness, width, length, surface, trim and processing type, in this order of priority. Where there were no appropriate comparison-market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773(a)(4) of the Act. We generally relied on the date of invoice as the date of sale. Consistent with the Department's practice, where the invoice was issued after the date of shipment, we relied on the date of shipment as the date of sale.

Export Price and Constructed Export Price

In accordance with section 772 of the Act, we calculated either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on prices charged to the first unaffiliated customer in the United States. We found that all of the respondents made a number of EP sales during the POR. These sales are properly classified as EP sales because they were made outside the United States by the exporter or producer to unaffiliated customers in the United States prior to the date of importation.

We also found that each respondent made CEP sales during the POR. Some of these sales involved softwood lumber sold from U.S. reload or through vendor-managed inventory (VMI) locations. Because such sales were made by the respondent after the date of importation, the sales are properly classified as CEP sales. In addition, both West Fraser and Weyerhaeuser made

sales to the United States through U.S. subsidiaries.

On September 9, 2003, the Department published a request for public comments on the appropriateness of deducting section 201 duties and countervailing duties (CVD) from export price and constructed export price in antidumping duty margin calculations (68 FR 53104). Because this issue is relevant to this review, on February 10, 2004, the petitioner requested that the Department collect information from the respondents regarding the CVD deposits made by the individual companies during the POR. We did so on February 19, 2004. Each of the companies responded to this request on February 26, 2004. As the Department is currently analyzing the comments received on this subject in response to its published request for public comments, no adjustment has been made to EP or CEP for the purpose of these preliminary results.

We made company-specific adjustments as follows:

(A) *Abitibi*

Abitibi made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Abitibi to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of the record. We calculated a CEP for sales made by Abitibi to the U.S. customer through VMI or reload centers after importation into the United States. EP and CEP sales were based on the packed, delivered, ex-mill, FOB reload center prices, as applicable.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include internal freight incurred in transporting merchandise to reload and VMI centers, as well as freight to the U.S. customer, warehousing, brokerage and handling, and inland insurance. We also deducted any billing adjustments, discounts and rebates.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*e.g.,* credit expenses) and imputed inventory carrying costs. In addition, we made adjustments to the starting price based upon our findings at verification. Abitibi did not report any other indirect selling expenses incurred in the United States. In accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. Finally, we made additional corrections to the U.S. sales data based upon our findings at verification. *See* Memorandum from Amber Musser and Vicki Schepker regarding Abitibi's Analysis for the Preliminary Results (June 2, 2004) (Abitibi's Preliminary Calculation Memorandum).

(B) *Buchanan*

Buchanan made both EP and CEP transactions during the POR. We calculated an EP for sales where the merchandise was sold directly by Buchanan to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of the record. We calculated a CEP for sales made by Buchanan to the U.S. customer through reload centers after importation into the United States. EP and CEP sales were based on the packed, delivered, ex-mill, FOB mill, and FOB reload center prices, as applicable.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include freight incurred in transporting merchandise to reload centers, freight to the U.S. customer, warehousing, brokerage, and a movement variance. We also deducted any discounts from the starting price, and added any billing adjustments and other miscellaneous charges/credits.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses, (*e.g.,* credit expenses) and imputed inventory carrying costs. In accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. Finally, we made additional corrections to the U.S. sales data based upon our findings at verification. *See* Memorandum from Erin Begnal and Marin Weaver regarding Buchanan's Analysis for the Preliminary Results (June 2, 2004) (Buchanan's Preliminary Calculation Memorandum).

(C) *Canfor*

Canfor made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Canfor to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of the record. We calculated a CEP for sales made by Canfor to the U.S. customer through VMI or reload centers after importation into the United States. EP and CEP sales were based on the packed, delivered, ex-mill, FOB mill, and FOB reload center prices, as applicable.

From its sales locations in the United States and Canada, Canfor made sales of Canfor-produced merchandise that had been commingled with lumber from other producers. Canfor provided a weighting factor to determine the quantity of Canfor-produced Canadian merchandise for all sales. We are using the weighting factors to estimate the volume of Canfor-produced merchandise included in each sale.

In some cases, the other producers knew or had reason to know that the merchandise purchased by Canfor was destined for the United States. For example, Canfor occasionally purchased merchandise from another producer and had the producer arrange freight from the producer's mill in Canada to the customer in the United States. We did not include such sales in our margin calculations. In other situations, Canfor purchased merchandise and the producer shipped it to U.S. reload centers, VMI locations, or to Canfor USA (CUSA) where it was commingled with lumber produced by Canfor. While the producer had knowledge that these sales were destined for the United States, Canfor was unable to link the purchases of lumber with a specific sale to the unaffiliated customer. Therefore, Canfor developed the weighting factor to determine, based on inventory location and control-number and the percentage of lumber at the specific inventory location and control-number, the percentage of lumber at the inventory location that was produced by Canfor. We are multiplying the weighting factor by the quantity of lumber in each sale to estimate the volume of Canfor-produced merchandise in each sale in the U.S. and home market and to eliminate the estimated non-Canfor produced merchandise.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include freight incurred in transporting merchandise to reload centers or VMI locations, as well as freight to U.S. customer, warehousing, brokerage and handling, and miscellaneous movement charges. We also deducted any discounts and rebates from the starting price.

In addition to these adjustments, for CEP sales, in accordance with section 772(d)(1) of the Act, we adjusted the starting price by the amount of direct

selling expenses and revenues (*e.g.,* credit expenses and interest revenue). We further reduced the starting price by the amount of indirect selling expenses incurred in the United States. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. Finally, we made additional corrections to the U.S. sales data based upon our findings at verification. *See* Memorandum from Vicki Schepker and Amber Musser regarding Canfor's Analysis for the Preliminary Results (June 2, 2004) (Canfor's Preliminary Calculation Memorandum).

(D) *Slocan*

Slocan made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Slocan to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of the record. We calculated a CEP for sales made by Slocan to the U.S. customer through VMI or reload centers after importation into the United States. EP and CEP sales were based on the packed, delivered, ex-mill, and FOB reload center prices, as applicable.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include domestic freight incurred in transporting merchandise to reload centers and to VMI customers, as well as freight to the U.S. customer, warehousing, U.S. brokerage and handling. We also deducted from the starting price any discounts and rebates.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*e.g.,* credit expenses, packing costs, commissions) and inventory carrying costs. Slocan did not report any other indirect selling expenses incurred in the United States. In accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. Finally, we made additional corrections to the U.S. sales data based upon our findings at verification. *See* Memorandum from Monica Gallardo and Martin Claessens regarding Slocan's Analysis for the Preliminary Results (June 2, 2004) (Slocan's Preliminary Calculation Memorandum).

(E) *Tembec*

Tembec made both EP and CEP transactions during the POR. We calculated an EP for sales where the merchandise was sold directly by Tembec to the first unaffiliated purchaser in the United States prior to importation. We calculated a CEP for sales made by Tembec to the U.S. customer through U.S. reload facilities or through VMI facilities. EP and CEP sales were based on the packed, delivered, FOB mill, FOB reload/VMI center and FOB destination prices, as applicable.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight incurred in transporting merchandise to Canadian reload centers and Canadian warehousing expenses, as well as freight to the U.S. customer or reload facility, U.S. warehousing expenses, and U.S. brokerage. We also deducted from the starting price any discounts and rebates.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*e.g.,* credit expenses) and indirect selling expenses. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. Finally, we made additional corrections to the U.S. sales data based upon our findings at verification. *See* Memorandum from Christopher Welty and David Layton regarding Tembec's Analysis for the Preliminary Results (June 2, 2004) (Tembec's Preliminary Calculation Memorandum).

(F) *Tolko*

Tolko made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Tolko to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of the record. We calculated a CEP for sales made by Tolko to the U.S. customer through VMI or reload centers after importation into the United States. EP and CEP sales were based on the packed, delivered, ex-mill, FOB mill, and FOB reload center prices, as applicable.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include freight incurred in transporting merchandise to reload centers or VMI locations, as well as freight to the U.S. customer, warehousing, brokerage and handling, and miscellaneous movement charges. We also deducted any discounts and rebates from the starting price.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*e.g.,* credit expenses, warranty expenses, and commissions) and imputed inventory carrying costs. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. Finally, we made additional corrections to the U.S. sales data based upon our findings at verification. *See* Memorandum from Keith Nickerson and James Kemp regarding Tolko's Analysis for the Preliminary Results (June 2, 2004) (Tolko's Preliminary Calculation Memorandum).

(G) *West Fraser*

West Fraser made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by West Fraser to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of the record. We calculated a CEP for sales made by WFFP to the U.S. customer through VMI or reload centers after importation into the United States. EP and CEP sales were based on the packed, delivered, ex-mill, and FOB reload center prices, as applicable.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include internal freight incurred in transporting merchandise to reload centers and to VMI customers, freight to the U.S. customer, warehousing, U.S. and Canadian brokerage, and inland insurance. We also deducted any discounts and rebates from the starting price.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses, (*e.g.,* credit expenses) and imputed inventory carrying costs. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. Finally, we made additional corrections to the U.S.

sales data based upon our findings at verification. *See* Memorandum from Salim Bhabhrawala and Keith Nickerson regarding West Fraser's Analysis for the Preliminary Results (June 2, 2004) (West Fraser's Preliminary Calculation Memorandum).

(H) *Weyerhaeuser*

Weyerhaeuser made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Weyerhaeuser to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of the record. We calculated a CEP for sales made by Weyerhaeuser to the U.S. customer through reload centers, VMIs, and Weyerhaeuser's affiliated reseller Weyerhaeuser Building Materials (WBM) after importation into the United States. EP and CEP sales were based on the packed, delivered, or FOB prices.

From its sales locations in the United States and Canada, Weyerhaeuser made sales of merchandise which had been commingled with that of other producers. Weyerhaeuser provided a weighting factor to determine the quantity of Weyerhaeuser-produced Canadian merchandise for these sales. We are multiplying the weighting factor by the quantity of lumber in each U.S. and home market sale to estimate the volume of Weyerhaeuser-produced merchandise in each transaction and to eliminate the estimated non-Weyerhaeuser-produced merchandise from our margin calculation.

In some cases, the other producers knew or had reason to know that the merchandise purchased by Weyerhaeuser was destined for the United States. For example, Weyerhaeuser routinely purchased merchandise and arranged freight from the producer's mill in Canada to the customer in the United States. We did not include such sales in our margin calculations. In other situations, Weyerhaeuser purchased merchandise and shipped it to U.S. warehouses where it was commingled with lumber produced by Weyerhaeuser. While the producer had knowledge that these sales were destined for the United States, Weyerhaeuser was unable to link the purchases with the specific sale to the unaffiliated customer. Therefore, Weyerhaeuser developed a second weighting factor to determine the quantity of the sale for which the third-party producer did not know, or have reason to know, that the merchandise was destined for the United States. We are multiplying the weighting factor by the quantity of lumber in each U.S. sale to estimate the volume of merchandise for which the producer did not have knowledge of destination in each transaction. We included this quantity in our margin calculation and excluded the estimated volume for which the producer did have knowledge of U.S. destination.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include freight to U.S. and Canadian warehouses or reload centers, warehousing expense in Canada and the United States, brokerage and handling, and freight to the final customer. We also deducted from the starting price any discounts, billing adjustments, and rebates.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including indirect selling expenses and direct selling expenses (*e.g.,* credit expenses). Additionally, in accordance with section 772(d)(3) of the Act, we deducted an amount for CEP profit. Finally, we made additional corrections to the U.S. sales data based upon our findings at verification. *See* Memorandum from James Kemp and Salim Bhabhrawala regarding Weyerhaeuser's Analysis for the Preliminary Results (June 2, 2004) (Weyerhaeuser's Preliminary Calculation Memorandum).

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. We found that all eight respondents had viable home markets for lumber.

To derive NV, we made the adjustments detailed in the *Calculation of Normal Value Based on Home-Market Prices* and *Calculation of Normal Value Based on Constructed Value*, sections below.

B. Cost of Production Analysis

Because the Department found in the Less Than Fair Value (LTFV) Investigation that six of the respondents made sales in the home market at prices below the cost of producing the subject merchandise and excluded such sales from NV, the Department determined that there were reasonable grounds to believe or suspect that softwood lumber sales were made in Canada at prices below the cost of production (COP) in this administrative review for these respondents. *See* section 773(b)(2)(A)(ii) of the Act. As a result, the Department has initiated a COP inquiry for these six respondents.

For Buchanan and Tolko, petitioner filed sales below cost allegations on December 22, 2003. Based on these allegations and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that Buchanan and Tolko made softwood lumber sales in Canada at prices below the COP in this administrative review. *See* Memorandum from Keith Nickerson and Erin Begnal, International Trade Compliance Analysts, to Gary Taverman, Director, regarding Allegation of Sales Below Cost of Production for Buchanan and Tolko (January 12, 2004). As a result, the Department has initiated a COP inquiry to determine whether Buchanan and Tolko made home-market sales at prices below their respective COPs during the POR within the meaning of section 773(b) of the Act.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses, selling expenses, packing expenses and interest expenses.

2. Cost Methodology

In a letter dated August 1, 2003, we solicited comments on certain threshold sales and cost questions from the parties. In response, the parties submitted their comments and rebuttals on August 8, 2003, and August 20, 2003, respectively. The threshold cost questions were primarily concerned with issues surrounding the use of a value-based cost allocation for lumber products in the context of an antidumping duty analysis. After considering the comments from all parties, we preliminarily decided on a method to follow for our section D questionnaire, issued on September 22, 2003. We solicited information from the respondents that allows for a value-based cost allocation methodology for wood and sawmill costs (*i.e.*, those costs

presumed to be joint costs), including by-product revenue. We allowed for the value allocation to cover species, grade, and dimension (*i.e.*, thickness, width and length). In our section D questionnaire, we requested that parties establish on the record the appropriateness of applying a value-based allocation to these physical characteristics. For production costs that are separately identifiable to specific products (*e.g.*, drying or planing costs), we directed parties to allocate such costs only to the associated products using an appropriate allocation basis (*e.g.*, MBF). In allocating wood and sawmill costs (including by-product revenue) based on value, costs associated with a particular group of co-products were to be allocated only to those products (*i.e.*, wood costs of a particular species should only be allocated to that species).

The issue of which prices (home market, U.S., or world-wide) to look to for the value allocation is of particular importance in a price-based antidumping analysis. After careful consideration, we directed the parties to use weighted-average world-wide prices in deriving the net realizable values (NRV) used for the allocation. We used world-wide prices to ensure that all products common to the joint production process, not just those sold in a particular market, are allocated their fair share of the total joint costs.

Finally, we directed the parties to perform the value allocation on the mill/facility level, using the company-wide weighted-average world-wide NRV for the specific products produced at the mill, along with the mill-specific production quantities.

During our analysis of the respondents' submissions, we noted that the presence of sales made on a random-length basis in our NRV data potentially distorts the value-based allocation. While the respondents have argued for a full value-based allocation, in part, to derive a difference-in-merchandise adjustment for dimensional differences, the presence of a significant number of random-length-tally sales masks any actual price differences between various lengths of lumber. In response to the problem of random-length sales, in our supplemental questionnaires dated February 2, 2004, and in subsequent telephone conversations documented in a follow-up Memorandum to the File, dated February 13, 2004, we requested that the respondents break out the random-length-tally sales separately from length-specific sales and to develop a two-tiered allocation method. *See* Memorandum from Michael Harrison to the File Regarding Tally Sales (February 13, 2004). First, we directed the respondents to perform the price-based cost allocation (including the random-length-tally sales) without regard to length. Second, we directed them to allocate the resulting product costs into length-specific costs. In performing the second step, we set out a hierarchy when looking for surrogate sales as allocation factors: (1) Length-specific sales of the identical product; (2) length-specific sales of products that are identical to the product except for width; and (3) length-specific sales of products identical to the product except for NLGA grade equivalent. For purposes of these preliminary results, we have used the programs and calculations provided by respondents except in the case of West Fraser. For West Fraser, this step was not necessary due to their ability to provide length-specific sales data. *See Treatment of Sales Made on a Random-Lengths Basis* section above. In addition, we excluded the price of purchased and resold lumber from our calculation of the respondent's per unit product costs.[11]

3. Individual Company Adjustments

We relied on the COP data submitted by each respondent in its cost questionnaire response, except in specific instances where based on our review of the submissions and our verification findings, we believe that an adjustment is required, as discussed below:

(A) *Abitibi*

1. We adjusted the byproduct revenue offset associated with the sale of wood chips to affiliates to reflect a market price in a given province.

2. We made the following adjustments to Abitibi's G&A expense rate:

(a) We excluded a miscellaneous revenue amount that they received for certain reimbursed legal fees related to the lumber dispute; and,

(b) We recalculated SG&A expenses on a non-consolidated basis.

3. We made the following adjustments to Abitibi's financial expense rate:

(a) We recalculated Abitibi's interest expense rate as the percentage of net interest expense over cost of sales, based on the consolidated financial statements of the respondent's parent company; and,

(b) We excluded the gain from discontinued operations from the calculation of interest expense, as this is not related to financial expenses but rather is the sale of a manufacturing entity.

