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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

[Docket No. 04–21]

RIN 1557–AC83

Lending Limits Pilot Program

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is extending for three years the lending limits pilot program (pilot program or program) that currently authorizes special lending limits for 1–4 family residential real estate loans and small business loans. Under the pilot program, which originated in 2001, eligible national banks with main offices located in states that prescribe a lending limit for residential real estate loans or small business loans that is higher than the current Federal limit may apply to take part in the program and use the higher limits. While the program has operated in a safe and sound manner thus far, we believe that additional experience with the program is needed before we can make a long-term determination whether to retain, modify, or rescind these special lending limits. Accordingly, the final rule extends the pilot program, as revised by this rule, for an additional three years, until June 11, 2007. The final rule also expands the program to include certain agricultural loans.

DATES: *Effective Date:* August 19, 2004.

FOR FURTHER INFORMATION CONTACT: Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090; Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; Jonathan Fink, Senior Attorney, Bank Activities and Structure, (202) 874–5300; or Thomas O'Dea, National Bank Examiner, Credit Risk, (202) 874–5170. Mailing address: Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

Federal statutes and regulations provide that a national bank may make loans to a single borrower in an amount up to 15 percent of its unimpaired capital and surplus.[1] A national bank also may extend credit up to an additional 10 percent of unimpaired capital and surplus to the same borrower if the amount of the loan that exceeds the 15 percent limit is secured by ''readily marketable collateral.'' Twelve CFR part 32 refers to these lending limits as the ''combined general limit.'' The statute and regulation also provide exceptions to the combined general limit for various types of loans and extensions of credit.

Twelve U.S.C. 84 authorizes the OCC to establish lending limits ''for particular classes or categories of loans'' that are different from those expressly provided by the statute's terms. In 2001, relying on this authority, the OCC published a final rule establishing a pilot program with special lending limits for residential real estate loans and small business loans. 66 FR 31114 (June 11, 2001) (2001 Final Rule). The purpose of the program is to enable community banks to remain competitive in states that provide their state-chartered institutions with a higher lending limit for these types of loans, while continuing to ensure that banks conduct their lending operations in a safe and sound manner. As of the end of June 2004, 178 national banks headquartered in 23 states had received approval to participate in the program.

On April 24, 2004, the OCC proposed to extend the pilot program for three years beyond its current expiration date of June 11, 2004. 69 FR 21978 (April 23, 2004). We proposed this extension to gain additional information and experience about the program and to reach a determination of whether, and under what circumstances, to terminate, modify, or extend the program. On June 10, 2004, the OCC issued an interim rule extending the pilot program through September 11, 2004.[2] 69 FR 32435 (June 10, 2004). We issued the interim rule to allow the pilot program to continue, uninterrupted, while we reviewed public comments on the proposed rule.

II. Overview of Comments Received

The OCC received 13 comments on the proposed rule. Eight comments were from national banks, most operating in small communities. Two comments were submitted by national-level bank trade associations; one comment was submitted by a state banking trade association. One comment was from a major trade association for homebuilders; and one comment was submitted by a Federal thrift.

All of the commenters supported the pilot program and favored extending it for three years, although many would prefer that the OCC make it permanent. One commenter, a national bank, stated that the lending program helped the bank retain customers who want one institution to provide all of their financing. A second commenter, also a national bank, stated that the pilot program has enabled the bank to remain competitive with state-chartered institutions with higher lending limits. A third commenter, a trade association for banks, endorsed the pilot program, noting that the higher lending limits have allowed community banks to retain customers they may have otherwise lost to other institutions.[3]

III. Description of the Final Rule

1. Continuation of the Pilot Program

The preamble to the 2001 Final Rule stated that, prior to conclusion of the pilot program, we would evaluate our experiences under the program and determine whether, and under what circumstances, to extend its duration. The proposal to this final rule noted that banks in the program have not had the additional lending authority for a sufficient period of time to allow the

[1] 12 U.S.C. 84; 12 CFR part 32 (implementing section 84).

[2] Under the 2001 Final Rule, national banks with approval to participate in the pilot program could make loans under the program until September 11, 2004.

[3] In the proposed rule, we solicited comment on whether to expand part 32 beyond its current scope (loans made by banks and their domestic operating subsidiaries) to statutory subsidiaries (*e.g.,* agricultural credit corporations). We received no comment on this question. Nor do we have any indication that this change is required by safety and soundness concerns. Therefore, the final rule does not change the scope of 12 CFR part 32.

OCC to assess fully the effects of the program. We also observed that the limited number of banks in the pilot program, and the relatively small number of quarters of data available for review, made reaching a final conclusion about the program premature. For these reasons, we proposed extending the pilot program for an additional three years.

As described earlier, all of the commenters supported extending the program. Several commenters also indicated that the pilot program has allowed them to remain competitive or retain customers. We continue to believe, however, that more data are needed before we can adequately evaluate whether to make the program permanent. Therefore, the final rule extends the program for an additional three years until June 11, 2007, with one substantive change to include an additional special lending limit for farm lending. Banks already approved under the pilot program need not reapply to continue lending under the program.