4. We changed the methodology for computing the cost of input material produced by Abitibi's sawmills and sent internally to its further processing mills.

5. We reversed cost adjustments related to machine stress rated (MSR) products.

See Memorandum from Nancy Decker to Neal Halper regarding Abitibi's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results (June 2, 2004).

(B) *Buchanan*

No adjustments were necessary.

(C) *Canfor*

1. We revised the financial expense rate to disallow Lakeland's negative interest expense.

2. We revised the G&A rate to disallow Canfor's gain on the sale of land, a non-depreciable asset.

3. We set negative net realizable sales values to zero and kept them in the value allocation program.

See Memorandum from Heidi Schriefer to Neal Halper regarding Canfor's, Lakeland's and The Pas' Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results (June 2, 2004).

(D) *Slocan*

1. We included the species-specific stumpage adjustment in the control number-specific cost of manufacturing.

2. We recalculated Slocan's G&A rate using the unconsolidated company-wide G&A rates of the lumber-producing entities.

3. For purposes of the value-allocation program, we set negative production quantities to a value of one.

See Memorandum from Peter Scholl to Neal Halper regarding Slocan's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results (June 2, 2004).

(E) *Tembec*

1. We recalculated Tembec's G&A rate using the unconsolidated company-wide G&A rates of the lumber-producing entities.

2. We recalculated Tembec's financial expense rate by including all foreign exchange gains and losses.

3. We excluded from the value allocation of sawmill and wood costs a facility that sells but does not produce lumber.

4. We adjusted the byproduct revenue offset associated with the sale of wood chips to affiliates to reflect a market price in a given province.

See Memorandum from Shiekh Hannan to Neal Halper regarding

[11] We note that the vast majority of purchased lumber was excluded from our sales analyses as the producer had knowledge that the product was for export to the United States.

Tembec's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results (June 2, 2004).

(F) *Tolko*

1. We adjusted Tolko's total G&A expenses to include G&A depreciation and to exclude income related to the recovery of bad debts, royalty income and interest income. We adjusted the cost of goods sold used as the denominator of Tolko's G&A expense ratio to exclude G&A depreciation and non-lumber packing costs. In addition, we added the results of Gilbert Smith to the overall G&A rate calculation.

2. We adjusted the cost of goods sold used as the denominator of Tolko's financial expense ratio to exclude G&A depreciation and non-lumber packing costs. In addition, we added the results of Gilbert Smith to the overall interest expense rate calculation.

See Memorandum from Robert Greger to Neal Halper regarding Tolko's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results (June 2, 2004).

(G) *West Fraser*

1. We disallowed West Fraser's start-up adjustment at the Chasm sawmill, because it appears that the mill reached commercial production levels prior to the POR.

2. We adjusted West Fraser's interest expense ratio calculation to include the additional foreign exchange losses and to exclude interest income from long-term sources from the numerator of the calculation. Additionally, we adjusted the denominator of the interest expense ratio calculation to exclude packing expenses and G&A related depreciation expenses.

3. We adjusted the byproduct revenue offset associated with the sale of wood chips to affiliates to reflect a market price in a given province.

4. We revised West Fraser's G&A expense rate to include depreciation expense related to G&A operations for two of its mills.

See Memorandum from Michael Harrison to Neal Halper regarding West Fraser's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results (June 2, 2004).

(H) *Weyerhaeuser*

1. We adjusted wood costs to reflect a value allocation for the logs for the POR.

2. We re-allocated energy and common plant overhead costs among major processes within the sawmill.

3. For BC Coastal, we excluded from wood cost going forward into the sawmills miscellaneous revenue and expenses and non-operating income and expense items that did not relate to wood costs.

See Memorandum from Taija Slaughter to Neal Halper regarding Weyerhaeuser's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results (June 2, 2004).

4. Test of Home-Market Sales Prices

We compared the adjusted weighted-average COP for each respondent to its home-market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the revised COP to the home-market prices, less any applicable movement charges, export taxes, discounts and rebates.

5. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to the POR average COP, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

For all respondents, we found that more than 20 percent of the home-market sales of certain softwood lumber products within an extended period of time were made at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining normal value, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of softwood lumber for which there were no useable home-market sales in the ordinary course of trade, we compared EPs or CEPs to the CV in accordance with section 773(a)(4) of the Act. *See Calculation of Normal Value Based on Constructed Value* section below.

C. Calculation of Normal Value Based on Home-Market Prices

We determined price-based NVs for each company as follows. For all respondents, we made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and section 351.410 of the Department's regulations. We also made adjustments, in accordance with section 351.410(e) of the Department's regulations, for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not in the other (the ''commission offset''). Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology. Company-specific adjustments are described below.

(A) *Abitibi*

We based home-market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price for foreign inland freight, warehousing expenses, insurance, discounts, rebates, and billing adjustments. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home-market sales (*e.g.*, credit and advertising expenses) and adding U.S. direct selling expenses (*e.g.*, credit expenses). For comparisons made to CEP sales, we deducted home-market direct selling expenses but did not add U.S. direct selling expenses. In addition, we made adjustments to the home-

market prices based upon our findings at verification. *See* Abitibi's Preliminary Calculation Memorandum.

(B) *Buchanan*

We based home-market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price by the amount of billing adjustments, early payment discounts, and movement expenses including inland freight, warehousing, miscellaneous movement charges, and a movement variance. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home-market sales (*e.g.*, credit expenses) and adding U.S. direct selling expenses (*e.g.*, credit expenses). For comparisons made to CEP sales, we deducted home-market direct selling expenses but did not add U.S. direct selling expenses. In addition, we made adjustments to the home-market prices based upon our findings at verification. *See* Buchanan's Preliminary Calculation Memorandum.

(C) *Canfor*

Canfor commingled self-produced with purchased lumber in home-market sales in the same manner as it did in U.S. sales, as described in the previous section. We used Canfor's weighting factor to determine the percentage of lumber in the commingled sales that was supplied by other producers. We did not include these quantities when calculating the weight-averaged home-market prices for comparison to EP or CEP.

We based home-market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price by the amount of billing adjustments, early payment discounts, rebates, interest revenue, and movement expenses (including inland freight, warehousing, and miscellaneous movement charges). For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home-market sales (*e.g.*, credit and warranty expenses) and adding U.S. direct selling expenses (*e.g.*, credit, advertising, and warranty expenses). For comparisons made to CEP sales, we deducted home-market direct selling expenses and revenue but did not add U.S. direct selling expenses. In addition, we made adjustments to the home-market prices based upon our findings at verification. *See* Canfor's Preliminary Calculation Memorandum.

(D) *Slocan*

We based home-market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price by the amount of billing adjustments, early payment discounts, rebates, inland freight to warehouse, inland freight to customer, and freight rebates. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home-market sales and adding U.S. direct selling expenses (*e.g.*, credit expenses) and adding direct selling expenses. For comparisons made to CEP sales, we deducted home-market direct selling expenses but did not add U.S. direct selling expenses. In addition, we made adjustments to the home-market prices based upon our findings at verification. *See* Slocan's Preliminary Calculation Memorandum.

(E) *Tembec*

We based home-market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price for billing adjustments, early payment discounts, rebates, interest revenue, freight from the mill to the reload center or VMI, reload center expenses and freight to the final customer. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses for home-market sales (*e.g.*, credit expenses) and adding U.S. direct selling expenses (*e.g.*, credit expenses). For comparisons made to CEP sales, we deducted home-market direct selling expenses but did not add U.S. direct selling expenses. In addition, we made adjustments to the home-market prices based upon our findings at verification. *See* Tembec's Preliminary Calculation Memorandum.

(F) *Tolko*

We based home-market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price by the amount of billing adjustments, early payment discounts, interest revenue, and movement expenses including inland freight, warehousing, and miscellaneous movement charges. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home-market sales (*e.g.*, credit and warranty expenses) and adding U.S. direct selling expenses (*e.g.*, credit and warranty expenses). For comparisons made to CEP sales, we deducted home-market direct selling expenses but did not add U.S. direct selling expenses. In addition, we made adjustments to the home-market prices based upon our findings at verification. *See* Tolko's Preliminary Calculation Memorandum.

(G) *West Fraser*

We based home-market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price for billing adjustments, early payment discounts, inland freight to the warehouse, warehousing expenses, special handling charges, inland freight to customers, freight rebates, and fuel surcharges.

For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home-market sales and adding U.S. direct selling expenses (*e.g.*, credit expenses). For comparisons made to CEP sales, we deducted home-market direct selling expenses but did not add U.S. direct selling expenses. In addition, we made adjustments to the home-market prices based upon our findings at verification. *See* West Fraser's Preliminary Calculation Memorandum.

(H) *Weyerhaeuser*

Weyerhaeuser commingled self-produced with purchased lumber in home-market sales in the same manner as it did in U.S. sales, as described in the previous section. We used Weyerhaeuser's weighting factor to determine the percentage of lumber in the commingled sales that was supplied by other producers. We did not include these quantities when calculating the weight-averaged home-market prices for comparison to EP or CEP.

We based home-market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price for discounts, rebates, billing adjustments, freight to the warehouse/reload center, warehousing expenses, freight to the final customer, and direct selling expenses including minor remanufacturing performed at Softwood Lumber Business (SWL) reloads and WBM locations. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home-market sales (*e.g.*, credit expenses) and adding U.S. direct selling expenses (*e.g.*, credit expenses). For comparisons made to CEP sales, we deducted home-market direct selling expenses but did not add U.S. direct selling expenses. In addition, we made adjustments to the home-market prices based upon our findings at verification. *See* Weyerhaeuser's Preliminary Calculation Memorandum.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those

models of softwood lumber products for which we could not determine the NV based on comparison-market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on the CV.

Section 773(e) of the Act provides that the CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the *Cost of Production Analysis* section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act. We used U.S. packing costs as described in the *Export Price* section, above.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home-market sales from, and adding U.S. direct selling expenses to, CV. For comparisons to CEP, we made COS adjustments by deducting from CV direct selling expenses incurred on home-market sales.

E. Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See* Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from each respondent about the marketing stages involved in the reported U.S. and comparison-market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying LOTs for EP and comparison-market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. We expect that, if claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar.

In this review, we determined the following, with respect to the LOT and CEP offset, for each respondent:

(A) *Abitibi*

Abitibi reported three channels of distribution in the home market. The first channel of distribution (channel 1) included direct sales from Canadian mills or reload centers to customers. The second channel of distribution (channel 3) consisted of VMI/consignment sales made to large retailers, distributors, building materials manufacturers and other large lumber producers. The third channel of distribution (channel 4) consisted of e-commerce sales. We compared selling functions in each of these three channels of distribution and found that the sales process, freight services and inventory maintenance activities were similar. Accordingly, we preliminarily determine that home-market sales in these three channels of distribution constitute a single LOT.

In the U.S. market, Abitibi had both EP and CEP sales. Abitibi reported EP sales to end-users and distributors through two channels of distribution. These two EP channels of distribution are direct sales from Canadian mills or reload centers to customers (channel 1), and VMI/consignment sales made to large retailers, distributors, building materials manufacturers and other large lumber producers (channel 2). There are no e-commerce sales in the U.S. market (channel 3). Because the sales process, freight services and inventory maintenance were similar, we preliminarily determine that EP sales in these two active channels of distribution during the review constitute a single LOT, which is identical to the home-market LOT.

With respect to CEP sales, Abitibi reported these sales through two channels of distribution. The first (channel 2) included direct sales from U.S. reload centers to customers. The second (channel 3) consisted of VMI/consignment sales made to large retailers, distributors, building materials manufacturers and other large lumber producers. The selling functions related to freight arrangements and inventory maintenance for these two channels of distribution were not significantly different and, therefore, we determined there is only one CEP LOT.

In determining whether separate LOTs exist between U.S. CEP sales and home-market sales, we examined the selling functions in the distribution chains and customer categories reported in both markets. In our analysis of LOTs for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

Abitibi's sales to end-users and distributors in the home-market and in the U.S. market do not involve significantly different selling functions. Abitibi's Canadian-based services for CEP sales were similar to the single home-market LOT with respect to sales process and warehouse/inventory maintenance. Because we found the LOT for CEP sales to be similar to the home-market LOT, we made no LOT adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(B) *Buchanan*

Buchanan reported multiple channels of distribution in the home market, with six categories of unaffiliated customers. Buchanan made sales to customers in Canada via the affiliated sales agent, Buchanan Lumber Sales, Inc. (BLS), direct from the mill, through a reload yard, or it made use of resellers in certain instances. We compared selling functions in each of these channels of distribution and found that the sales process and freight services were similar. Accordingly, we preliminarily determine that home-market sales in

these channels of distribution constitute a single LOT.

In the U.S. market, Buchanan had both EP and CEP sales. Buchanan reported EP sales to end-users and distributors, via the affiliated sales agent BLS, through multiple channels of distribution, including mill-direct sales, sales that traveled through reload facilities, and sales made via resellers. These EP channels of distribution do not significantly differ from the channels of distribution in the home market. Because the sales process and freight services were similar, we preliminarily determine that EP sales in these six channels of distribution constitute a single LOT, which is identical to the home-market LOT.

With respect to CEP sales, Buchanan reported those sales that traveled through a U.S. reload yard. In determining whether separate LOTs exist between U.S. CEP sales and home-market sales, we examined the selling functions in the distribution chains and customer categories reported in both markets. In our analysis of LOTs for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

Buchanan's sales in the home and U.S. markets do not involve significantly different selling functions. Buchanan's Canadian-based services for its CEP sales were similar to the single home-market LOT with respect to sales process and freight arrangements. Because we found the LOT for CEP sales to be similar to the home-market LOT, we made no LOT adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(C) *Canfor*

Canfor reported three channels of distribution in the home market,[12] with seven customer categories. The first channel of distribution (channel 1) includes sales where merchandise was shipped directly from one of Canfor's sawmills to a Canadian customer. The second channel of distribution (channel 2) consists of sales made through reload centers or remanufacturing operations, where merchandise was shipped from the primary mill through one or more lumber-handling and inventory yards and/or secondary manufacturing facilities before delivery to the end customer. Finally, the third channel of distribution (channel 3) includes sales made pursuant to VMI programs.

We compared the selling functions in these three channels of distribution and found that they differed only slightly in that certain services were provided for VMI customers that were not provided to other channels including: Product brochures, inventory management, education on environmental issues, and in-store training. Also, office wholesalers (wholesalers that do not hold inventory), one of Canfor's customer categories, only purchased lumber through channel 1. In addition, home centers requested custom packing, wrapping, and bar coding. With respect to the sales process, freight and delivery services, warranty services, custom-packing services, providing technical information, inspecting quality claims, and participating in trade shows, the sales to all customer categories in all channels were similar in all respects. Accordingly, we preliminarily determine that home-market sales in these three channels of distribution constitute a single LOT.

In the U.S. market, Canfor had both EP and CEP sales. Canfor reported EP through all three channels of distribution. These three EP channels of distribution do not significantly differ from the channels of distribution in the home market. Accordingly, we preliminarily determine that EP sales in these three channels of distribution constitute a single LOT that is identical to the home-market LOT.

With respect to CEP sales, Canfor reported that these sales were made through channels 2 (U.S. reload facilities) and 3 (VMI customers). The selling functions performed for these two channels of distribution were not significantly different in terms of freight arrangements, inventory management and warranty services; therefore, we determined there is only one CEP LOT.

Canfor's sales in the home and U.S. markets do not involve significantly different selling functions. Canfor's Canadian-based services for its CEP sales were similar to the single home-market LOT with respect to sales process and inventory management. Because we found the LOT for CEP sales to be similar to the home-market LOT, we made no LOT adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(D) Slocan

Slocan reported two channels of distribution in the home market. The first channel (channel 1) is comprised of direct sales and shipments to customers, and represents the large majority of sales. The second (channel 2) consisted of sales through reload centers. We compared the selling functions in the two channels of distribution and found that Slocan's sales process was identical across both channels. In addition, freight services and inventory maintenance activities were similar. Accordingly, we preliminarily determine that home-market sales in these two channels of distribution constitute a single LOT.

In the U.S. market, Slocan had both EP and CEP sales. Slocan reported EP sales through two channels of distribution: (1) Direct sales to customers; and (2) settlements of futures contracts. The first, coded channel 1, included direct sales and shipments to customers. All other EP sales were ex-pit settlements of SPF lumber futures positions on the Chicago Mercantile Exchange (CME), *i.e.*, sales settled outside the pit of the CME. Slocan treats the CME like a customer. These sales, coded as channel 4, effectively use the same channel of distribution as channel 1 once the sale is arranged. Although the sales process for channel 4 differs somewhat from that of other EP sales and home-market sales, the selling functions and channels of distribution for both channel 1 and channel 4 are similar in that they are minimal. Therefore, we preliminarily determine that EP sales in the U.S. market constitute a single LOT.

On this basis, it appears that the LOT of Slocan's home-market sales do not involve significantly different selling functions than the LOT of the company's EP sales, and that the distinctions do not constitute a difference in LOT between the two markets.

Slocan's CEP sales were reported in two channels of distribution: (1) Sales through reload operations; and (2) sales through VMI programs. The first, coded as channel 2, consisted of sales shipped from reload centers in the United States operated by unaffiliated parties. Unlike home-market and EP sales, the shipment instruction would go to the reload center rather than the mill. All channel 2 sales were reported as CEP sales. Slocan also reported some VMI sales, coded as channel 3, in which inventory was stored by the customer, although Slocan held title to the merchandise until it was sold. Slocan's Canada-based services for its CEP sales include order taking, issuing invoices to purchasers, and shipment instructions and inventory management for channel 2 sales. With respect to channel 3 sales, Slocan's involvement included the collection of weekly invoices of withdrawals from inventory and

[12] We note that, in its August 29, 2003, section A response, Canfor described three channels of distribution. However, Canfor reported sales through reload centers and sales through remanufacturing facilities as separate channels of distribution in its October 20, 2003, section B and C response, thereby reporting four channels of distribution.

keeping track of inventory levels. Slocan did not report any indirect selling expenses related to economic activity in the United States, other than imputed inventory carrying costs for either of these channels. Given the similarity of selling functions between these two channels of distribution, we concluded, preliminarily, that they constituted a single LOT.

In determining whether separate LOTs existed between U.S. CEP sales and home-market sales, we examined the selling functions for the chains of distribution and customer categories reported in the home market and the United States. In determining LOTs for CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

We found the CEP LOT to be similar to home-market LOT. Both were similar with respect to sales process and warehouse/inventory maintenance. Therefore, where possible, we matched CEP sales to NV based on home-market sales and made no LOT adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(E) Tembec

In Tembec's narrative response on its channels of distribution and in its sales databases, Tembec originally reported four channels of distribution applicable to both markets.[13] Tembec originally reported these four channels of trade based on customer categories. Channel 1 sales were distributed through office wholesalers who purchased the lumber generally on an FOB mill basis, and shipped it to a final customer, of whom Tembec had no knowledge. Channel 2 sales included sales made to stocking wholesale distributors which were normally shipped to the customer's facility. Channel 3 sales involved direct sales to building material/retail dealers. Channel 4 sales involved material for the further manufacture of finished or semi-finished products by remanufacturers.

The Department issued supplemental questions on Tembec's original presentation of four channels of distribution. In its narrative responses for home-market and U.S. sales, and in its supplemental narrative response on channels of distribution, Tembec revised its analysis and reported two channels of distribution in each market.[14] The first channel of distribution (channel 1) included direct sales to customers which included sales to wholesalers who took title to—but not physical possession of—the lumber and resold it to end-users. The second channel of distribution (channel 2) consisted of sales which were shipped through a reload center en route to the customer. We found that the two channels of distribution were similar with respect to both the sales process and freight services. Accordingly, we preliminarily determine that home-market sales in these two channels of distribution constitute a single LOT.

In the U.S. market, Tembec had both EP and CEP sales. Tembec reported EP sales to end-users and distributors through the same two channels of distribution reported for home-market sales. These two channels of distribution as they apply to EP sales do not differ from the two channels of distribution in the home market. Because the sales process, freight services and inventory maintenance were similar, we preliminarily determine that EP sales in these two channels of distribution constitute a single LOT which is identical to the home-market LOT.

With respect to CEP sales, the Department has determined that Tembec made these sales through one channel of distribution, which consisted of U.S. sales that either pass through a U.S. reload center en route to the customer, or go to a VMI. In determining whether separate LOTs exist between U.S. CEP sales and home-market sales, we examined the selling functions reported for different distribution chains and customer categories in the home market and the United States.

Tembec's sales to end-users and distributors in the home market and in the U.S. market do not involve significantly different selling functions. Tembec's Canadian-based services for CEP sales were similar to the single home-market LOT with respect to sales process and freight arrangements. Tembec normally provides transportation to the customer. Tembec provided the same services for VMI sales. Because we found the LOT for CEP sales to be similar to the home-market LOT, we made no LOT adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(F) Tolko

Tolko reported three channels of distribution in the home market. The first channel of distribution (channel 1) included direct sales made by Tolko's North American Lumber sales, Brokerage, and Tolko Distribution Sales (TDS) units from Tolko's Canadian mill production and may have been shipped either directly or through a reload center to customers. The second channel of distribution (channel 2) consisted of sales made by Tolko's Brokerage and TDS sales units from inventory locations that contain softwood lumber produced by Tolko and various suppliers. The third channel of distribution (channel 3) consisted of sales made through its North American Lumber sales unit on a customer collect basis. We compared sales process in each of the three channels of distribution and found that, although the first two channels had similar freight services and inventory maintenance whereas the third channel sales were purchases made on an f.o.b. mill basis, the selling functions were similar for each channel in that they were minimal and the difference in freight alone does not merit a separate LOT. Accordingly, we preliminarily determine that home-market sales in these three channels of distribution constitute a single LOT.

In the U.S. market, Tolko had both EP and CEP sales. Tolko reported EP sales to U.S. customers through one channel of distribution. Similar to the home market, the first channel of distribution (channel 1) included direct sales made by Tolko's North American Lumber sales, Brokerage, and TDS units from Tolko's Canadian mill production and may be shipped either directly or through a reload center to customers.

With respect to CEP sales, Tolko reported these sales through two channels of distribution. The first (channel 2) included sales by Tolko's North American Lumber and Brokerage sales units from U.S. inventory reload centers to customers. The second (channel 3) consisted of sales made to U.S. companies pursuant to VMI contracts. The selling functions related to freight arrangements and inventory maintenance for these two channels of distribution were not significantly different and, therefore, we determined there is only one CEP LOT. In determining whether separate LOTs exist between U.S. CEP sales and home-market sales, we examined the selling functions in the distribution chains and customer categories reported in both markets.

Tolko's sales in the home and U.S. markets do not involve significantly different selling functions. Tolko's Canadian-based services for its CEP sales were similar to the single home-market LOT with respect to sales process and inventory management.

[13] *See* Tembec Section A Response, August 29, 2003, at page A–12.

[14] *See* Tembec Section B and C Responses, October 20, 2003, at pages B–12 and C–12, and Tembec Supplemental Response, November 5, 2003. We note that in the actual sale databases Tembec continues to report four channel classifications.

Because we found the LOT for CEP sales to be similar to the home-market LOT, we made no LOT adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(G) West Fraser

West Fraser reported three channels of distribution in the home market, with ten customer categories, of which only eight were used during the POR. The first channel of distribution (channel 1) included sales made directly to end-users and distributors from a mill or origin reload. The second channel of distribution (channel 2) consisted of sales made to end-users and distributors through unaffiliated inventory location. The third channel of distribution (channel 3) consisted of sales made to end-users and distributors through VMI programs. We compared these three channels of distribution and found that, while selling functions differed slightly with respect to the arrangement of freight and delivery for origin reload centers in channel 3, and the payment of commissions for channel 2 and 3 sales, all three channels were similar with respect to sales process, packing, freight services, inventory services, warranty services, and early payment discount services. Accordingly, we found that home-market sales in these three channels of distribution constitute a single LOT.

In the U.S. market, West Fraser had both EP and CEP sales. West Fraser reported EP sales to end-users and distributors through four channels of distribution and ten customer categories, of which only eight were used during the POR. The first two EP channels of distribution did not differ from the first two channels of distribution within the home market, except with respect to paper processing services in connection with brokerage and handling.

With respect to CEP sales, West Fraser's channel of distribution (channel 3) included sales to end-users and distributors through West Fraser's subsidiary, WFFP. The company WFFP is incorporated in the United States and was specifically created to act as the importer of record and hold title to lumber sold in the United States. It has no facilities or employees in the United States. These sales were made from unaffiliated destination reload centers in the United States by sales people located in Canada. In determining whether separate LOTs actually existed between CEP sales and home-market sales, we examined the selling functions in the different distribution chains and customer categories reported in the home market and the United States.

West Fraser's Canadian-based services for its CEP sales include order-taking, invoicing and inventory management. West Fraser's Canadian sales agents occasionally arrange for reload center excess storage and freight from U.S. destination reload centers to unaffiliated end users. Any services occurring in the United States are provided by the unaffiliated reload centers, which are paid a fee by West Fraser. These expenses have been deducted from the CEP starting price as movement expenses.

West Fraser's sales to end-users and distributors in the home market and the importers in the U.S. market do not involve significantly different selling functions. The CEP LOT was similar to the single home-market LOT with respect to sales process, and inventory maintenance. We found the LOT for CEP sales similar to the home-market LOT. Therefore, we made no LOT adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(H) Weyerhaeuser

Weyerhaeuser reported six channels of distribution in the home market, with seven customer categories.[15] The channels of distribution are (1) mill-direct sales; (2) VMI sales; (3) mill-direct sales made through WBM; (4) sales made out of inventory by WBM; (5) sales invoiced from Canadian reloads; and (6) sales from B.C. Coastal Group's (BCC) processing mills. To determine whether separate levels of trade exist in the home market, we examined the selling functions, the chain of distribution, and the customer categories reported in the home market.

For each of its channels of distribution, Weyerhaeuser's selling functions included invoicing, freight arrangement, quality claims, marketing and promotional activities, market information, advanced shipping notices, and order status information. For each channel, except WBM sales from inventory, Weyerhaeuser offered certification of adherence to sustainable forestry initiatives. Weyerhaeuser's sales made out of inventory by WBM appear to involve substantially more selling functions, and to be made at a different point in the chain of distribution than mill-direct sales. WBM functions as a distributor for BCC and SWL and operates as a reseller. WBM operates a number of customer service centers (CSC) throughout Canada where it provides local sales offices and just-in-time inventory locations for customers. Generally, BCC and SWL make the sale to WBM, after which the merchandise is sold to the final customer by WBM's local sales force. Freight must be arranged to the WBM inventory location and then to the final customer. CSCs will also engage in minor further manufacturing to fill a customer order, if the desired product is not in inventory. WBM also sells from inventory through its trading group locations (TGs). The TGs maintain some sales offices of their own and have sales personnel at some CSCs.

WBM also sells on a mill-direct basis. Although double-invoicing (*i.e.,* the mill invoices WBM and WBM invoices the final customer) is involved, there is no need to maintain local just-in-time inventory or arrange freight twice. Therefore, we do not consider mill-direct sales made through WBM to be at a separate LOT from mill-direct sales made by SWL and BCC. Additionally, we compared sales invoiced from Canadian reloads (channel 5) and sales made from BCC's processing mills (channel 6) to the mill direct sales and found that the selling activities did not differ to the degree necessary to warrant separate LOTs.

Sales made through VMI arrangements also appear to involve significantly more selling activities than mill-direct sales. SWL has a designated sales team responsible for VMI sales which works with the customers to develop a sales volume plan, manages the flow of products and replenishing process, and aligns the sales volume plan with Weyerhaeuser's production plans. It also offers extra services such as bar coding, cut-in-two, half packing and precision end trimming.

We analyzed Weyerhaeuser's seven customer categories in relation to the channels of distribution and application of selling functions. Each channel services multiple customer categories with channels 1, 2, and 4 serving at least five customer categories. We found there were not significant differences in the application of selling functions by customer and instead the activities depended on the channel of distribution. Therefore, customer category is not a useful indicator of LOT for Weyerhaeuser's home market sales.

Because both VMI and WBM inventory sales involve significantly more selling functions than the mill-direct sales, we consider them to be at a more advanced LOT for purposes of the preliminary results. While the selling activities for VMI and WBM inventory sales are not identical, the principal selling activity for both is just-in-time inventory maintenance. Thus,

[15] Weyerhaeuser also reported a customer category for employee sales in the home market. However, we removed these sales from the margin calculation and LOT analysis.

we consider them to be at the same LOT. Accordingly, we find that there are two LOTs in the home market, mill-direct (HM1) (encompassing channels 1, 3, 5, and 6) and VMI and WBM sales out of inventory (HM2) (encompassing channels 2 and 4).

Weyerhaeuser reported seven channels of distribution in the U.S. market, with eight customer categories. The channels of distribution are (1) mill-direct sales; (2) VMI sales; (3) WBM direct sales; (4) WBM U.S. inventory sales; (5) SWL sales through U.S. reloads; (6) sales invoiced from Canadian reloads; and (7) sales from BCC's processing mills. In determining whether separate LOTs existed between U.S. and home market sales, we examined the selling functions, the chain of distribution, and customer categories reported in the U.S. market.

With regard to the mill-direct sales to the United States, Weyerhaeuser has the same selling activities as it does for mill-direct sales in Canada. Likewise, we consider sales invoiced from Canadian reloads (channel 6) and sales made from BCC processing mills (channel 7) to be at the same LOT as the direct sales. Therefore, where possible, we matched the U.S. mill-direct sales (U.S.1) (encompassing channels 1, 3, 6, and 7) to the Canadian mill-direct sales (HM1). The other channels consist of CEP sales as addressed below.

Weyerhaeuser's Canadian selling functions for VMI sales to the United States include the same selling functions performed for home market VMI sales, as described above. Although the VMI warehouses are located in the United States, most, if not all, of the associated selling functions appear to be performed in Canada. Therefore, even after the deduction of U.S. expenses and profit we find that the U.S. VMI sales (U.S.2) are made at the same LOT as home market VMI sales (HM2), and we have matched them accordingly.

SWL's sales through U.S. reloads also appear to have most of their selling functions occurring in Canada. While Weyerhaeuser states that it maintains just-in-time inventory for its U.S. customers at these reloads, it does not maintain local sales offices, and the sales do not involve a reseller. Therefore, these sales do not appear to be at a different point in the chain of distribution than mill-direct sales in Canada. In addition, SWL does not appear to offer the same services from its U.S. reloads that it offers its VMI customers. Therefore, for purposes of the preliminary results, we consider SWL's sales through U.S. reloads to be at the same LOT as its mill-direct sales (U.S.1 and HM1), and we have matched them accordingly.

With regard to WBM's U.S. inventory sales, significant selling activities occur in the United States, such as maintaining local sales offices and just-in-time inventory, and arranging freight to the final customer. The selling functions occurring in Canada are the same selling functions performed for mill-direct sales. Therefore, after the deduction of U.S. expenses and profit, we find that WBM's U.S. inventory sales are at the same LOT as mill-direct sales (U.S.1 and HM1), and we have matched them accordingly.

As was the case with Canadian sales, each U.S. channel of distribution services multiple customer categories. Channels 1–5 have buyers from at least five customer categories. The other three channels have two to four customer categories each but also realized significantly fewer sales during the POR. We found there were not significant differences in the application of selling functions by customer and instead the activities depended on the channel of distribution. Therefore, customer category is not a useful indicator of LOT for Weyerhaeuser's U.S. sales.