2. Scope of the Pilot Program

The pilot program authorizes an eligible national bank to apply for approval to make residential real estate loans and small business loans to a single borrower in addition to amounts that they may already lend to a single borrower under the existing combined general limit and special limits in 12 CFR 32.3(a) and (b). Under the pilot program, an eligible national bank may make residential loans in an additional amount up to the lesser of 10 percent of its capital and surplus, or the percent of its capital and surplus in excess of 15 percent that a state bank is permitted to lend under the state lending limit that is available for residential real estate loans or unsecured loans in the state where the main office of the national bank is located. Similarly, an eligible national bank may make small business loans in an additional amount up to the lesser of 10 percent of capital and surplus, or the percent of its capital and surplus in excess of 15 percent that a state bank is permitted to lend under the state lending limit that is available for small business loans or unsecured loans in the state where the main office of the national bank is located. In each case, the bank may lend no more than $10 million to a single borrower under the special authority. The 2001 Final Rule provides specific definitions for residential real estate loans and small business loans. 66 FR 31120 (June 11, 2001); *see also* 12 CFR 32.2(p) and (r).

Several commenters requested that the OCC add agricultural loans as another category of loans eligible for the special lending limits. One commenter observed that consolidation has resulted in fewer, but larger, farms with expanded credit needs. This situation makes the higher lending limit more important and useful to serving the bank's customers. Another commenter stated that rural banks have significant expertise in agricultural lending, thereby reducing the risk of loss of the agricultural loans they make. Another commenter stated that loans to small farms present no more risk, and perhaps less risk, than small business loans.

We agree with the commenters that the addition of agricultural loans to the pilot program likely will help both the community national banks that serve rural agricultural communities in those states with higher lending limits and their customers. Moreover, the incremental risk posed by the expansion of the pilot program to include agricultural loans does not raise significant safety and soundness concerns. It is our supervisory observation that agricultural loans have rates of loss that are similar to, and sometimes lower than, other types of loans. Therefore, the final rule provides that, in addition to the amount that a bank may lend to one borrower under §§ 32.3 (a) and (b), an eligible national bank may make small farm loans to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a state bank is permitted to lend under the state lending limit that is available for small farm loans or unsecured loans in the state where the main office of the national bank is located. In no event may a bank lend more than $10 million to one borrower under this authority. The OCC will use the data we accumulate over the three-year extension of the program to evaluate the effects of this additional authority on participating banks.

This final rule defines the term ''small farm loans'' by referring to the instructions for preparation of the Consolidated Report of Condition and Income (Call Report Instructions).[4] The Call Report Instructions include loans or extensions of credit ''secured by farmland (including farm residential and other improvements)'' or loans or extensions of credit ''to finance agricultural production and other loans to farmers.'' We adopted this definition because banks are familiar with the Call Report Instructions.

One commenter, a major trade association for homebuilders, suggested that we add loans for property construction and land development (construction and development) purposes to the program. The commenter asserted that lending limits are problematic for community banks. We did not receive comment from any banks suggesting that banks have been disadvantaged due to higher state lending limits for construction and development lending. Nor did the homebuilders association provide such evidence. Moreover, it is our supervisory experience that construction and development loans present more significant risks than do loans currently in the pilot program. Therefore, we decline to extend the program to construction and development loans.

3. Safeguards

At the outset of the pilot program, in 2001, we adopted a number of safeguards that apply to banks using the authority under the pilot program. For example, the amount that a bank may lend under the pilot program's special limits is subject to an individual borrower cap and an aggregate borrower cap. Under the individual borrower cap, the total outstanding amount of a bank's loans to one borrower under 12 CFR 32.3(a) and (b), together with loans made under the program, may not exceed 25 percent of the bank's capital and surplus. The aggregate cap provides that the total outstanding amount of any loan or parts of loans made by a bank to all of its borrowers under the special limits of the pilot program may not exceed 100 percent of the bank's capital and surplus. And, as noted earlier, the amount a bank may lend to one borrower under the special lending limit may not exceed $10 million. These caps, which apply to residential real estate loans and small business loans banks, will now include small farm loans made by a bank under the expanded pilot program.

One commenter suggested that the OCC increase the $10 million individual cap to $20 million to broaden the appeal of the program and further level the playing field between state and national banks. The same commenter also recommended expanding the program's aggregate lending cap on all small business and real estate loans from 100 percent to 200 percent of a bank's capital and surplus.

We believe that the 100 percent aggregate lending cap provides

[4] The Call Report Instructions are available at *http://www.ffiec.gov*. The addition of agricultural loans to the pilot program is not intended to expand the program to loans for farm property construction and land development. Such loans are currently excluded from the definition of ''loans to small farms.'' *See* Call Report Instructions, item 1.b, at RC–C–4.

significant opportunity for lending under the pilot program and is a provision that comports with safety and soundness. As we stated in the proposed rule, while the pilot program has operated in a safe and sound manner, the data available to the OCC is not of sufficient volume or maturity to make a long-term decision about whether to modify these safeguards. Therefore, at this time we decline to increase the amounts that banks may lend under the pilot program. During the course of the next few years, we will consider the effect of the cap on lending under the revised pilot program, *e.g.,* whether agricultural lenders typically make loans under other parts of the pilot program and, if so, whether the caps have resulted in a competitive disadvantage for participating banks.