Because we found a pattern of consistent price differences between LOTs, where we matched across LOTs, we made an LOT adjustment under section 773(a)(7)(A) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average margins exist for the period May 22, 2002, through April 30, 2003:

Producer	Weighted-average margin (percentage)
Abitibi	2.97
(and its affiliates Produits Forestiers Petit Paris Inc., Produits Forestiers La Tuque Inc., and Societe En Commandite Scierie Opticwan)	
Buchanan	4.80
(and its affiliates Atikokan Forest Products Ltd., Long Lake Forest Products Inc., Nakina Forest Products Limited [16], Buchanan Distribution Inc., Buchanan Forest Products Ltd., Great West Timber Ltd., Dubreuil Forest Products Ltd., Northern Sawmills Inc., McKenzie Forest Products Inc., Buchanan Northern Hardwoods Inc., Northern Wood, and Solid Wood Products Inc.)	
Canfor*	2.06
(and its affiliates Lakeland Mills Ltd., The Pas Lumber Company Ltd., Howe Sound Pulp and Paper Limited Partnership, and Skeena Cellulose)	
Slocan	1.64
Tembec	10.21
(and its affiliates Marks Lumber Ltd., Excel Forest Products, Les Industries Davidson Inc., Produits Forestiers Temrex Limited Partnership [17])	
Tolko	3.68
(and its affiliates Gilbert Smith Forest Products Ltd. Compwood Products Ltd., and Pinnacle Wood Products Ltd.)	
West Fraser	1.08
(and its affiliates West Fraser Forest Products Inc., and Seehta Forest Products Ltd.)	
Weyerhaeuser	8.38
(and its affiliates Weyerhaeuser Saskatchewan Ltd., and Monterra Lumber Mills Limited [18])	
Review-Specific Average Rate Applicable to the Following Companies:	

Producer	Weighted-average margin (percentage)
2 by 4 Lumber Sales Ltd.	
440 Services Ltd.	
582912 B.C. Ltd. (DBA Paragon Wood Products, Lumby)	
A.J. Forest Products Ltd.	
A.L. Stuckless & Sons Limited	
Abitibi-LP Engineered Wood, Inc.	
Age Cedar Products	
Alberta Spruce Industries Ltd.	
Allmac Lumber Sales Ltd.	
Alpa Lumber Mills Inc.	
American Bayridge Corporation	
Apex Forest Products Inc.	
Apollo Forest Products Ltd.	
Aquila Cedar Products Ltd.	
Arbutus Manufacturing Ltd.	
Armand Duhamel et fils Inc.	
Ashley Colter (1961) Limited	
Aspen Planers Ltd.	
Atco Lumber Ltd.	
AWL Forest Products	
Bakerview Forest Products Inc.	
Barrett Lumber Company Limited	
Barrette-Chapais Ltee	
Beaubois Coaticook Inc.	
Blanchette et Blanchette Inc.	
Bloomfield Lumber Limited	
Bois Cobodex (1995) Inc.	
Bois Daaquam Inc.	
Bois d'oeuvre Cedrico Inc.	
Bois Neos Inc.	
Bois Omega Ltee	
Bois Rocam Inc.	
Boisaco Inc.	
Boucher Forest Products Ltd.	
Bowater Canadian Forest Products Incorporated	
Bridgeside Higa Forest industries Ltd.	
Brittania Lumber Company Limited	
Brouwer Excavating Ltd.	
Brunswick Valley Lumber Inc.	
Buchanan Lumber	
Burrows Lumber Inc.	
BW Creative Wood	
Byrnexco Inc.	
C.E. Harrison & Sons Ltd.	
Caledon Log Homes (FEWO)	
Caledonia Forest Products Ltd.	
Cambie Cedar Products Ltd.	
Canadian Forest Products Ltd.	
Canadian Lumber Company Ltd.	
Cando Contracting Ltd.	
Canex International Lumber Sales Ltd.	
Canwel Distribution Ltd.	
Canyon Lumber Company Ltd.	
Cardinal Lumber Manufacturing & Sales Inc	
Carrier Forest Products Ltd.	
Carrier Lumber Ltd.	
Carson Lake Lumber	
Cedarland Forest Products Ltd.	
Central Cedar	
Centurion Lumber Manufacturing (1983) Ltd.	
Chaleur Sawmills	
Cheminis Lumber Inc.	
Cheslatta Forest Products Ltd.	
Chisholm's (Roslin) Ltd.	
Choicewood Products Inc.	
City Lumber Sales & Services Ltd.	
Clair Industrial Development Corp. Ltd. (Waska)	
Clareco Industries Ltd	
Claude Forget Inc.	
Clearwood Industries Ltd.	
Coast Clear Wood Ltd.	
Colonial Fence Mfg. Ltd.	

Producer	Weighted-average margin (percentage)
Comeau Lumber Ltd.	
Commonwealth Plywood Co. Ltd.	
Cooper Creek Cedar Ltd.	
Cooperative Forestiere Laterriere	
Cottle's Island Lumber Co. Ltd.	
Coventry Forest Products Ltd.	
Cowichan Lumber Ltd	
Crystal Forest Industries Ltd.	
Curley's Cedar Post & Rail	
Cushman Lumber Co. Inc.	
D.S. McFall Holding Ltd.	
Dakeryn Industries Ltd.	
Delco Forest Products Ltd.	
Delta Cedar Products Ltd.	
Devlin Timber Company (1992) Limited	
Devon Lumber Co. Ltd.	
Doman Forest Products Limited	
Doman Industries Limited	
Doman Western Lumber Ltd.	
Domexport Inc.	
Domtar Inc.	
Downie Timber Ltd.	
Duluth Timber Company	
Dunkley Lumber Ltd.	
E. Tremblay et fils Ltee	
E.R. Probyn Export Ltd.	
Eacan Timber Canada Ltd.	
Eacan Timber Limited	
Eacan Timber USA Ltd.	
East Fraser Fiber Co. Ltd.	
Eastwood Forest Products Inc.	
Edwin Blaikie Lumber Ltd.	
Elmira Wood Products Limited	
Elmsdale Lumber Company Limited	
Evergreen Empire Mills Incorporated	
EW Marketing	
F.L. Bodogh Lumber Co. Ltd.	
Falcon Lumber Limited	
Faulkener Wood Specialities Ltd.	
Fawcett Lumber	
Federated Co-operative Limited	
Finmac Lumber Limited	
Fontaine Inc (dba J.A. Fontaine et fils Incorporee)	
Fraser Inc.	
Fraser Pacific Forest Products Inc.	
Fraser Pacific Lumber Company	
Fraser Pulp Chips Ltd.	
Fraserview Cedar Products Ltd	
Frontier Mills Inc.	
Georgetown Timber Limited	
Georgian Bay Forest Products Ltd.	
Gestofor Inc.	
Gogama Forest Products	
Goldwood Industries Ltd.	
Goodfellow Inc.	
Gorman Bros. Lumber Ltd.	
Great Lakes MSR Lumber Ltd.	
Greenwood Forest Products (1983) Ltd.	
Groupe Cedrico Inc.	
H.A. Fawcett & Son Limited	
H.J. Crabbe & Sons Ltd.	
Haida Forest Products Ltd.	
Hainesville Sawmill Ltd.	
Harry Freeman & Son Ltd.	
Hefler Forest Products Ltd.	
Hi-Knoll Cedar Inc.	
Hilmoe Forest Products Ltd.	
Hoeg Bros. Lumber Ltd.	
Holdright Lumber Products Ltd.	
Hudson Mitchell & Sons Lumber Inc.	
Hughes Lumber Specialities Inc.	
Hyak Speciality Wood	

Producer	Weighted-average margin (percentage)
Industrial Wood Specialities	
Industries Maibec Inc.	
Industries Perron inc.	
Interior Joinery Ltd.	
International Forest Products Limited (Interfor)	
Isidore Roy Limited	
J.A. Turner & Sons (1987) Limited	
J.D. Irving, Limited	
Jackpine Engineered Wood Products Inc.	
Jackpine Forest Products Ltd.	
Jamestown Lumber Company Limited	
Jasco Forest Products Ltd.	
Jointfor (3207021) Canada, Inc.	
Julimar Lumber Co. Limited	
Kenora Forest Products Limited	
Kent Trusses Ltd.	
Kenwood Lumber Ltd.	
Kispiox Forest Products	
Kruger, Inc.	
Lakeburn Lumber Limited	
Landmark Structural Lumber	
Landmark Truss & Lumber Inc.	
Langevin Forest Products, Inc.	
Langley Timber Company Ltd.	
Lawson Lumber Company Ltd.	
Lecours Lumber Company	
Ledwidge Lumber Co. Ltd	
Leggett & Platt	
LeggettWood	
Les Bois d'Oeuvre Beaudoin & Gautheir Inc.	
Les Bois Lemelin Inc.	
Les Bois S&P Grondin inc.	
Les Produits Forestiers D.G. Ltee	
Les Produits Forestiers Dube Inc.	
Les Produits Forestiers F.B.M. Inc.	
Les Produits Forestiers Maxibois Inc.	
Les Produits Forestiers Miradas Inc.	
Les Produits Forestiers Portbec Ltee	
Les Scieries du Lac St Jean Inc.	
Leslie Forest Products Ltd.	
Lignum Ltd.	
Lindsay Lumber Ltd.	
Liskeard Lumber Ltd.	
Littles Lumber Ltd.	
Lonestar Lumber Inc.	
LP Canada Ltd.	
LP Engineered Wood Products Ltd.	
Lulumco Inc.	
Lyle Forest Products Ltd.	
M&G Higgins Lumber Ltd.	
M.F. Bernard Inc.	
M.L. Wilkins & Son Ltd.	
MacTara Limited	
Manitou Forest Products Ltd.	
Maple Creek Saw Mills Inc.	
Marcel Lauzon Inc.	
Marwood Ltd.	
Materiaux Blanchette Inc.	
Max Meilleur & Fils Ltee	
McCorquindale Holdings Ltd.	
McNutt Lumber Company Ltd.	
Mercury Manufacturing Inc.	
Meunier Lumber Company Ltd.	
Mid America Lumber	
Midland Transport Limited	
Midway Lumber Mills Ltd.	
Mill & Timber Products Ltd.	
Millar Western Forest Products Ltd.	
Millco Wood Products Ltd.	
Mobilier Rustique (Beauce) Inc.	
Monterra Lumber Mills Limited	
Mountain View Specialty Products & Reload Inc.	

Producer	Weighted-average margin (percentage)
Murray A. Reeves Forestry Limited	
N.F. Douglas Lumber Limited	
Nechako Lumber Co. Ltd.	
Newcastle Lumber Co. Inc.	
Nexfor Inc.	
Nicholson and Cates Limited	
Nickel Lake Lumber	
Norbord Industries Inc.	
North American Forest Products Ltd.	
North Enderby Timber Ltd.	
North Mitchell Lumber Co. Ltd.	
North Shore Timber Ltd.	
North Star Wholesale Lumber Ltd.	
Northchip Ltd.	
Northland Forest Products	
Olav Haavaldsrud Timber Company	
Olympic Industries Inc.	
Optibois Inc. 692	
P.A. Lumber & Planing Mill	
Pacific Lumber Remanufacturing Inc.	
Pacific Northern Rail Contractors Corp.	
Pacific Western Woodworks Ltd.	
Pallan Timber Products (2000) Ltd.	
Palliser Lumber Sales Ltd.	
Pan West Wood Products Ltd.	
Paragon Ventures Ltd. (DBA Paragon Wood Products, Grindrod)	
Parallel Wood Products Ltd.	
Pastway Planing Limited	
Pat Power Forest Products Corp.	
Paul Vallee Inc.	
Peak Forest Products Ltd.	
Peter Thomson & Sons Inc.	
Phoenix Forest Products Inc.	
Pope & Talbot Inc.	
Porcupine Wood Products Ltd.	
Portelance Lumber Capreol Ltd.	
Power Wood Corp.	
Precibois Inc. 692	
Preparabois Inc.	
Prime Lumber Limited	
Pro Lumber Inc.	
Produits Forestiers Labrieville	
R. Fryer Forest Products Ltd.	
Raintree Lumber Specialties Ltd.	
Ramco Lumber Ltd.	
Redtree Cedar Products Ltd.	
Redwood Value Add Products Inc.	
Ridgewood Forest Products Ltd.	
Rielly Industrial Lumber, Inc.	
Riverside Forest Products Ltd.	
Rojac Cedar Products Inc.	
Rojac Enterprises Inc.	
Rouck Bros. Sawmill Ltd.	
Russell White Lumber Limited	
Sauder Industries Limited	
Sawn Wood Products	
Scierie Adrien Arseneault Ltee	
Scierie Beauchesne et Dube Inc	
Scierie Gaston Morin Inc.	
Scierie La Patrie, Inc.	
Scierie Landrienne Inc.	
Scierie Lapointe & Roy Ltee	
Scierie Leduc	
Scierie Nord-Sud Inc.	
Scierie West Brome Inc.	
Scott Lumber Ltd.	
Selkirk Speciality Wood Ltd.	
Shawood Lumber Inc.	

Producer	Weighted-average margin (percentage)
Sigurdson Bros. Logging Co. Ltd.	
Sinclar Enterprises Ltd.*	
Skana Forest Products Ltd.	
South River Planing Mills Inc.	
South-East Forest Products Ltd.	
Spray Lake Sawmills (1980) Ltd.	
Spruce Forest Products Ltd.	
Spruce Products Limited	
St. Anthony Lathing Mills Ltd.	
St. Jean Lumber (1984) Ltd.	
Stuart Lake Lumber Co. Ltd.	
Sunbury Cedar Sales Ltd.	
SWP Industries Inc.	
Sylvanex Lumber Products Inc.	
T.P. Downey & Sons Ltd.	
Tarpin Lumber Incorporated	
Teeda Corp	
Terminal Forest Products Ltd.	
TimberWorld Forest Products Inc.	
T'loh Forest Products Limited Partnership	
Treeline Wood Products Ltd.	
Triad Forest Products Ltd.	
Twin Rivers Cedar Products Ltd.	
Tyee Timber Products Ltd.	
United Wood Frames Inc.	
Usine Sartigan Inc.	
Vancouver Specialty Cedar Products Ltd.	
Vanderhoof Specialty Wood Products	
Vandermeer Forest Products (Canada) Ltd.	
Vanderwell Contractors (1971) Ltd.	
Vanport Canada Co.	
Vernon Kiln & Millwork Ltd.	
Visscher Lumber Inc.	
W.C. Edwards Lumber	
W.I. Woodtone Industries Inc.	
Welco Lumber Corporation	
Weldwood of Canada Limited	
Wentworth Lumber Ltd.	
Wernham Forest Products	
West Bay Forest Products & Manufacturing Ltd.	
West Can Rail Ltd.	
West Chilcotin Forest Products Ltd.	
West Hastings Lumber Products	
Western Commercial Millwork Inc.	
Westmark Products Ltd.	
Weston Forest Corp.	
West-Wood Industries Ltd.	
White Spruce Forest Products Ltd.	
Wilkerson Forest Products Ltd.	
Williams Brothers Limited	
Winnipeg Forest Products, Inc	
Woodko Enterprises Ltd	
Woodland Forest Products Ltd.	
Woodline Forest Products Ltd.	
Woodtone Industries, Inc.	
Wynndel Box & Lumber Co. Ltd	3.98

*We note that, during the POR, Sinclar Enterprises Ltd. (Sinclar) acted as an affiliated reseller for Lakeland, an affiliate of Canfor. In this review, we reviewed the sales of Canfor and its affiliates; therefore, Canfor's weighted-average margin applies to all sales produced by any member of the Canfor Group and sold by Sinclar. As Sinclar also separately requested a review, any sales produced by another manufacturer and sold by Sinclar will receive the ''Review-Specific All Others'' rate.

[16] We note that Nakina Forest Products Limited is a division of Long Lake Forest Products, Inc, an affiliate of Buchanan Lumber Sales.

[17] We note that Produits Forestiers Temrex Limited Partnership is the same entity as the company Produits Forestiers Temrex Usine St. Alphonse, Inc. included in the initiation notice. *See Notice of Initiation of Antidumping Duty Administrative Review*, 68 FR 39059 (July 1, 2003).

[18] Based on the Final Results of the Changed Circumstances Review, Monterra shall receive Weyerhaeuser's weighted-average margin until December 23, 2002; thereafter the company will be subject to the review-specific average rate. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 54891 (September 19, 2003).

Disclosure and Opportunity To Submit Data Analyses

The Department will disclose calculations performed in accordance with 19 CFR 351.224(b). In addition, the Department is offering interested parties the opportunity to submit data analyses related to: (1) The appropriateness of continuing to use length as a matching characteristic; (2) the use of length in the value-based cost calculation; and (3) the treatment of sales made on a random-length basis in price-to-price comparisons. All data analyses must be based solely on data already on the record and should contain the following:

1. A complete SAS program which starts with the database actually submitted by the respondent. The program should be submitted in both hard copy and electronic format.

2. A detailed narrative response which discusses each element of the output and its significance.

3. An explanation as to how the results of the analysis can be meaningfully used by the Department in resolving the aforementioned issues.

The submissions of data analyses as indicated above are due ten days after the publication of this notice. Comments on the data analyses may be made in the case briefs; however, no further data analysis programs will be considered. Data analyses submissions which do not contain all the requested information will be rejected and will not be considered for the final.

Public Hearing

An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, the parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Assessment

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. We will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. For the companies requesting a review, but not selected for examination and calculation of individual rates, we will calculate a weighted-average assessment rate based on all importer-specific assessment rates excluding any which are *de minimis* or margins determined entirely on adverse facts available. Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of Certain Softwood Lumber Products From Canada entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate listed above for each specific company will be the rate established in the final results of this review, except if a rate is less than 0.5 percent, and therefore *de minimis,* the cash deposit will be zero; (2) for the non-selected companies we will calculate a weighted-average cash deposit rate based on all the company-specific cash deposit rates, excluding *de minimis* margins or margins determined entirely on adverse facts available; (3) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (4) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (5) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 8.43 percent, the ''All Others'' rate established in the LTFV investigation. At this time the Department is considering instructing CBP to apply the cash deposit rate to the sum of the entered value, countervailing duties and antidumping duties when these items are deducted in determining entered value. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entities during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–13073 Filed 6–10–04; 8:45 am]

BILLING CODE 3510–DS–P

Federal Register

Monday,
June 14, 2004

Part V

Department of the Treasury

17 CFR Part 403

Government Securities Act Regulations: Protection of Customer Securities and Balances; Order Regarding the Collateral Registered Government Securities Brokers and Dealers Must Pledge When Borrowing Customer Securities; Final Rule and Notice

DEPARTMENT OF THE TREASURY

17 CFR Part 403

RIN 1505–AA94

Government Securities Act Regulations: Protection of Customer Securities and Balances

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (''Treasury,'' or ''We,'' or ''Us'') is issuing in final form an amendment to the customer protection rules in § 403.4 of the regulations issued under the Government Securities Act of 1986 (''GSA''), as amended.[1] This provision requires entities registered with the Securities and Exchange Commission (''SEC'') as specialized government securities brokers and dealers (''registered government securities brokers and dealers'') under § 15C(a)(2) of the Securities Exchange Act of 1934 (''the Exchange Act'')[2] to comply with the requirements of the SEC customer protection rule (''SEC Rule 15c3–3'') with certain modifications. We published a proposed rule on December 11, 2003, and received no comments. We are therefore adopting the changes as proposed. Specifically, this amendment makes certain conforming technical changes to the GSA regulations that allow for the expansion of collateral that registered government securities brokers and dealers may pledge when borrowing fully paid or excess-margin securities from customers. This final rule allows us to designate additional categories of collateral pursuant to an order issued by Treasury.