4. Application Process

A bank is eligible for the pilot program only if it is well capitalized, as defined in 12 CFR 6.4(b)(1), and has a rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS), with at least a rating of 2 for asset quality and for management. These criteria ensure that only banks with sufficient capital and good managerial oversight are permitted to use the increased limits.

A bank also must apply and obtain the OCC's approval before it may use the special lending limits. The application includes a certification that the bank is well capitalized and has the requisite ratings, citation to state law on lending limits, a copy of a written resolution by a majority of the bank's board of directors approving the use of the new lending authority, and a description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

One commenter suggested that the OCC allow a national bank to self-certify that it is an eligible bank rather than go through an application process. We believe that the application process is an important tool that allows the OCC to monitor carefully the banks that wish to participate in the program. Therefore, we are maintaining the application requirement.

IV. Regulatory Analysis

1. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities for the following reasons. Participation in the pilot program is voluntary; the program does not impose new requirements on banks; the program confers a benefit; and banks that participate in the program will not experience a significant economic impact, regardless of size. Also, to date, only a small fraction of national banks have taken part in the program.

2. Administrative Procedure Act

Under section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C 553(d), the OCC must generally provide a 30-day delayed effective date for final rules. The OCC may dispense with the 30-day delayed effective date requirement ''for good cause found and published with the rule.'' Similarly, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), requires a banking agency to make a rule effective on the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form, unless the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1).

The OCC finds that there is good cause to dispense with the two effective date requirements because a failure to extend the September 11, 2004, sunset date would cause unnecessary disruption in the operation of the pilot program. In addition, the purpose of the APA and CDRI delayed effective date provisions is to afford affected persons a reasonable time to comply with rule changes. While the final rule expands the scope of loans a bank may make under the program, the rule makes no substantive changes to the existing lending limits pilot program. Therefore, there is no additional regulatory or compliance burden associated with the final rule for banks that apply to enter the program or banks already in the pilot program.

3. Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

4. Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

5. Paperwork Reduction Act

The Office of Management and Budget (OMB) has reviewed and approved the collection of information requirements contained in the pilot program under control number 1557–0221, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, part 32 of chapter I of title 12 of the Code of Federal Regulations is amended to read as follows:

PART 32—LENDING LIMITS

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 12 U.S.C. 84, and 12 U.S.C. 93a.

■ 2. In § 32.2, paragraph (s) is redesignated as paragraph (t), and a new paragraph (s) is added to read as follows:

§ 32.2 Definitions.

* * * * *

(s) *Small farm loans or extensions of credit* means ''loans to small farms,'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

* * * * *

■ 3. Section 32.7 is amended by removing the phrase ''(a)(1) and (2)'' each place it appears and adding the phrase ''(a)(1), (2), and (3)'' in its place; revising the heading of paragraph (a); redesignating paragraphs (a)(3) and (4) as paragraphs (a)(4) and (5); adding a new

paragraph (a)(3); in paragraph (c), removing the phrase ''the date three years after September 10, 2001,'' and adding in its place ''September 10, 2007,''; in the first sentence of paragraph (d), removing the phrase ''residential or small business'' and adding in its place ''residential real estate, small business, or small farm''; and in paragraph (e), removing the phrase ''2004'' and adding in its place the phrase ''2007'' to read as follows:

§ 32.7 Pilot program for residential real estate, small business, and small farm loans.

(a) *Residential real estate, small business, and small farm loans.*

* * * * *

(3) In addition to the amount that a national bank may lend to one borrower under § 32.3, an eligible national bank may make small farm loans or extensions of credit to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank is permitted to lend under the State lending limit that is available for small farm loans or unsecured loans in the State where the main office of the national bank is located. In no event may a bank lend more than $10 million to one borrower under this authority.

* * * * *

Dated: August 6, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 04–18888 Filed 8–18–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18850; Directorate Identifier 2004–SW–19–AD; Amendment 39–13771; AD 2004–16–15]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS–365N2, AS 365 N3, EC 155B, EC155B1, SA–365N and N1, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) helicopters. This action requires inspecting the main gearbox (MGB) baseplate for a crack and replacing the MGB if a crack is found in the MGB base plate. This amendment is prompted by the discovery of a crack in a MGB base plate. The actions specified in this AD are intended to detect a crack in a MGB base plate and prevent failure of one of the MGB attachment points to the frame, which could result in severe vibration and subsequent loss of control of the helicopter.

DATES: Effective September 3, 2004.

Comments for inclusion in the Rules Docket must be received on or before October 18, 2004.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;
- Fax: (202) 493–2251; or
- 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.

Examining the Dockets

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

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for Eurocopter Model AS–365N2, AS 365 N3, EC 155B, EC155B1, SA–365N and N1, and SA–366G1 helicopters. This action requires visually inspecting the MGB for a crack in the MGB base plate, part number (P/N) 366A32–1062–03 or P/N 366A32–1062–06, close to the attachment hole using a 10x or higher magnifying glass. Stripping paint from the inspection area is also required, but only before the initial inspection. This amendment is prompted by the discovery of a crack in the MGB base plate of a MGB installed in a Model AS–365 N2 helicopter. The cause of the crack is under investigation, therefore, this AD is an interim action until the cause of the crack can be determined. The crack was located very close to the attachment points of one of the laminated pads, and it propagated to the inside of the MGB base plate and then continued into the MGB casing. This condition, if not detected, could result in failure of one of the MGB attachment points to the frame, which could result in severe vibration and subsequent 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 Model SA 365 N, N1, SA 366 G1, AS 365 N2, N3, and EC 155 B and B1 helicopters. The DGAC advises of the discovery of a crack on the MGB base plate of a Model AS 365 N2 helicopter.