EFFECTIVE DATE: June 14, 2004.

ADDRESSES: This final rule is available for downloading from the Bureau of the Public Debt's Web site at *http://www.publicdebt.treas.gov*. It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lee Grandy (Associate Director), Deidere Brewer (Government Securities Specialist), or Kevin Hawkins (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632 or e-mail us at *govsecreg@bpd.treas.gov*.

SUPPLEMENTARY INFORMATION: The implementing regulations Treasury issued in 1987 [3] under the Government Securities Act of 1986 [4] adopted the SEC's customer protection rule at 17 CFR 240.15c3–3 with certain modifications. Currently, § 403.4 of the GSA regulations maintains for registered government securities brokers and dealers the customer protection standards set out in SEC Rule 15c3–3 for brokers and dealers when borrowing fully paid or excess-margin securities from customers.

On March 17, 2003, the SEC published a final amendment [5] to Rule 15c3–3 to allow, through the issuance of an SEC order, the expansion of collateral that brokers and dealers may pledge when borrowing fully paid or excess-margin securities from customers. Since an SEC order cannot be incorporated by reference to apply to registered government securities brokers and dealers, on December 11, 2003,[6] we issued a proposed rule with conforming technical changes to § 403.1 [7] and § 403.4 [8] of the GSA regulations that will allow Treasury to expand the categories of permissible collateral by issuing an exemptive order. We received no comments on the proposed rule. As explained below, we are adopting the rule as proposed. We believe this final amendment will continue to protect customer securities and balances, while potentially adding liquidity to the securities lending markets and lowering borrowing costs for registered government securities brokers and dealers.

I. Background

A. SEC Rule 15c3–3

In 1972, the SEC adopted the customer protection rule, Rule 15c3–3, to protect customer securities and funds held by brokers and dealers.[9] At that time, securities brokers and dealers were required to pledge cash, U.S. Treasury bills and notes, or letters of credit as collateral when borrowing customer securities. In 1989, the SEC issued a no-action letter that expanded the categories of permissible collateral.[10]

On March 17, 2003, the SEC issued a final amendment to Rule 15c3–3 that allows for the expansion of collateral that brokers and dealers may pledge when borrowing fully paid or excess-margin securities from customers pursuant to orders issued by the SEC.[11] The preamble to the SEC's final amendment stated that the amended rule provides flexibility to ensure receipt of full collateral by customers while allowing for a wider range of permissible collateral, thereby adding liquidity to the securities lending markets and lowering borrowing costs for brokers and dealers.

On April 22, 2003, the SEC issued by order [12] the list of permissible categories of collateral under Rule 15c3–3.[13]

B. Government Securities Act Regulations

When Treasury first issued the implementing regulations [14] for the GSA [15] in 1987, we reviewed the existing regulations for brokers and dealers registered with the SEC under § 15(b) of the Exchange Act in order to avoid overly burdensome or duplicative regulations. In that regard, the GSA regulations at 17 CFR chapter IV incorporate by reference many of the SEC's rules regulating brokers and dealers including, with modifications, SEC Rule 15c3–3.

Since the SEC does not have the authority to grant exemptions from § 15C or the rules and regulations

[1] 15 U.S.C. 78*o*–5.

[2] 15 U.S.C. 78*o*–5(a)(2).

[3] The GSA regulations were published as a final rule on July 24, 1987 (52 FR 27910). The regulations, as amended, are codified at 17 CFR Chapter IV.

[4] Pub. L. 99–571, 100 Stat. 3208 (1986).

[5] Securities and Exchange Act Release No. 34–47480 (March 11, 2003), 68 FR 12780 (March 17, 2003).

[6] 68 FR 69059 (December 11, 2003).

[7] 17 CFR 403.1.

[8] 17 CFR 403.4.

[9] 17 CFR 240.15c3–3.

[10] *See* Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, SEC, to Frances R. Bermanzohn, Esq., Senior Vice President of the Public Securities Association (March 2, 1989). The SEC no-action letter provided that under certain facts and circumstances, a broker or dealer could provide to a customer lender as the collateral in a government securities borrowing transaction any of the following: ''government securities'' as defined in § 3(a)(42)(A) and § 3(a)(42)(B) of the Exchange Act, and securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, or the Financing Corporation.

[11] *See supra* note 5.

[12] Securities and Exchange Act Release No. 47683 (April 16, 2003), 68 FR 19864 (April 22, 2003).

[13] The SEC order expands permissible collateral for brokers and dealers when borrowing a customer's securities to: ''government securities'' as defined in sections 3(a)(42)(A) and (B) of the Exchange Act; certain ''government securities'' meeting the definition in section 3(a)(42)(C) of the Exchange Act; securities issued or guaranteed by certain Multilateral Development banks; ''mortgage related securities'' as defined in section 3(a)(41) of the Exchange Act; certain negotiable certificates of deposit and bankers acceptances; foreign sovereign debt securities; foreign currency; and certain corporate debt securities.

[14] *See supra* note 3.

[15] *See supra* note 4.

thereunder,[16] on December 11, 2003, Treasury issued a proposed rule that was similar to the SEC's final rule. The amended rule would allow for the expansion of the categories of collateral designated as permissible through the issuance of a Treasury exemptive order. We identified in the preamble to the proposed amendment the categories of collateral we were considering for an order should the amendment to § 403.4 of the GSA regulations be issued in final form.[17] Since registered government securities brokers and dealers may conduct a business only in government and other exempted securities (except municipal securities), the list of securities we identified was more limited than the list the SEC provided in its order. Treasury did not receive any comment letters in response to the proposed rule.

II. Analysis

We are now adopting, without change, the amendments to § 403.1 and § 403.4. The amendments add a new paragraph (e) to § 403.4 and make a conforming change to § 403.1. Paragraph (e) of § 403.4 modifies paragraph (b)(3)(iii)(A) of SEC Rule 15c3–3, and now provides that in addition to the categories of collateral currently acceptable (cash, U.S. Treasury bills and notes, and bank letters of credit), registered government securities brokers and dealers may pledge ''such other collateral as the Secretary designates as permissible by order as consistent with the public interest, the protection of investors, and the purposes of the Act, after giving consideration to the collateral's liquidity, volatility, market depth and location, and the issuer's creditworthiness.'' Treasury is publishing at the same time as this rule an order designating the additional categories of collateral applicable to registered government securities brokers and dealers.

[16] 15 U.S.C. 78mm(b).

[17] The categories of collateral we identified in the proposed amendment were: ''Government securities'' as defined in § 3(a)(42)(A) and (B) of the Exchange Act; ''Government securities'' as defined in § 3(a)(42)(C) of the Exchange Act issued or guaranteed as to principal or interest by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, or the Financing Corporation; and securities issued by, or guaranteed as to principal and interest by certain Multilateral Development Banks.

We believe this amendment will provide us with the flexibility to expand the categories of collateral that may be pledged by registered government securities brokers and dealers, while maintaining the customer protection objectives of § 403.4. This amendment, and the accompanying order, will potentially increase liquidity in the securities lending markets and lower borrowing costs for registered government securities brokers and dealers.

III. Special Analysis

This final rule makes only a technical change to the GSA regulations to provide for a broader list of collateral that registered government securities brokers and dealers may pledge. Therefore, this amendment does not meet the criteria for a ''significant regulatory action'' under Executive Order 12866. The purpose of the amendment is to relieve a restriction on registered government securities brokers and dealers; we are therefore making it effective immediately.

For the same reason, we certify under the Regulatory Flexibility Act [18] that the amendment, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis is not required.

Although the amendment is technical in nature, it does not impose any additional burdens on such firms. The amendment should increase liquidity in the government securities market and lower borrowing costs for registered government securities brokers and dealers. The collections of information under the Government Securities Act regulations have previously been reviewed and approved by the Office of Management and Budget under control number 1535–0089.

List of Subjects in 17 CFR Part 403

Banks, Banking, Brokers, Government securities.

■ For the reasons set out in the preamble, 17 CFR part 403 is amended as follows:

PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

■ 1. The authority citation for part 403 is revised to read as follows:

[18] 5 U.S.C. 601.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209; sec. 4(b), Pub. L. 101–432, 104 Stat. 963; sec. 102, sec. 106, Pub. L. 103–202, 107 Stat. 2344 (15 U.S.C. 78o–5(a)(5), (b)(1)(A), (b)(4).

■ 2. Section 403.1 is revised to read as follows:

§ 403.1 Application of part to registered brokers and dealers.

With respect to their activities in government securities, compliance by registered brokers or dealers with § 240.8c–1 of this title (SEC Rule 8c–1), as modified by §§ 403.2 (a), (b) and (c), with § 240.15c2–1 of this title (SEC Rule 15c2–1), with § 240.15c3–2 of this title (SEC Rule 15c3–2), as modified by § 403.3, and with § 240.15c3–3 of this title (SEC Rule 15c3–3), as modified by §§ 403.4 (a)–(d), (f)(2)–(3), (g)–(j), and (m), constitutes compliance with this part.

■ 3. Section 403.4 is amended by re-designating paragraphs (e) through (l) as paragraphs (f) through (m), respectively, and by adding new paragraph (e) to read as follows:

§ 403.4 Customer Protection—reserves and custody of securities.

* * * * *

(e) For purposes of this section, § 240.15c3–3(b)(3)(iii)(A) of this title is modified to read as follows:

(A) Must provide to the lender upon the execution of the agreement, or by the close of the business day of the loan if the loan occurs subsequent to the execution of the agreement, collateral that fully secures the loan of securities, consisting exclusively of cash or United States Treasury bills or Treasury notes or an irrevocable letter of credit issued by a bank as defined in § 3(a)(6)(A)–(C) of the Act (15 U.S.C. 78c(a)(6)(A)–(C)) or such other collateral as the Secretary designates as permissible by order as consistent with the public interest, the protection of investors, and the purposes of the Act, after giving consideration to the collateral's liquidity, volatility, market depth and location, and the issuer's creditworthiness; and

* * * * *

Dated: May 24, 2004.

Brian C. Roseboro,

Under Secretary, Domestic Finance.

[FR Doc. 04–13128 Filed 6–10–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Order Regarding the Collateral Registered Government Securities Brokers and Dealers Must Pledge When Borrowing Customer Securities

June 14, 2004.

Title I of the Government Securities Act of 1986 [1] (''GSA'') amended the Securities Exchange Act of 1934 (''Exchange Act'') by adding § 15C, authorizing the Secretary of the Treasury (''Secretary'') to promulgate regulations concerning the financial responsibility, protection of customer securities and balances, recordkeeping and reporting of government securities brokers and dealers. Section 15C(a)(5) of the Exchange Act [2] authorizes the Secretary, by rule or order, to conditionally or unconditionally exempt any government securities broker or dealer, or class of government securities brokers or dealers, from certain provisions under the GSA, or the rules thereunder, if the Secretary finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of the Exchange Act.

By this order, the Secretary will allow entities registered with the Securities and Exchange Commission (''SEC'') as specialized government securities brokers and dealers (''registered government securities brokers and dealers'') under § 15C(a)(2) of the Exchange Act that borrow fully paid [3] or excess-margin [4] securities from customers to pledge a wider range of collateral than is permitted under paragraph (b)(3) of SEC Rule 15c3–3,[5] as incorporated and modified by § 403.4 of the GSA regulations.[6]

As background, Title I of the GSA requires government securities brokers and dealers to comply with the rules prescribed by the Department of the Treasury (''Treasury,'' or ''We,'' or ''Us,'') under the GSA. Treasury has issued rules in 17 CFR, subchapter A, parts 400–449. Among those rules is a rule for the protection of customer securities and balances (part 403). As issued by Treasury in 1987,[7] part 403 adopted the SEC's customer protection rule, SEC Rule 15c3–3,[8] with certain modifications. At the same time we are issuing this order, we are also issuing a final rule amendment to § 403.4 of the GSA regulations to allow for the expansion of collateral that registered government securities brokers and dealers may pledge when borrowing fully paid or excess-margin government securities from customers.

Section 403.4(e) allows the Secretary to designate by order other collateral as permissible, consistent with the ''public interest, the protection of investors, and the purposes of the Act, after giving consideration to the collateral's liquidity, volatility, market depth and location and the issuer's creditworthiness.''

Accordingly, after giving consideration to the liquidity, volatility, market depth and location and the issuer's creditworthiness in connection with the following described types of collateral, we find an exemption to be consistent with the public interest, the protection of investors, and the purposes of the Act. The exemption will potentially increase liquidity in the government securities market and lower borrowing costs for registered government securities brokers and dealers, while maintaining the customer protection objectives of § 403.4.

Therefore, it is ordered, pursuant to § 15C(a)(5) of the Exchange Act, that registered government securities brokers and dealers may pledge, in accordance with all applicable conditions set forth below and in § 403.4 of the GSA regulations, the following types of collateral (in addition to those permitted under paragraph (e) of § 403.4) when borrowing fully paid or excess-margin securities from customers:

1. ''Government securities'' as defined in § 3(a)(42)(A) and 3(a)(42)(B) of the Exchange Act.

2. ''Government securities'' as defined in § 3(a)(42)(C) of the Exchange Act issued or guaranteed as to principal or interest by the following corporations: (i) The Federal Home Loan Mortgage Corporation, (ii) the Federal National Mortgage Association, (iii) the Student Loan Marketing Association, or (iv) the Financing Corporation.

3. Securities issued by, or guaranteed as to principal and interest by, the following Multilateral Development Banks whose obligations are backed by the participating countries, including the U.S.: (i) The International Bank for Reconstruction and Development, (ii) the Inter-American Development Bank, (iii) the Asian Development Bank, (iv) the African Development Bank, (v) the European Bank for Reconstruction and Development, and (vi) the International Finance Corporation.

The categories of permissible collateral do not include securities that have no principal component (*e.g.*, STRIPS).

Registered government securities brokers and dealers that pledge any of the government securities set forth above must, in addition to the notice requirements contained in paragraph (b)(3) of SEC Rule 15c3–3 as incorporated and modified by § 403.4, include in the written agreement with the customer a notice that some of the securities being provided by the borrower as collateral under the agreement may not be guaranteed by the United States.

Dated: May 24, 2004.

Brian C. Roseboro,

Under Secretary, Domestic Finance.

[FR Doc. 04–13129 Filed 6–10–04; 8:45 am]

BILLING CODE 4810–39–P

[1] Pub. L. 99–571, 100 Stat. 3208 (1986).

[2] 15 U.S.C. 78*o*–5(a)(5).

[3] 17 CFR 403.4(b).

[4] 17 CFR 403.4(d).

[5] 17 CFR 240.15c3–3.

[6] 17 CFR 403.4.

[7] The GSA regulations were published as a final rule on July 24, 1987 (52 FR 27910). Section 403.4 requires registered government securities brokers and dealers to comply with the requirements of SEC Rule 15c3–3 regarding reserves and custody of securities.

[8] On March 17, 2003, the SEC issued a final amendment to SEC Rule 15c3–3 to allow for the expansion of the collateral general purpose brokers and dealers may pledge when borrowing securities from customers. Securities and Exchange Act Release No. 34–47480 (March 11, 2003), 68 FR 12780 (March 17, 2003). On April 22, 2003, the SEC issued by order the list of permissible categories of collateral that brokers and dealers may pledge under SEC Rule 15c3–3. Securities and Exchange Act Release No. 47683, 68 FR 19864 (April 22, 2003).

Federal Register

Monday,
June 14, 2004

Part VI

Securities and Exchange Commission

17 CFR Parts 239 and 274
Disclosure of Breakpoint Discounts by Mutual Funds; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release Nos. 33–8427; 34–49817; IC–26464; File No. S7–28–03]

RIN 3235–AI95

Disclosure of Breakpoint Discounts by Mutual Funds

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to Form N–1A under the Securities Act of 1933 and the Investment Company Act of 1940 to require an open-end management investment company to provide enhanced disclosure regarding breakpoint discounts on front-end sales loads. Under the amendments, an open-end management investment company will be required to describe in its prospectus any arrangements that result in breakpoints in sales loads and to provide a brief summary of shareholder eligibility requirements.

DATES: *Effective Date:* July 23, 2004.

Compliance Date: All initial registration statements, and all post-effective amendments that are either annual updates to effective registration statements or that add a new series, filed on Form N–1A on or after September 1, 2004, must include the disclosure required by the amendments. Section II.G. of this release contains more information on the compliance date.

FOR FURTHER INFORMATION CONTACT: Christian L. Broadbent, Senior Counsel, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, or with respect to questions about disclosure by financial intermediaries, Joseph P. Corcoran, Special Counsel, Office of Chief Counsel, Division of Market Regulation, (202) 942–0073, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is adopting amendments to Form N–1A,[1] the registration form used by open-end management investment companies to register under the Investment Company Act of 1940 (''Investment Company Act'') and to offer their securities under the Securities Act of 1933 (''Securities Act'').[2]

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I. Introduction and Background

The shares of open-end management investment companies (''mutual funds'') are sold to investors in a variety of ways. Many shares are sold without a sales load, including shares sold directly by the fund and those sold through retirement plans. An estimated 37% of mutual fund shareholders purchase shares through a broker-dealer or another financial intermediary.[3] Fund shares sold through a broker-dealer or other intermediary often are subject to a sales charge or ''front-end sales load'' that is based on a percentage of the purchase price. The broker-dealer that sells the fund shares is compensated out of the proceeds of the front-end sales load.

Mutual funds with a front-end sales load typically establish a schedule of sales load percentages that are used to calculate the sales load that an investor pays. Some mutual funds that charge front-end sales loads will charge lower sales loads for larger investments. For example, a fund might charge a 5% front-end sales load for investments up to $50,000, but charge a load of 4% for investments between $50,000 and $100,000 and 3% for investments exceeding $100,000. The investment levels required to obtain a reduced sales load are commonly referred to as ''breakpoints.''[4]

Each mutual fund company establishes its own formula for how it will calculate whether an investor is entitled to receive a breakpoint. Funds typically offer investors two principal options that enable them to take advantage of breakpoints in sales loads for aggregate purchases made over time: a letter of intent and a right of accumulation.[5] A mutual fund that offers breakpoint discounts must disclose its schedule of breakpoints in its prospectus.[6] A fund must disclose its aggregation rules for determining breakpoints, such as letters of intent and rights of accumulation, in either its prospectus or statement of additional information (''SAI'').[7] A broker-dealer who sells fund shares to retail customers must disclose breakpoint information to its customers and must have procedures reasonably designed to ascertain information necessary to determine the availability and appropriate level of breakpoints.[8]

[1] 17 CFR 239.15A; 17 CFR 274.11A.

[2] The Commission proposed these amendments in December 2003. Investment Company Act Release No. 26298 (Dec. 17, 2003) [68 FR 74732 (Dec. 24, 2003)] (''Proposing Release'').

[3] Investment Company Institute, 2001 Profile of Mutual Fund Shareholders 13–14 (Fall 2001).

[4] Information for investors concerning mutual fund breakpoints—including how funds calculate breakpoints and the steps investors can take if they fail to receive the benefit of a breakpoint to which they were entitled—is available on the Commission's Web site at *http://www.sec.gov/answers/breakpt.htm*. In addition, the Commission has jointly developed educational material with NASD and industry groups that explains breakpoints and discusses ways in which an investor might earn these discounts. *See Making the Most of Mutual Fund Breakpoints* (April 2004), *at http://www.nasd.com/Investor/Choices/breakpoints_brochure.htm.*

[5] *See* Section I, ''Introduction and Background,'' Proposing Release, *supra* note 2, 68 FR at 74732–33 (description of letters of intent and rights of accumulation, and of the methods used by funds to value accounts in order to determine whether aggregate holdings have reached a sales load breakpoint).

[6] Item 7(a)(1) of Form N–1A. Rule 22d–1 under the Investment Company Act [17 CFR 270.22d–1] permits a mutual fund to sell shares at prices reflecting scheduled breakpoints if it meets certain requirements, such as furnishing to existing shareholders and prospective investors the information regarding breakpoints required by applicable registration statement form requirements.

[7] Items 7(a)(2) and 17(a) of Form N–1A. The SAI is part of a fund's registration statement and contains information about a fund in addition to that contained in the prospectus. The SAI is required to be delivered to investors upon request and is available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System.

[8] *In re American Express Financial Advisors*, Securities Act Release No. 8365 (Feb. 12, 2004) (finding violations of securities laws where a broker-dealer failed to disclose to customers that they were not receiving the benefit of applicable breakpoint discounts, and failed to charge these customers correct sales loads and to disclose in confirmations the remuneration received from the sales loads charged). *See In re Application of Harold R. Fenocchio for Review of Disciplinary Action Taken by the NASD*, 46 SEC 279 (1976) (sustaining NASD's finding of violation of its Rules of Fair Practice where registered representatives failed to have customers execute a letter of intent or to inform them of their rights of accumulation in connection with mutual fund purchases); *NASD Special Notice to Members 02–85* (Dec. 23, 2002) (directing all member firms to immediately review the adequacy of their existing policies and procedures to ensure that investors are charged the correct sales load on mutual fund transactions); *NASD Notice to Members 94–16* (Mar. 1994) (discussing the obligation of member firms to ensure that communications with customers are accurate and complete regarding mutual fund breakpoints). *Cf.* NASD Conduct Rule IM–2830–1

In late 2002, the staffs of the Commission and NASD identified concerns regarding the extent to which mutual fund investors were receiving breakpoint discounts, which were first uncovered by NASD's routine examination program. As a result, the Commission and NASD launched a multifaceted action plan to address these concerns,[9] including an examination sweep (with the New York Stock Exchange (''NYSE'')) of 43 broker-dealers that sell front-end sales load mutual funds,[10] and the formation of the Joint NASD/Industry Task Force on Breakpoints (''Task Force'') to recommend ways in which the mutual fund and broker-dealer industries could prevent breakpoint problems in the future.[11]

In addition, the Commission and NASD recently announced enforcement and disciplinary actions against 15 brokerage firms for failure to deliver mutual fund breakpoint discounts during 2001 and 2002.[12] The firms agreed to compensate customers for the overcharges, pay fines that total over $21.5 million, and undertake other corrective measures.[13]

Today we are continuing to attack breakpoint discount problems by adopting form amendments that implement recommendations of the Task Force. The Task Force issued its report in July 2003 and, among other things, recommended that the Commission adopt rules requiring a fund to disclose certain information regarding breakpoints in its prospectus and on its Web site.[14] In December 2003, we issued a release proposing form amendments intended to address these recommendations (''Proposing Release'').[15] Specifically, we proposed to require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements. In addition, we proposed to require a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints. We also proposed to require a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary. Further, we proposed to require a mutual fund to state in its prospectus whether it makes available on or through its Web site information regarding its sales loads and breakpoints.

The Commission received 14 comment letters on the proposed amendments regarding breakpoint discounts from an investment adviser, professional and trade associations, investor advocacy and consumer groups, and individuals. These commenters generally supported the Commission's proposals to provide enhanced disclosure regarding breakpoint discounts on front-end sales loads. We are now adopting these proposed amendments, which are intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors as to the information that they may need to provide to funds and broker-dealers to take full advantage of all available breakpoint discounts. The amendments also should help broker-dealers to access information about available breakpoint discounts.

II. Discussion

The Commission is adopting, with one technical change,[16] amendments to Form N–1A, the registration form for mutual funds, that will require enhanced disclosure regarding breakpoint discounts on front-end sales loads. Nothing in the amendments will eliminate, or diminish in any respect, a broker-dealer's obligations to its customers with respect to mutual fund breakpoints, including its obligations to disclose information about breakpoints.[17]

A. Disclosure of Arrangements That Result in Breakpoints in Sales Loads

We are revising Form N–1A to require a mutual fund to provide a brief description in its prospectus of arrangements that result in sales load breakpoints, including a summary of shareholder eligibility requirements. Currently, Item 7(a)(2) of Form N–1A requires disclosure of arrangements that result in breakpoints in, or elimination of, sales loads, including letters of intent and rights of accumulation.[18] Item 7(a)(2) also requires that each class of individuals or transactions to which the arrangements apply be identified and that each different breakpoint be stated as a percentage of both the offering price and the amount invested. This information may be provided in either the prospectus or the SAI.

The amendments will require that a mutual fund include the description required by Item 7(a)(2) of arrangements

(''Breakpoint'' Sales); NASD Conduct Rule 2110 (Standards of Commercial Honor and Principles of Trade).

[9] *SEC and NASD Action Plan on Mutual Fund Sales Load Charges*, Securities and Exchange Commission Press Release, Jan. 16, 2003, *http://www.sec.gov/news/press/2003–7.htm.*

[10] The Commission, NASD, and NYSE conducted their examination sweep of broker-dealers between November 2002 and January 2003. The examination revealed that most firms, in some instances, did not provide investors with breakpoint discounts for which they appeared to have been eligible. Securities and Exchange Commission *et al.*, Joint SEC/NASD/NYSE Report of Examinations of Broker-Dealers Regarding Discounts On Front-End Sales Charges On Mutual Funds 14–15 (Mar. 2003) [hereinafter Joint Report], *available at http://www.sec.gov/spotlight/breakpoints.htm.*

[11] *NASD Announces Joint NASD/Industry Breakpoint Task Force,* NASD News Release, Feb. 18, 2003, *http://www.nasdr.com/news/pr2003/release_03_006.html.*

[12] *Fifteen Firms to Pay Over $21.5 Million in Penalties to Settle SEC and NASD Breakpoints Charges*, Securities and Exchange Commission Press Release, Feb. 12, 2004, *http://www.sec.gov/news/press/2004–17.htm.* The Commission and NASD each brought cases against a group of 7 firms, and NASD separately brought actions against the other 8 firms. *Id.*

[13] Each of the 15 firms agreed to review all front-end load mutual fund trades in excess of $2,500 conducted between January 1, 2001, and November 3, 2003; to provide written notification of the firm's problem delivering breakpoint discounts to each customer who purchased front-end load mutual funds from January 1, 1999, through November 3, 2003, and advise these customers that they may be entitled to a refund; to provide refunds where appropriate; and to pay a fine equal to the amount of the firm's projected overcharges. *Id.*

[14] NASD *et al.*, Report of the Joint NASD/Industry Task Force on Breakpoints 10, 13–14 (July 2003), *available at http://www.nasdr.com/pdf-text/breakpoints_report.pdf.* The Task Force also made a number of recommendations to the NASD, NYSE, and mutual fund and brokerage industries. NASD recently reported that the financial industry has taken the steps necessary to implement 7 of the Task Force's 13 recommendations and that substantial progress has been made toward implementing the remainder of the recommendations. NASD, Status Report: Implementation of Recommendations of Joint NASD/Industry Breakpoint Task Force (Mar. 2004), *available at http://www.nasdr.com/breakpoints_status.asp.*

[15] *See* Proposing Release, *supra* note 2.

[16] The technical amendment to General Instruction C.3.(d)(i) to Form N–1A that the Commission is adopting is discussed in Section II.E. of this release.

[17] *See supra* note 8 and accompanying text; *In re Russell C. Turek*, Exchange Act Release No. 45459 (Feb. 20, 2002) (Commission sanctioned registered representative for, among other violations, failing to inform customers of the availability of breakpoint discounts); *In re Mason, Moran & Co.*, Exchange Act Release No. 4832 (Apr. 23, 1953) (registrant claimed it complied with disclosure requirements of the federal securities laws by furnishing the customer with a prospectus which included breakpoint information; Commission held that while the prospectus requirements were intended to provide the investor with more information than had theretofore been generally available in the ordinary securities transaction, these requirements were not intended to abrogate the greater disclosure duties traditionally imposed on brokers and dealers in a fiduciary position).

[18] The amendments to Form N–1A reflect the recent adoption of amendments to the form that renumber Items 7 (Shareholder Information), 8 (Distribution Arrangements), and 18 (Purchase, Redemption, and Pricing of Shares) as Items 6, 7, and 17, respectively. *See* Investment Company Act Release No. 26372 (Feb. 27, 2004) [69 FR 11244 (Mar. 9, 2004)].

that result in breakpoints in, or elimination of, sales loads in its prospectus. Our amendments direct that prospectus disclosure regarding breakpoints be brief in order to avoid overwhelming investors with excessively detailed information. Item 7(a)(2) will not require the prospectus to include the information currently required in the SAI regarding breakpoints for affiliated persons of the fund and breakpoints in connection with a reorganization.[19] This information will continue to be required in the SAI.

We are amending Item 17(a) of Form N–1A to require that information regarding breakpoint arrangements that is not included in the prospectus be included in the SAI. We are also modifying Item 17(a) to conform the enumeration of types of special purchase plans or methods in that Item to the enumeration in Item 7(a)(2) of types of arrangements that result in breakpoints. Specifically, we are adding references to ''dividend reinvestment plans,'' ''employee benefit plans,'' and ''redemption reinvestment plans'' to Item 17(a) and eliminating ''services in connection with retirement plans'' from Item 17(a). The amendments also add ''waivers for particular classes of investors'' to the enumeration in both Items 7(a)(2) and 17(a). To assist investors and financial intermediaries in finding all information about breakpoints, the prospectus will be required to state, if applicable, that additional information concerning sales load breakpoints is available in the SAI.

Our amendments add an instruction to require that the description of arrangements resulting in breakpoints include a brief summary of shareholder eligibility requirements. This summary will be required to include a description or list of the types of accounts (*e.g.*, retirement accounts, accounts held at other financial intermediaries), account holders (*e.g.*, immediate family members, family trust accounts, solely-controlled business accounts), and fund holdings (*e.g.*, funds held within the same fund complex) that may be aggregated for purposes of determining eligibility for sales load breakpoints.

Several commenters provided recommendations regarding the location of the breakpoint disclosure. For example, two commenters argued that the Commission should require a fund to provide the breakpoint disclosure at the front of its prospectus, such as in the fee table required by Item 3 of Form N–1A, so that the disclosure would be easier to locate. We believe, however, that the amendments strike an appropriate balance between providing enhanced disclosure regarding breakpoint discounts and not overwhelming investors with information. Although important information regarding breakpoint discounts should be included in the prospectus, including this information in the fee table could tend to detract from the presentation of more basic information about fund costs. In addition, some commenters recommended that breakpoint information be provided to investors at the point of sale or in confirmation statements. We note that we recently proposed rules that would require a broker-dealer to provide its customers with information regarding breakpoints at the point of sale and in transaction confirmations.[20]

B. Disclosure of Methods Used To Value Accounts

The amendments also require a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints, including the circumstances in which and the classes of individuals to whom each method applies.[21] The methods required to be disclosed, if applicable, will include historical cost, net amount invested, and offering price.[22]

C. Disclosure Regarding Information and Records Necessary To Aggregate Holdings

Our amendments will also require a mutual fund to state in its prospectus, if applicable, that, in order to obtain a breakpoint discount, it may be necessary at the time of purchase for a shareholder to inform the fund or his or her financial intermediary of the existence of other accounts in which there are holdings eligible to be aggregated to meet sales load breakpoints.[23] In addition, a mutual fund will be required to describe any information or records, such as account statements, that may be necessary for a shareholder to provide to the fund or his or her financial intermediary in order to verify his or her eligibility for a breakpoint discount. The description will be required to include, if applicable:

- Information or records regarding shares of the fund or other funds held in all accounts (*e.g.,* retirement accounts) of the shareholder at the financial intermediary;[24]
- Information or records regarding shares of the fund or other funds held in any account of the shareholder at another financial intermediary;[25] and
- Information or records regarding shares of the fund or other funds held at any financial intermediary by related parties of the shareholder, such as members of the same family or household.[26]

In addition, if a mutual fund permits breakpoints to the determined based on historical cost, it will be required to state in its prospectus that a shareholder should retain any records necessary to substantiate historical costs because the fund, its transfer agent, and financial intermediaries may not maintain this information.[27]

D. Disclosure of Availability of Sales Load and Breakpoint Information on Fund's Web Site

The amendments require that a mutual fund state in its prospectus whether it makes available free of charge, on or through its Web site at a specified Internet address, and in a clear and prominent format, the information that is required regarding the fund's sales loads and breakpoints in the prospectus and SAI pursuant to Items 7(a) and 17(a), including whether the Web site includes hyperlinks that facilitate access to the information.[28] A mutual fund that does not make the sales load and breakpoint information available in this manner will be required to disclose the reasons why it does not do so (including, where applicable, that the fund does not have an Internet Web site).

The amendments will require that the disclosure about Web site availability of

[19] Instruction 2 to Item 7(a)(2) of Form N–1A. Item 12(d) of Form N–1A requires that a mutual fund disclose any arrangements that result in breakpoints in, or elimination of, sales loads for directors and other affiliated persons of the fund. Item 17(b) of Form N–1A requires that a mutual fund disclose any arrangements that result in breakpoints in, or elimination of, sales loads in connection with the terms of a merger, acquisition, or exchange offer made under a plan of reorganization.

[20] Exchange Act Release No. 49148 (Jan. 29, 2004) [69 FR 6438, 6479–83 (Feb. 10, 2004)] (proposing rules 15c2–2 and 15c2–3 under the Securities Exchange Act of 1934).

[21] Item 7(a)(3) of Form N–1A.

[22] *See* Proposing Release, *supra* note 2, 68 FR at 74733 (discussing net asset value, public offering price, and historical cost methods of valuing accounts). We refer here to ''net amount invested'' rather than ''net asset value,'' and to ''offering price'' rather than ''public offering price,'' because these are the terms currently used in Form N–1A. *See* Instruction 3(a) and (b) to Item 7(a)(1) of Form N–1A.