Eurocopter has issued Alert Telexes:

- No. 05.00.45, applicable to Model 365 N, N1, N2, and N3 helicopters;
- No. 05.29, applicable to Model 366 G1 helicopters; and
- No. 05A005, applicable to Model EC 155 B and B1 helicopters, all dated February 5, 2004. These alert telexes specify visually inspecting the MGB base plate for absence of cracks. In addition, the alert telexes state that a 10x magnifying glass can be used to facilitate the crack inspection. Also, if in doubt about the existence of a crack, the alert telexes specify inspecting for a crack using a dye-penetrant crack detection inspection. The DGAC classified these alert telexes as mandatory and issued AD No. UF–2004–023(A), dated February 6, 2004, and AD No. F–2004–023, dated March 3, 2004, 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. Therefore, this AD is being issued to detect a crack in the MGB base plate and prevent failure of one of the MGB attachment points to the frame, which could result in severe vibration and subsequent loss of control of the helicopter. This AD requires initial and repetitive inspections of the MGB base plate for cracking at various short time intervals until its cause can be determined. Various compliance times are required depending on the helicopter model. The short compliance times involved are required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Therefore, since initial and repetitive inspections of the MGB base plate for cracking are required at short time intervals, 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.

We estimate that this AD will affect 142 helicopters and that the initial inspection will take approximately 0.5 work hour. Each recurring inspection will take approximately 0.25 work hour, and replacing the MGB, if necessary, will take approximately 4 work hours to accomplish, all at an average labor rate of $65 per work hour. It will cost approximately $25,000 to repair a cracked MGB base plate. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $138,067, assuming that each of the 135 Model AS 365 and SA 366 helicopters are inspected 40 times (the initial inspection plus 39 recurring inspections) and each of the 7 Model EC 155 helicopters are inspected 200 times (the initial inspection plus 199 recurring inspections), and one cracked MGB base plate is found requiring the replacement of one MGB. This estimate also assumes that a replacement MGB will not need to be purchased while a previously-installed MGB is being repaired.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18850; Directorate Identifier 2004–SW–19–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

2004–16–15 Eurocopter France: Amendment 39–13771. Docket No. FAA–2004–18850; Directorate Identifier 2004–SW–19–AD.

Applicability: Eurocopter France Model AS–365N2, AS 365 N3, EC 155B, EC155B1, SA–365N and N1, and SA–366G1 helicopters with a main gearbox (MGB) base plate, part number (P/N) 366A32–1062–03 or P/N 366A32–1062–06, installed, certificated in any category.

Compliance: Required as indicated in the following table and before installing a replacement main gearbox (MGB).

For . . .	Then . . .	Or . . .	Or . . .
Model SA–365N and N1, and Model SA–366G1 helicopters.	If a MGB is installed that has less than 9,900 cycles and has never been overhauled or repaired. On or before accumulating 9,900 cycles, unless accomplished previously, and thereafter, at intervals not to exceed 15 hours time-in-service (TIS).	If a MGB is installed that has 9,900 or more cycles and has never been overhauled or repaired, before further flight, unless accomplished previously, and thereafter, at intervals not to exceed 15 hours TIS.	If a MGB is installed that is overhauled or repaired, before further flight, unless accomplished previously, and thereafter, at intervals not to exceed 15 hours TIS.

For . . .	Then . . .	Or . . .	Or . . .
Model AS–365N2 and AS 365 N3 helicopters.	If a MGB is installed that has less than 7,300 cycles and has never been overhauled or repaired, on or before accumulating 7,300 cycles, unless accomplished previously, and thereafter, at intervals not to exceed 15 hours TIS.	If a MGB is installed that has 7,300 or more cycles and has never been overhauled or repaired, before further flight, and thereafter, at intervals not to exceed 15 hours TIS.	If a MGB is installed that has been overhauled or repaired, before further flight, and thereafter, at intervals not to exceed 15 hours TIS.
Model EC 155B and EC155B1 helicopters.	If a MGB base plate is installed that has less than 2,600 cycles, no later than 2,600 cycles, unless accomplished previously, and thereafter, before the first flight of each day and on or before reaching each 9 hours TIS interval during the day.	If a MGB base plate is installed that has 2,600 or more cycles, unless accomplished previously, before further flight, and thereafter, before the first flight of each day and on or before reaching each 9 hours TIS interval during the day.	

One cycle equates to one helicopter landing in which a landing gear touches the ground.

To detect a crack in the MGB base plate and prevent failure of a MGB attachment point to the frame, which could result in severe vibration and subsequent loss of control of the helicopter:

(a) Before the initial inspection at the time indicated in the compliance table, strip the paint from area ''D'' on both sides (''B'' and ''C'') of the MGB base plate as depicted in Figure 1.

BILLING CODE 4910–13–P

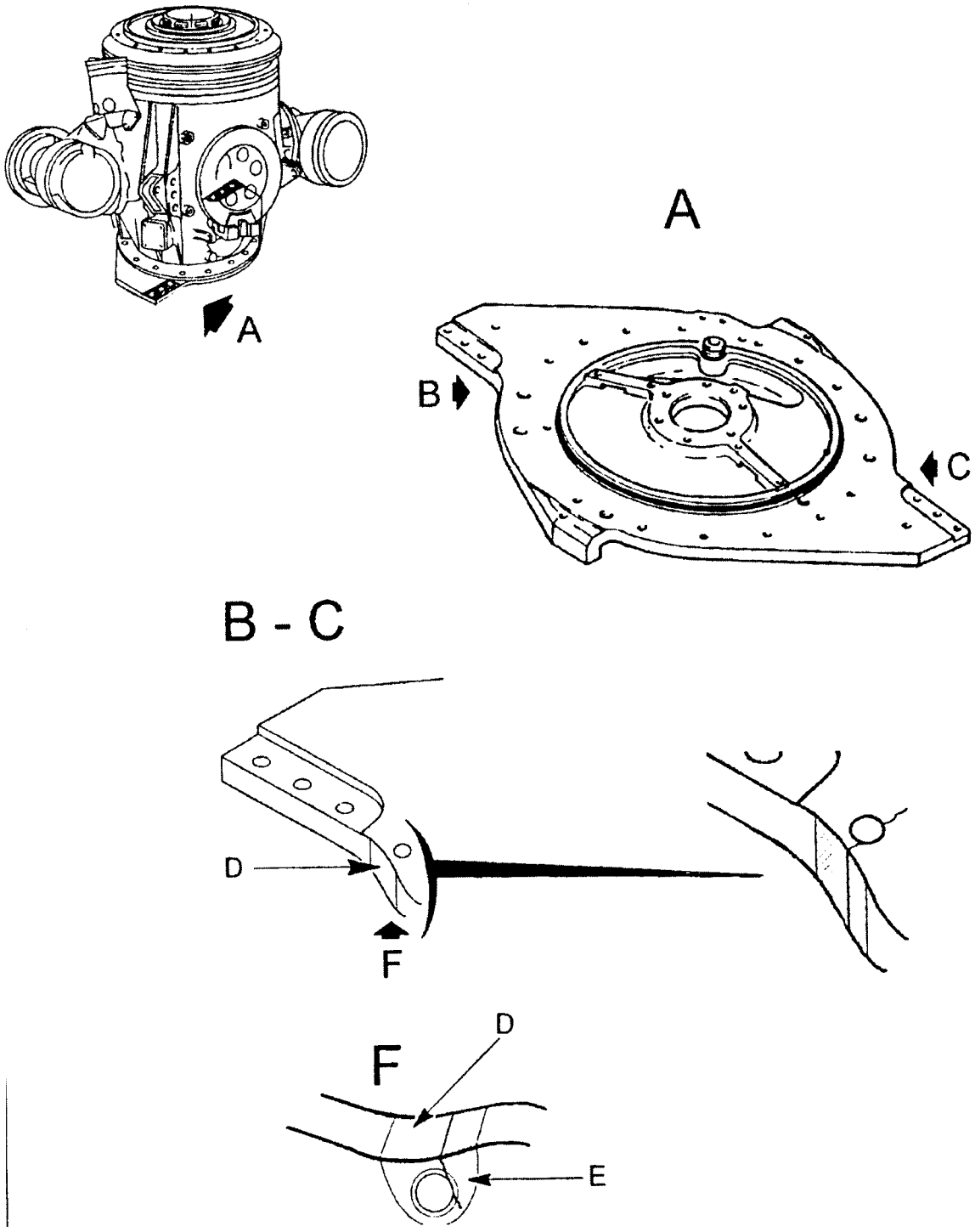

Figure 1

(b) At the times indicated in the compliance table, inspect area ''D'' of the MGB base plate for a crack using a 10x or higher magnifying glass.

Note 1: Eurocopter France Alert Telex No. 05.00.45, applicable to Model AS–365N2, AS 365 N3, SA–365N and SA–365N1 helicopters; Alert Telex No. 05.29, applicable to Model SA–366G1 helicopters, and Alert Telex No. 05A005, applicable to Model EC 155B and EC155B1 helicopters, pertain to the subject of this AD. All three alert telexes are dated February 5, 2004.

(c) If a crack is found in a MGB base plate, remove and replace the MGB with an airworthy MGB before further flight.

(d) 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.

(e) This amendment becomes effective on September 3, 2004.

Note 2: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. UF–2004–023(A), dated February 6, 2004, and AD No. F–2004–023, dated March 3, 2004.

Issued in Fort Worth, Texas, on August 4, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–18438 Filed 8–18–04; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket Nos. 1978N–0021 and 1978N–021P]

RIN 0910–AF42

Skin Protectant Drug Products for Over-the-Counter Human Use; Final Monograph; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) published a document in the **Federal Register** of June 4, 2003 (68 FR 33362), that established a final monograph with conditions under which over-the-counter (OTC) skin protectant drug products are generally recognized as safe and effective and not misbranded as part of FDA's ongoing review of OTC drug products. That final monograph included OTC skin protectant drug products for minor cuts, scrapes, burns, chapped skin and lips, poison ivy, poison oak, poison sumac, and insect bites. That document also amended the regulation that lists nonmonograph active ingredients by adding those OTC skin protectant ingredients that were found to be not generally recognized as safe and effective. However, that document had an incorrect ''approved as of'' date (May 7, 1991, instead of November 10, 1993) in § 310.545(a)(18)(v)(A) and (a)(18)(vi)(A) in part 310 (21 CFR part 310) and incorrectly added paragraphs (a)(18)(ii) through (a)(18)(vi)(A) to § 310.545(d)(1) when those paragraphs should have been included in § 310.545(d)(11). This document corrects those errors.