[23] Item 7(a)(4)(i) of Form N–1A.

[24] Item 7(a)(4)(i)(A) of Form N–1A.

[25] Item 7(a)(4)(i)(B) of Form N–1A.

[26] Item 7(a)(4)(i)(C) of Form N–1A.

[27] Item 7(a)(4)(ii) of Form N–1A.

[28] Item 7(a)(5) of Form N–1A.

sales load and breakpoint information indicate whether the information is in a clear and prominent format, including whether the Web site includes hyperlinks that facilitate access to the information. We believe that it is important for Web site disclosure regarding sales loads and breakpoint discounts to be clear and prominent in order to help investors and financial intermediaries find this information easily. Hyperlinks that facilitate access to the information may contribute to a clear and prominent presentation. Thus, Web sites could provide sales load and breakpoint information in a clear and prominent format by, for example, using clear and prominent hyperlinks that provide direct linkage to the relevant portions of the fund's prospectus and SAI or the specific pages on a third-party Web site containing the information.[29]

Three commenters argued that breakpoint information should be included on a fund's Web site. For example, one commenter recommended that the Commission require an explanation of breakpoint eligibility requirements on the Web sites of funds that maintain them because the Web sites may be useful in conveying these requirements to investors. Another commenter, by contrast, argued that we should revise our proposed amendments so that a fund disclosing the availability of breakpoint information on its Web site would not be required to discuss the format of this information, and so that a fund which does not make breakpoint information available on its Web site would not be required to disclose that fact and explain the reasons why it does not do so.

We believe, however, that our proposed approach, which we are adopting, more appropriately reflects our intention to encourage mutual funds to provide accessible Web site disclosure regarding the availability of breakpoint discounts.[30] The increased availability of information through the Internet has helped to promote transparency, liquidity, and efficiency by making information available to investors quickly and in a cost-effective manner.

[29] *See* Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480, 58493 (Sept. 16, 2002)] (requiring companies to include disclosure in their annual reports on Form 10–K about availability on company Web sites of reports on Forms 10–K, 10–Q, and 8–K). We direct funds to this release for guidance concerning satisfaction of this requirement through hyperlinking to a third-party Web site.

[30] *Cf. id.*

E. Presentation Requirements

The amendments will require that the disclosure in Item 7(a)(2) regarding arrangements resulting in breakpoints in, or elimination of, sales loads, and all other sales load disclosure required by Item 7(a), be adjacent to the table of sales loads and breakpoints required by Item 7(a)(1).[31] This will include the description of sales loads required by Item 7(a)(1), as well as the information about breakpoints, including valuation methods, shareholder information and records, and Web site availability that will be required by Items 7(a) (3), (4), and (5). The amendments also will require that a mutual fund present the information required by Item 7(a) in a clear, concise, and understandable manner, and include tables, schedules, and charts as expressly required by Item 7(a)(1) or where doing so would facilitate understanding.[32]

General Instruction C.3.(a) to Form N–1A currently requires the information required by Item 7 to be in one place in the prospectus. This includes the information about sales loads and breakpoints required by Item 7(a)(1), information about 12b–1 fees required by Item 7(b), and information about multiple class and master-feeder funds required by Item 7(c). It does not include the information on breakpoints currently required by Item 7(a)(2) because this information may be included in the SAI or in a separate purchase and redemption document pursuant to Item 6(g). Item 6(g) of Form N–1A currently permits a mutual fund to omit from the prospectus information about purchase and redemption procedures required by Items 6(b)–(d)[33] and 7(a)(2), other than information that is also required by Item 6(e),[34] and provide it in a separate disclosure document if the fund delivers the document with the prospectus, incorporates the document into the prospectus by reference and files the document with the prospectus, and provides disclosure explaining that the information disclosed in the document is part of, and incorporated into, the prospectus.

[31] Instruction to Item 7(a) of Form N–1A.

[32] *Id. Cf.* rule 421 under the Securities Act of 1933 [17 CFR 230.421] (plain English requirements for prospectuses).

[33] Items 6(b)–(d) require a description of the procedures for purchasing and redeeming the fund's shares, as well as the fund's policy with respect to dividends and distributions.

[34] Newly-adopted Item 6(e) requires disclosure regarding frequent purchases and redemptions of fund shares. This information may not be omitted from the prospectus in reliance on Item 6(g). Investment Company Act Release No. 26418 (Apr. 16, 2004) [69 FR 22300 (Apr. 23, 2004)].

Under our amendments, Item 6(g) will continue to permit the breakpoint information required by Item 7(a)(2) to be included in a separate purchase and redemption document.[35] In addition, we are amending Item 6(g) to permit the information about breakpoints required by new Items 7(a) (3), (4), and (5) (*i.e.*, valuation methods, shareholder information and records, and Web site availability) to be included in the separate purchase and redemption document. We are also amending General Instruction C.3.(a) to Form N–1A to make it clear that this information may be disclosed in a separate purchase and redemption document, provided that all the information required by paragraphs 7(a) (2), (3), (4), and (5) is included in the separate document. This instruction will also clarify that if the information required by paragraphs 7(a) (2)–(5) is disclosed in a separate purchase and redemption document, the table of sales loads and breakpoints required by Item 7(a)(1) must be included in the separate purchase and redemption document, as well as the prospectus, in order to comply with the requirement that all disclosure required by Item 7(a) be adjacent to the table of sales loads and breakpoints.

General Instruction C.3.(d)(i) to Form N–1A currently permits a fund to modify or omit, if inapplicable, the information required by Items 6(b)–(d) and 7(a)(2) for funds used as investment options for certain defined contribution plans, tax-deferred arrangements, and variable insurance contracts. The Commission is adopting a technical amendment to General Instruction C.3.(d)(i) to extend the instruction to the information required by new Items 7(a) (3), (4), and (5).

F. Omnibus Accounts

Typically, a brokerage firm has one omnibus account with each of the mutual funds with which it does business and through which all of its brokerage customers purchase and redeem shares of those mutual funds. Consequently, these mutual funds do not have information on the identity of the underlying brokerage customer who is purchasing or redeeming the funds' shares. In the breakpoint context, omnibus accounts make it difficult for funds to track information about the underlying shareholder that could entitle the shareholder to breakpoint discounts.

Although omnibus accounts were not addressed in the proposed amendments, several commenters provided

[35] We are, however, eliminating, as duplicative, the reference to this alternative in Item 7(a)(2).

suggestions regarding these accounts. One commenter urged the Commission to end the practice of using omnibus accounts, and in the meantime to require broker-dealers who rely on omnibus accounts and other methods of settling transactions without providing identifying information to show that their methods are as accurate in providing breakpoints as methods that do provide this information. Another commenter argued that the Commission should require financial intermediaries to disclose shareholder identity and transaction information to mutual funds.

We note that the Commission addressed omnibus account issues in our proposed rules regarding mandatory redemption fees.[36] Specifically, we proposed to require that, on at least a weekly basis, a financial intermediary provide to a fund the Taxpayer Identification Number and the amount and dates of all purchases, redemptions, or exchanges for each shareholder within an omnibus account. If the Commission adopts this proposed requirement, the information provided under this requirement may in some cases be helpful to funds that would be able to use it to determine whether shareholders received appropriate breakpoint discounts on purchases of fund shares sold with a front-end sales load.[37]

G. Compliance Date

The effective date for these amendments will be July 23, 2004. We are requiring all initial registration statements, and all post-effective amendments that are either annual updates to effective registration statements or that add a new series, filed on Form N–1A on or after September 1, 2004, to include the disclosure required by the amendments. We believe that this will provide funds with sufficient time to draft new disclosure to reflect the amendments.

III. Paperwork Reduction Act

Certain provisions of the amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501, *et seq.*]. The title for the collection of information is: ''Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (''OMB'') control number.

Form N–1A (OMB Control No. 3235–0307) was adopted pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a–8] and section 5 of the Securities Act [15 U.S.C. 77e]. We published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted the proposed collection of information to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. We received no comments on the proposed collection of information requirements.

We are adopting amendments to Form N–1A to require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements. In addition, we are requiring a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints. We are also requiring a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary. Our amendments also require a mutual fund to state in its prospectus whether it makes available on or through its Web site, and in a clear and prominent format, information regarding its sales loads and breakpoints. In addition, our amendments will require a mutual fund to provide prospectus disclosure regarding sales loads and breakpoints adjacent to the table of sales loads and breakpoints, and to present the information in a clear, concise, and understandable manner. This enhanced disclosure is intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors to the information that they may need to provide to funds and financial intermediaries to take full advantage of all available breakpoint discounts.

Form N–1A, including the amendments, contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

The Commission estimates that, on an annual basis, registrants file initial registration statements on Form N–1A covering 483 portfolios, and file post-effective amendments on Form N–1A covering 6,542 portfolios. We continue to estimate that the amendments will increase the hour burden per portfolio per filing of an initial registration statement on Form N–1A by 2 hours and will increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement on Form N–1A by 1 hour. We also continue to estimate that 30% of mutual fund portfolios will be affected by the amendments.[38] The additional incremental hour burden resulting from the amendments will be 2,252 hours (2 hours for initial registration statements $\times$ 483 portfolios $\times$ 30%) + (1 hour per post-effective amendment $\times$ 6,542 portfolios $\times$ 30%). The estimated total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–1A is 1,142,296 hours.[39]

IV. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The amendments that the Commission is adopting require mutual funds to provide enhanced disclosure regarding breakpoint discounts on front-end sales loads. Specifically, the amendments:

- Require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements;
- Require a mutual fund to describe in its prospectus the methods used to

[36] Investment Company Act Release No. 26375A (Mar. 5, 2004) [69 FR 11762 (Mar. 11, 2004)]. An Omnibus Account Task Force convened by the NASD to study the issue of trading through omnibus accounts recommended this proposed approach in a report to the Commission. *See* NASD, Report of the Omnibus Account Task Force 7 (Jan. 30, 2004).

[37] Investment Company Act Release No. 26375A, *supra* note 36, 69 FR at 11767.

[38] This estimate is based on information regarding the number of mutual fund portfolios with one or more classes of shares that have front-end sales loads, derived by the staff from Commission filings and third-party information sources.

[39] This number represents 2,252 hours added to the current total annual hour burden for the preparation and filing of Form N–1A, which is 1,140,044 hours. This total annual hour burden differs from the estimate of 1,107,078 hours contained in the Proposing Release due to the following additional hour burdens for Form N–1A that relate to amendments proposed subsequent to the Proposing Release: 30,998 hours resulting from proposed amendments relating to portfolio manager disclosure; and 1,968 hours resulting from the proposed rules relating to disclosure of sales loads and revenue sharing in connection with the proposals for new mutual fund confirmation and point of sale disclosure. Investment Company Act Release No. 26383 (Mar. 11, 2004) [69 FR 12752, 12759 (Mar. 17, 2004)]; Exchange Act Release No. 49148 (Jan. 29, 2004) [69 FR 6438, 6474 (Feb. 10, 2004)]. The estimate is based on the following calculation: 1,107,078 hours + 30,998 hours + 1,968 hours = 1,140,044 hours.

value accounts in order to determine whether a shareholder has met sales load breakpoints;

- Require a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary;
- Require a mutual fund to state in its prospectus whether it makes available on or through its Web site, and in a clear and prominent format, information regarding its sales loads and breakpoints; and
- Require a mutual fund to provide prospectus disclosure regarding sales loads and breakpoints adjacent to the table of sales loads and breakpoints, and to present the information in a clear, concise, and understandable manner.

A. Benefits

The form amendments are expected to benefit mutual fund investors by providing them with enhanced disclosure about breakpoint discounts on front-end sales loads. This enhanced disclosure is intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors to the information that they may need to provide to funds and financial intermediaries to take full advantage of all available breakpoint discounts. An examination sweep by the Commission, the NASD, and the NYSE between November 2002 and January 2003 found that in 32% of the transactions reviewed that appeared to be eligible for a reduced sales charge, investors did not receive a breakpoint discount or appeared to have incurred other unnecessary sales charges.[40] The average discount not provided was $364 per transaction.[41] We anticipate that our amendments may result in a decrease in the number of transactions in which investors do not receive breakpoint discounts to which they are entitled.

Specifically, we believe that the amendments relating to disclosure of arrangements that result in breakpoints in sales loads will benefit investors by requiring that information regarding breakpoints, which can significantly affect the cost of a shareholder's investment, be included in the prospectus that is delivered to all shareholders. In addition, the requirement that this prospectus disclosure include a summary of the eligibility requirements for sales load breakpoints may assist investors in better understanding the ways in which they may take full advantage of breakpoint opportunities.

The amendments relating to disclosure of methods used to value accounts in determining breakpoint eligibility also may benefit investors by assisting them and their financial intermediaries in more effectively determining investors' eligibility. Also, the disclosure relating to information and records necessary to aggregate holdings may benefit investors because prospectus disclosure regarding the information or records that it may be necessary for a shareholder to provide may facilitate the correct application of breakpoint discounts in transactions in which shares are aggregated to meet sales load breakpoints. In addition, the disclosure may heighten investors' awareness of the importance of maintaining records when breakpoints are determined using the historical cost method.

The amendments relating to disclosure regarding the availability of sales load and breakpoint information on a mutual fund's Web site may benefit investors by encouraging mutual funds to provide accessible Web site disclosure regarding the availability of breakpoint discounts to complement the prospectus disclosure regarding breakpoints. In addition, the amendments relating to the presentation of disclosure regarding breakpoints should benefit investors by encouraging mutual funds to present information regarding sales loads and breakpoints in an integrated manner that will be easily understood by investors.

B. Costs

The amendments impose new requirements on mutual funds that have front-end sales loads to provide several new prospectus disclosures regarding breakpoint discounts on these front-end sales loads. We estimate that complying with the new disclosures will entail a relatively small financial burden. The information regarding breakpoint discounts should be available to management and the board of directors of a fund, and mutual funds already disclose much of the breakpoint disclosure that is required by the amendments in their registration statements (although they have not been required to include this information in their prospectuses). Therefore, we expect that the cost of compiling and reporting this information should be limited.

Specifically, we are adopting amendments to Form N–1A to require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements. In addition, we are requiring a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints. We are also requiring a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary. Our amendments also require a mutual fund to state in its prospectus whether it makes available on or through its Web site, and in a clear and prominent format, information regarding its sales loads and breakpoints.

The costs of adding these new prospectus disclosures may include both internal costs (for attorneys and other non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure) and external costs (for printing and typesetting of the disclosure). For purposes of the Paperwork Reduction Act, we have estimated that the new disclosure requirements will add 2,252 hours to the total annual burden of completing Form N–1A.[42] We estimate that this additional burden will equal total internal costs of $188,650 annually, or approximately $89 per fund portfolio.[43]

We expect that the external costs of providing the new prospectus

[40] Joint Report, *supra* note 10, at 14–15.

[41] *Id.* at 16.

[42] This estimate is based on the following calculation: (2 hours per initial registration statement × 483 portfolios × 30% of portfolios) + (1 hour per post-effective amendment × 6,542 portfolios × 30% of portfolios) = 2,252 hours.

[43] These figures are based on a Commission estimate that approximately 781 registered investment companies, with 2,108 portfolios, will file initial registration statements or post-effective amendments annually that will be subject to the disclosure requirements, and an estimated hourly wage rate of $83.77. The estimate of the number of investment companies is based on data derived from the Commission's EDGAR filing system. The estimated wage rate is a blended rate, based on published hourly wage rates for assistant/associate general counsels ($82.05) and programmers ($42.05) in New York City, and the estimate that staff in these categories will divide time equally on compliance with the disclosure requirements, yielding a weighted wage rate of $62.05 (($82.05×.50)+(42.05×.50))=$62.05). *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2003* (Sept. 2003). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $83.77 ($62.05×1.35)=$83.77). This estimate differs from the estimate in the Proposing Release, which was based on published compensation for compliance attorneys outside New York City ($37.60) and programmers ($29.44) contained in the Securities Industry Association's *Report on Management & Professional Earnings in the Securities Industry 2002* (Sept. 2002).

disclosure will be limited, because the amendments relating to disclosure of arrangements that result in breakpoints in sales loads require the description of the arrangements to be brief. We expect that the disclosure will not add significant length to the prospectus.

V. Consideration of Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act [15 U.S.C. 80a–2(c)] and Section 2(b) of the Securities Act [15 U.S.C. 77(b)] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In the Proposing Release, we requested comment on whether the proposed amendments would promote efficiency, competition, and capital formation. We received no comments on this section of the proposals.

The amendments are intended to provide greater transparency for mutual fund shareholders regarding breakpoint discounts on front-end sales loads. These changes may improve efficiency. The enhanced disclosure requirements are intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors to the information that they may need to provide to funds and financial intermediaries to take full advantage of all available breakpoint discounts, which could promote more efficient allocation of investments among mutual funds. The amendments may also improve competition, as enhanced disclosure regarding the ways in which investors can aggregate holdings to meet sales load breakpoints may prompt investors to seek out mutual funds that offer the most favorable breakpoint schedules and aggregation rules for their particular circumstances, and may prompt funds to compete for the business of these better informed investors. Finally, the effects of the amendments on capital formation are unclear.