DATES: This rule is effective August 19, 2004.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

■ 2. Section 310.545 is amended by revising paragraphs (a)(18)(v)(A) and (a)(18)(vi)(A) headings and paragraphs (d)(1) and (d)(11) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(18) * * *

(v) * * *

(A) *Ingredients—Approved as of November 10, 1993.*

* * * * *

(vi) * * *

(A) *Ingredients—Approved as of November 10, 1993.*

* * * * *

(d) * * *

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(2)(i), (a)(3)(i), (a)(4)(i), (a)(6)(i)(A), (a)(6)(ii)(A), (a)(7) (except as covered by paragraph (d)(3) of this section), (a)(8)(i), (a)(10)(i) through (a)(10)(iii), (a)(12)(i) through (a)(12)(iv)(A), (a)(14) through (a)(15)(i), and (a)(16) through (a)(18)(i)(A).

* * * * *

(11) November 10, 1993, for products subject to paragraphs (a)(8)(ii), (a)(10)(v) through (a)(10)(vii), (a)(18)(ii) (except products that contain ferric subsulfate as covered by paragraph (d)(22) of this section) through (a)(18)(v)(A), (a)(18)(vi)(A), (a)(22)(ii), (a)(23)(i), (a)(24)(i), and (a)(25) of this section.

* * * * *

Dated: August 11, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–18975 Filed 8–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 2003–T–023]

RIN 0651–AB67

Changes in the Requirements for Amendment and Correction of Trademark Registrations

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (''Office'') is amending its rules to eliminate the requirement that a request for amendment or correction of a registration be accompanied by the original certificate of registration or a certified copy thereof, and the requirement that an application to surrender a registration for cancellation be accompanied by the original certificate or a certified copy.

DATES: Effective September 20, 2004.

FOR FURTHER INFORMATION CONTACT: Cheryl Black, Office of the Commissioner for Trademarks, by telephone at (703) 308–8910, ext. 153; or by e-mail to *cheryl.black@uspto.gov*.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making was published in the **Federal Register** (68 FR 70482) on December 18, 2003. No public hearing was held. Two organizations, two law firms and two attorneys submitted written comments.

The Office is amending its rules to eliminate the requirement that the original certificate of registration or a certified copy thereof accompany a request for amendment of a registration, a request for correction of a registration, or an application to surrender a registration for cancellation.

References below to ''the Act,'' ''the Trademark Act,'' or ''the statute'' refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended.

Requirement for Submission of Original Certificate of Registration or Certified Copy

The Office is eliminating the requirement under §§ 2.173, 2.174, and 2.175(b) that a request for amendment or

correction of a registration under section 7 of the Trademark Act be accompanied by the original certificate of registration or a certified copy thereof. Under the current rules, the Office attaches an updated registration certificate showing the amendment or correction to the original certificate and returns it to the registrant. However, the Office believes that requiring the registrant to submit the original certificate or a certified copy for the purpose of physically attaching an updated registration certificate, only to return the original certificate (or certified copy thereof) to the owner of record is unnecessary and inefficient. Instead, the Office will send the updated registration certificate showing the amendment or correction to the registrant, and instruct the registrant to attach it to the certificate of registration. The Office will update its own records to show the amendment or correction and attach an updated registration certificate to the printed copy of the registration on file in the Office.

The Office is also eliminating the requirement under § 2.172, that an application for surrender of a registration for cancellation under section 7 of the Trademark Act be accompanied by the original certificate, if not lost or destroyed. The requirement is unnecessary and inefficient. The Office will process a request for cancellation regardless of whether the original registration certificate accompanies the request. If the original certificate is submitted, the Office will destroy the certificate once the registration is cancelled.

One-Year Time Limit for Requests for Correction of Registrations

The proposed amendment to §§ 2.174 and 2.175 required registrants to file all requests for correction of a registration within one year after the date of registration, even where a mistake in a registration resulted from an Office error. This change in practice was proposed because granting requests to correct errors in registrations years after the date of registration caused confusion to examining attorneys and third parties who might have previously searched Office records and relied on information about existing registrations.

Four comments stated that many of the mistakes go unnoticed for years after issuance and are not discovered until it is time to file an affidavit of use or excusable nonuse under Section 8 of the Trademark Act. In an example provided by one commenter, a registrant received an error-free registration certificate and years later after preparing an affidavit of use discovered an error on the registration in the Office's Trademark electronic database. Two comments stated that denying requests to correct errors in registrations after the one-year limit could result in the loss of substantive trademark rights and that maintaining a registration with inaccurate information could cause problems for registrants in establishing a complete chain of title, seeking foreign and international trademark rights, and protecting against trademark infringement. Accordingly, the Office has reconsidered this proposed change and at this time is not imposing a time limit for requests for corrections to registrations under §§ 2.174 and 2.175. The benefits of providing accurate information about registrations in the records of the Office, protecting the rights of owners to seek correction of errors in registrations and avoiding possible loss of substantive trademark rights due to mistakes in the registration outweigh the concerns that would warrant a time limit on filing requests for corrections.

Discussion of Specific Rules

The Office is amending §§ 2.172, 2.173, 2.174, 2.175, and 2.176.

The Office is amending § 2.172 to eliminate the requirement that an application to surrender a trademark registration for cancellation be accompanied by the original certificate of registration.

The Office is amending § 2.173 to eliminate the requirement that the original certificate of registration or a certified copy thereof accompany a request for amendment of a trademark registration.

The Office is amending § 2.174 to eliminate the requirement that the original certificate of registration or a certified copy thereof accompany a request for correction of a mistake by the Office in a trademark registration pursuant to section 7(g) of the Trademark Act.

The Office is amending § 2.175 to eliminate the requirement that the original certificate of registration or a certified copy thereof accompany a request for correction of a mistake by a registrant in a trademark registration pursuant to section 7(g) of the Trademark Act.

The Office is amending § 2.176 to change ''Examiner of Trademarks'' to ''Post Registration Examiners.''

Rule Making Requirements

Regulatory Flexibility Act

The changes in this final rule relate solely to the procedure to be followed in requesting an amendment or correction of a registration. Therefore, these rule changes involve interpretive rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). *See Bachow Communications Inc.* v. *FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are ''rules of agency organization, procedure, or practice'' and exempt from the Administrative Procedure Act's notice and comment requirement); *Merck & Co., Inc.* v. *Kessler*, 80 F.3d 1543, 1549–50, 38 USPQ2d 1347, 1351 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules (to which the notice and comment requirements of the Administrative Procedure Act apply)); *Fressola* v. *Manbeck*, 36 USPQ2d 1211, 1215 (D.D.C. 1995) (''it is doubtful whether any of the rules formulated to govern patent and trade-mark practice are other than 'interpretative rules, general statements of policy, * * * procedure, or practice'' ' (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act*, 38 Trademark Rep. 149, 153 (1948)).

Nevertheless, the Office published a notice of proposed rule making in the **Federal Register**, 68 FR 70482 (Dec. 18, 2003), and in the Official Gazette of the United States Patent Office on January 13, 2004, in order to solicit public participation with regard to this rule package. Pursuant to the notice of proposed rule making, the Deputy General Counsel for General Law of the United States Patent and Trademark Office certified to the Chief Counsel for Advocacy of the Small Business Administration under the provisions of section 605(b) of the Regulatory Flexibility Act that the proposed rule would not have a significant economic impact on a substantial number of small entities. No comments were received which referenced any impact the proposed rules would have on small entities.

This final rule package does not impose any new fees on members of the public. In fact, because this final rule eliminates the requirement that registrants must submit the original certificate of registration or a certified copy thereof with a request for amendment, correction, or surrender of a registration, this final rule will lessen the financial burden on many registrants. In situations where a registrant does not have a certified copy of his or her own registration, the

registrant, whether a large or small entity, will no longer be required to pay fees to the USPTO to obtain a certified copy of his or her own registration.

Accordingly, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that the rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)).

Executive Order 13132

This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rule making has been determined not to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information and recordkeeping requirements have been reviewed and approved by OMB under OMB Control Number 0651–0009, Trademark Processing. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Trademarks.

■ For the reasons given in the preamble and under the authority contained in 35 U.S.C. 2 and 15 U.S.C. 1123, as amended, the Office amends part 2 of title 37 as follows:

■ 1. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 2. Revise § 2.172 to read as follows:

§ 2.172 Surrender for cancellation.

Upon application by the registrant, the Director may permit any registration to be surrendered for cancellation. An application for surrender must be signed by the registrant. When there is more than one class in a registration, one or more entire class(es) but less than the total number of classes may be surrendered. Deletion of less than all of the goods or services in a single class constitutes amendment of registration as to that class (*see* § 2.173).

■ 3. Amend § 2.173 by revising paragraph (a) to read as follows:

§ 2.173 Amendment of registration.

(a) A registrant may apply to amend a registration or to disclaim part of the mark in the registration. The registrant must submit a written request specifying the amendment or disclaimer. This request must be signed by the registrant and verified or supported by a declaration under § 2.20, and accompanied by the required fee. If the amendment involves a change in the mark, the registrant must submit a new specimen showing the mark as used on or in connection with the goods or services, and a new drawing of the amended mark. The registration as amended must still contain registrable matter, and the mark as amended must be registrable as a whole. An amendment or disclaimer must not materially alter the character of the mark.

* * * * *

■ 4. Revise § 2.174 to read as follows:

§ 2.174 Correction of Office mistake.

Whenever a material mistake in a registration, incurred through the fault of the United States Patent and Trademark Office, is clearly disclosed by the records of the Office, a certificate of correction stating the fact and nature of the mistake, signed by the Director or by an employee designated by the Director, shall be issued without charge and recorded. A printed copy of the certificate of correction shall be attached to each printed copy of the registration certificate. Thereafter, the corrected certificate shall have the same effect as if it had been originally issued in the corrected form. In the discretion of the Director, the Office may issue a new certificate of registration without charge.