Although, as noted above, we believe that the amendments will benefit investors, the magnitude of the effect of the amendments on efficiency, competition, and capital formation, and the extent to which they would be offset by the costs of the amendments, are difficult to quantify. We note that, with respect to the amendments, in many cases mutual funds currently provide disclosure in their registration statements regarding breakpoint discounts on front-end sales loads.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 604, and relates to the Commission's form amendments under the Securities Act and the Investment Company Act to require mutual funds to provide enhanced disclosure about breakpoint discounts on front-end sales loads. An Initial Regulatory Flexibility Analysis (''IRFA''), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release.

A. Reasons for, and Objectives of, the Amendments

Sections I and II of this release describe the reasons for and objectives of the amendments. As discussed in detail above, the amendments adopted by the Commission include disclosure reforms intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors to the information that they may need to provide to funds and financial intermediaries to take full advantage of all available breakpoint discounts.

B. Significant Issues Raised by Public Comment

In the IRFA for the proposed amendments, we requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposed amendments, the likely impact of the proposals on small entities, and the nature of any impact, and we asked commenters to provide any empirical data supporting the extent of the impact. We received one comment letter specifically on the IRFA, in which the commenter argued that the Commission should ensure that small mutual funds, and small investment management companies, are not negatively impacted by the proposed rules beyond that permitted by the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*].

C. Small Entities Subject to the Rule

The amendments adopted by the Commission will affect registered investment companies that are small entities. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[44] Approximately 145 investment companies registered on Form N–1A meet this definition.[45]

D. Reporting, Recordkeeping, and Other Compliance Requirements

We are adopting amendments to Form N–1A to require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements. In addition, we are requiring a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints. We are also requiring a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary. Our amendments also require a mutual fund to state in its prospectus whether it makes available on or through its Web site, and in a clear and prominent format, information regarding its sales loads and breakpoints. In addition, our amendments will require a mutual fund to provide prospectus disclosure regarding sales loads and breakpoints adjacent to the table of sales loads and breakpoints, and to present the information in a clear, concise, and understandable manner.

The Commission estimates some one-time formatting and ongoing costs and burdens that will be imposed on all mutual funds, including funds that are small entities. We note, however, that in many cases funds currently provide disclosure in their registration statements regarding breakpoint discounts. For purposes of the Paperwork Reduction Act, we have estimated that the new disclosure requirements will increase the hour burden per portfolio per filing of an initial registration statement on Form N–1A by 2 hours and will increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 1 hour. We estimate that this additional burden will increase total internal costs of filing an initial registration statement by approximately $168 per affected mutual fund portfolio annually, and will increase total internal costs of filing a post-effective amendment by

[44] 17 CFR 270.0–10.

[45] This estimate is based on analysis by the Division of Investment Management staff of information from databases compiled by third-party information providers, including Morningstar, Inc., and Lipper.

approximately $84 per affected mutual fund portfolio annually.[46]

We expect that the external costs of providing the new prospectus disclosure will be limited, because some funds currently provide some of this information in their registration statements, and we do not expect that the disclosure will add significant length to the prospectus.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The disclosure amendments will provide shareholders with greater transparency of breakpoint discounts on front-end sales loads. Different disclosure requirements for funds that are small entities may create the risk that the shareholders in these funds would not be as able as investors in larger funds to assess the terms upon which breakpoint discounts in sales loads are offered. We believe it is important for the disclosure that will be required by the amendments to be provided to shareholders by all mutual funds, not just funds that are not considered small entities.

We have endeavored through these amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the amendments for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context. Based on our past experience, we believe that the disclosure required by the amendments will be more useful to investors if there are enumerated informational requirements.

[46] These figures are based on an estimated hourly wage rate of $83.77. *See supra* note 43.

VII. Statutory Authority

The Commission is adopting amendments to Form N–1A pursuant to authority set forth in Sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)] and Sections 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–29, and 80a–37].

List of Subjects

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Form Amendments

For the reasons set out in the preamble, the Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 1. The general authority citation for part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 2. The authority citation for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 3. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

■ a. Removing the final sentence of General Instruction C.3.(a) and adding two new sentences;

■ b. Revising the reference ''7(a)(2)'' to read ''7(a)(2)–(5)'' in General Instruction C.3.(d)(i);

■ c. Revising the introductory text of Item 6(g);

■ d. Revising Item 7(a)(2);

■ e. Adding Instructions to Items 7(a)(1) and (2);

■ f. Adding Items 7(a)(3), (4), and (5);

■ g. Adding an Instruction to Item 7(a); and

■ h. Revising Item 17(a).

These additions and revisions read as follows:

Note: The text of Form N–1A does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–1A

* * * * *

General Instructions

* * * * *

C. Preparation of the Registration Statement

* * * * *

3. Additional Matters:

(a) * * * Disclose the information required by Item 7 (Distribution Arrangements) in one place in the prospectus, except that the information required by paragraphs 7(a)(2), (3), (4), and (5) may be disclosed in a separate purchase and redemption document pursuant to Item 6(g), provided that all the information required by paragraphs 7(a)(2), (3), (4), and (5) is included in the separate document. If the information required by paragraphs 7(a)(2), (3), (4), and (5) is disclosed in a separate purchase and redemption document, the table required by paragraph 7(a)(1) must be included in the separate purchase and redemption document, as well as the prospectus, in order to comply with the Instruction to Item 7(a), which states that all information required by paragraph 7(a) must be adjacent to the table required by paragraph 7(a)(1).

* * * * *

Item 6. Shareholder Information

* * * * *

(g) *Separate Disclosure Document.* A Fund may omit from the prospectus information about purchase and redemption procedures required by Items 6(b)–(d) and 7(a)(2)–(5), other than information that is also required by Item 6(e), and provide it in a separate document if the Fund:

* * * * *

Item 7. Distribution Arrangements

(a) * * *

(2) Unless disclosed in response to paragraph (a)(1), briefly describe any

arrangements that result in breakpoints in, or elimination of, sales loads (*e.g.*, letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, redemption reinvestment plans, and waivers for particular classes of investors). Identify each class of individuals or transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the net amount invested. If applicable, state that additional information concerning sales load breakpoints is available in the Fund's SAI.

Instructions

1. The description, pursuant to paragraph (a)(1) or (a)(2) of this Item 7, of arrangements that result in breakpoints in, or elimination of, sales loads must include a brief summary of shareholder eligibility requirements, including a description or list of the types of accounts (*e.g.*, retirement accounts, accounts held at other financial intermediaries), account holders (*e.g.*, immediate family members, family trust accounts, solely-controlled business accounts), and fund holdings (*e.g.*, funds held within the same fund complex) that may be aggregated for purposes of determining eligibility for sales load breakpoints.

2. The description pursuant to paragraph (a)(2) of this Item 7 need not contain any information required by Items 12(d) and 17(b).

(3) Describe, if applicable, the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints, including the circumstances in which and the classes of individuals to whom each method applies. Methods that should be described, if applicable, include historical cost, net amount invested, and offering price.

(4)(i) State, if applicable, that, in order to obtain a breakpoint discount, it may be necessary at the time of purchase for a shareholder to inform the Fund or his or her financial intermediary of the existence of other accounts in which there are holdings eligible to be aggregated to meet sales load breakpoints. Describe any information or records, such as account statements, that it may be necessary for a shareholder to provide to the Fund or his or her financial intermediary in order to verify his or her eligibility for a breakpoint discount. This description must include, if applicable:

(A) Information or records regarding shares of the Fund or other funds held in all accounts (*e.g.*, retirement accounts) of the shareholder at the financial intermediary;

(B) Information or records regarding shares of the Fund or other funds held in any account of the shareholder at another financial intermediary; and

(C) Information or records regarding shares of the Fund or other funds held at any financial intermediary by related parties of the shareholder, such as members of the same family or household.

(ii) If the Fund permits eligibility for breakpoints to be determined based on historical cost, state that a shareholder should retain any records necessary to substantiate historical costs because the Fund, its transfer agent, and financial intermediaries may not maintain this information.

(5) State whether the Fund makes available free of charge, on or through the Fund's Web site at a specified Internet address, and in a clear and prominent format, the information required by paragraphs (a)(1) through (a)(4) and Item 17(a), including whether the Web site includes hyperlinks that facilitate access to the information. If the Fund does not make the information required by paragraphs (a)(1) through (a)(4) and Item 17(a) available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Fund does not have an Internet Web site).

Instruction. All information required by paragraph (a) of this Item 7 must be adjacent to the table required by paragraph (a)(1) of this Item 7; must be presented in a clear, concise, and understandable manner; and must include tables, schedules, and charts as expressly required by paragraph (a)(1) of this Item 7 or where doing so would facilitate understanding.

* * * * *

Item 17. Purchase, Redemption, and Pricing of Shares

(a) *Purchase of Shares.* To the extent that the prospectus does not do so, describe how the Fund's shares are offered to the public. Include any special purchase plans or methods not described in the prospectus or elsewhere in the SAI, including letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, redemption reinvestment plans, and waivers for particular classes of shareholders.

* * * * *

By the Commission.

Dated: June 7, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13276 Filed 6–10–04; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

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To provide for expansion of Sleeping Bear Dunes National Lakeshore. (May 28, 2004; 118 Stat. 645)

H.R. 708/P.L. 108–230

To require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes, and for other purposes. (May 28, 2004; 118 Stat. 646)

H.R. 856/P.L. 108–231

To authorize the Secretary of the Interior to revise a repayment contract with the Tom Green County Water and Control and Improvement District No. 1, San Angelo project, Texas, and for other purposes. (May 28, 2004; 118 Stat. 648)

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To provide for the establishment of separate campaign medals to be awarded to members of the uniformed services who participate in Operation Enduring Freedom and to members of the uniformed services who participate in Operation Iraqi Freedom. (May 28, 2004; 118 Stat. 655)

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33 Parts:			
1–124	(869–050–00122–5)	55.00	July 1, 2003
125–199	(869–050–00123–3)	61.00	July 1, 2003
200–End	(869–050–00124–1)	50.00	July 1, 2003
34 Parts:			
1–299	(869–050–00125–0)	49.00	July 1, 2003
300–399	(869–050–00126–8)	43.00	[7]July 1, 2003
400–End	(869–050–00127–6)	61.00	July 1, 2003
35	(869–050–00128–4)	10.00	[6]July 1, 2003
36 Parts			
1–199	(869–050–00129–2)	37.00	July 1, 2003
200–299	(869–050–00130–6)	37.00	July 1, 2003
300–End	(869–050–00131–4)	61.00	July 1, 2003
37	(869–050–00132–2)	50.00	July 1, 2003
38 Parts:			
0–17	(869–050–00133–1)	58.00	July 1, 2003
18–End	(869–050–00134–9)	62.00	July 1, 2003
39	(869–050–00135–7)	41.00	July 1, 2003
40 Parts:			
1–49	(869–050–00136–5)	60.00	July 1, 2003
50–51	(869–050–00137–3)	44.00	July 1, 2003
52 (52.01–52.1018)	(869–050–00138–1)	58.00	July 1, 2003
52 (52.1019–End)	(869–050–00139–0)	61.00	July 1, 2003
53–59	(869–050–00140–3)	31.00	July 1, 2003
60 (60.1–End)	(869–050–00141–1)	58.00	July 1, 2003
60 (Apps)	(869–050–00142–0)	51.00	[8]July 1, 2003
61–62	(869–050–00143–8)	43.00	July 1, 2003
63 (63.1–63.599)	(869–050–00144–6)	58.00	July 1, 2003
63 (63.600–63.1199)	(869–050–00145–4)	50.00	July 1, 2003
63 (63.1200–63.1439)	(869–050–00146–2)	50.00	July 1, 2003
63 (63.1440–End)	(869–050–00147–1)	64.00	July 1, 2003
64–71	(869–050–00148–9)	29.00	July 1, 2003
72–80	(869–050–00149–7)	61.00	July 1, 2003
81–85	(869–050–00150–1)	50.00	July 1, 2003
86 (86.1–86.599–99)	(869–050–00151–9)	57.00	July 1, 2003
86 (86.600–1–End)	(869–050–00152–7)	50.00	July 1, 2003
87–99	(869–050–00153–5)	60.00	July 1, 2003
100–135	(869–050–00154–3)	43.00	July 1, 2003
136–149	(869–150–00155–1)	61.00	July 1, 2003
150–189	(869–050–00156–0)	49.00	July 1, 2003
190–259	(869–050–00157–8)	39.00	July 1, 2003
260–265	(869–050–00158–6)	50.00	July 1, 2003
266–299	(869–050–00159–4)	50.00	July 1, 2003
300–399	(869–050–00160–8)	42.00	July 1, 2003
400–424	(869–050–00161–6)	56.00	July 1, 2003
425–699	(869–050–00162–4)	61.00	July 1, 2003
700–789	(869–050–00163–2)	61.00	July 1, 2003
790–End	(869–050–00164–1)	58.00	July 1, 2003
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–050–00165–9)	23.00	[7]July 1, 2003
101	(869–050–00166–7)	24.00	July 1, 2003
102–200	(869–050–00167–5)	50.00	July 1, 2003
201–End	(869–050–00168–3)	22.00	July 1, 2003
42 Parts:			
1–399	(869–050–00169–1)	60.00	Oct. 1, 2003
400–429	(869–050–00170–5)	62.00	Oct. 1, 2003
430–End	(869–050–00171–3)	64.00	Oct. 1, 2003
43 Parts:			
1–999	(869–050–00172–1)	55.00	Oct. 1, 2003
1000–end	(869–050–00173–0)	62.00	Oct. 1, 2003
44	(869–050–00174–8)	50.00	Oct. 1, 2003
45 Parts:			
1–199	(869–050–00175–6)	60.00	Oct. 1, 2003
200–499	(869–050–00176–4)	33.00	Oct. 1, 2003
500–1199	(869–050–00177–2)	50.00	Oct. 1, 2003
1200–End	(869–050–00178–1)	60.00	Oct. 1, 2003
46 Parts:			
1–40	(869–050–00179–9)	46.00	Oct. 1, 2003
41–69	(869–050–00180–2)	39.00	Oct. 1, 2003
70–89	(869–050–00181–1)	14.00	Oct. 1, 2003
90–139	(869–050–00182–9)	44.00	Oct. 1, 2003
140–155	(869–050–00183–7)	25.00	Oct. 1, 2003
156–165	(869–050–00184–5)	34.00	Oct. 1, 2003
166–199	(869–050–00185–3)	46.00	Oct. 1, 2003
200–499	(869–050–00186–1)	39.00	Oct. 1, 2003
500–End	(869–050–00187–0)	25.00	Oct. 1, 2003
47 Parts:			
0–19	(869–050–00188–8)	61.00	Oct. 1, 2003
20–39	(869–050–00189–6)	45.00	Oct. 1, 2003
40–69	(869–050–00190–0)	39.00	Oct. 1, 2003
70–79	(869–050–00191–8)	61.00	Oct. 1, 2003
80–End	(869–050–00192–6)	61.00	Oct. 1, 2003
48 Chapters:			
1 (Parts 1–51)	(869–050–00193–4)	63.00	Oct. 1, 2003
1 (Parts 52–99)	(869–050–00194–2)	50.00	Oct. 1, 2003
2 (Parts 201–299)	(869–050–00195–1)	55.00	Oct. 1, 2003
3–6	(869–050–00196–9)	33.00	Oct. 1, 2003
7–14	(869–050–00197–7)	61.00	Oct. 1, 2003
15–28	(869–050–00198–5)	57.00	Oct. 1, 2003
29–End	(869–050–00199–3)	38.00	[9]Oct. 1, 2003
49 Parts:			
1–99	(869–050–00200–1)	60.00	Oct. 1, 2003

Title	Stock Number	Price	Revision Date
100–185	(869–050–00201–9)	63.00	Oct. 1, 2003
186–199	(869–050–00202–7)	20.00	Oct. 1, 2003
200–399	(869–050–00203–5)	64.00	Oct. 1, 2003
400–599	(869–050–00204–3)	63.00	Oct. 1, 2003
600–999	(869–050–00205–1)	22.00	Oct. 1, 2003
1000–1199	(869–050–00206–0)	26.00	Oct. 1, 2003
1200–End	(869–048–00207–8)	33.00	Oct. 1, 2003
50 Parts:			
1–16	(869–050–00208–6)	11.00	Oct. 1, 2003
17.1–17.95	(869–050–00209–4)	62.00	Oct. 1, 2003
17.96–17.99(h)	(869–050–00210–8)	61.00	Oct. 1, 2003
17.99(i)–end	(869–050–00211–6)	50.00	Oct. 1, 2003
18–199	(869–050–00212–4)	42.00	Oct. 1, 2003
200–599	(869–050–00213–2)	44.00	Oct. 1, 2003
600–End	(869–050–00214–1)	61.00	Oct. 1, 2003
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2004 CFR set		1,342.00	2004
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Complete set (one-time mailing)		298.00	2002

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2003. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.