■ 5. Amend § 2.175 by revising paragraphs (a) and (b) to read as follows:

§ 2.175 Correction of mistake by registrant.

(a) Whenever a mistake has been made in a registration and a showing has been made that the mistake occurred in good faith through the fault of the registrant, the Director may issue a certificate of correction. In the discretion of the Director, the Office may issue a new certificate upon payment of the required fee, provided that the correction does not involve such changes in the registration as to require republication of the mark.

(b) An application for such action must:

(1) Include the following:

(i) Specification of the mistake for which correction is sought;

(ii) Description of the manner in which it arose; and

(iii) A showing that it occurred in good faith;

(2) Be signed by the registrant and verified or include a declaration in accordance with § 2.20; and

(3) Be accompanied by the required fee.

* * * * *

■ 6. Revise § 2.176 to read as follows:

§ 2.176 Consideration of above matters.

The matters in §§ 2.171 to 2.175 will be considered in the first instance by the Post Registration Examiners. If the action of the Examiner is adverse, registrant may petition the Director to review the action under § 2.146. If the registrant does not respond to an adverse action of the Examiner within 6 months of the mailing date, the matter will be considered abandoned.

Dated: August 13, 2004.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 04–19016 Filed 8–18–04; 8:45 am]

BILLING CODE 3510–16–P

POSTAL SERVICE

39 CFR Part 601

Issue 3 of the Purchasing Manual; Incorporation by Reference

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service announces the publication of Issue 3 of the Postal Service Purchasing Manual. Issue 3 supersedes previous editions of the Purchasing Manual, and is incorporated by reference in the Code of Federal Regulations.

EFFECTIVE DATE: This final rule is effective on August 19, 2004. The incorporation by reference of the Purchasing Manual, Issue 3 is approved by the Director of the Federal Register as of August 19, 2004.

FOR FURTHER INFORMATION CONTACT: Michael J. Harris (202) 268–5653.

SUPPLEMENTARY INFORMATION: Issue 1 of the Purchasing Manual was issued on January 31, 1997, as the successor to former USPS Publication 41, the U.S.

Postal Service Procurement Manual. At that time, purchasing organizations were advised that, pending the updating of contract-writing systems, the purchasing organizations could determine, subject to specific limitations, when and to what extent they may adopt its policies and procedures. The Purchasing Manual then became fully effective on January 27, 2000.

Subsequently, updated editions of the Purchasing Manual were issued on January 31, 2002 (Issue 2), and December 25, 2003 (Issue 3). Pending the updating of purchasing support systems for consistency with the new policies contained in Issue 3, purchasing organizations were advised that they might adopt the policies and procedures contained in Issue 3 immediately, or might continue to follow the policies and procedures contained in Issue 2. If a purchasing organization adopted Issue 3 policies and procedures for any category or categories of purchases, it would be required to use those policies and procedures consistently for that category or categories, and not revert to previous policies and procedures. Contracting officers were required to ensure that solicitations and other purchasing documents made prospective offerors fully aware of the authority (Issue 3 or Issue 2, as revised through April 18, 2002) pursuant to which an individual purchase was made. Particular care was required that previous versions of provisions and clauses were not used in purchases made under the policies and procedures of Issue 3, and vice versa. To date, the Postal Service has not formally transitioned from PM Issue 2 to PM Issue 3 primarily because of problems in updating purchasing support systems for consistency with the new policies contained in Issue 3. The end of this transition period will be announced in the **Federal Register**.

The Purchasing Manual is published and available to all users on the World Wide Web at *http://www.usps.com/business,* and contains the Postal Service's purchasing policy.

It will be noted that on March 24, 2004 (69 FR 13786), the Postal Service published a proposed rule in the **Federal Register** entitled ''Purchasing of Property and Services''. In this document, the Postal Service proposed to amend its regulations in order to implement the acquisition portions of its *Transformation Plan* (April 2000) and the similar recommendations of the President's Commission on the United States Postal Service (July 2003) as they relate to the acquisition of property and services. That earlier, ongoing rulemaking is proceeding separately and independently, and should not be considered to be a part of this current notice.

On June 28, 2004 (69 FR 36018), the Postal Service published in the **Federal Register** a detailed discussion of the policy changes and other major features contained in Issue 1 of the Purchasing Manual. Subsequently, on July 29, 2004 (69 FR 45270) the Postal Service published a detailed discussion of the policy changes and other major features contained in Issue 2 of the Purchasing Manual. The following is a similar discussion of the most significant changes in Postal Service purchasing policy contained in Issue 3.

Purchasing Manual Issue 3—Major Policy Changes

Overview: Issue 3 of the Postal Service Purchasing Manual continues the efforts of the Postal Service (1) to reflect the best practices of the private and public sectors, (2) to streamline the purchasing process and ensure it concentrates on furthering the business and competitive interests of the Postal Service, and (3) to provide a policy structure that furthers the Postal Service's use of supply chain management business practices. Issue 3 also contains the cumulative changes made to Issue 2 of the Purchasing Manual between January 31, 2002, and December 25, 2003. A discussion of all significant changes contained in Issue 3 is available to all users on the World Wide Web at *http://www.usps.com/business.*

Organizational Changes: The restructuring of Purchasing and Materials into Supply Management has resulted in numerous changes in organization names (*i.e.,* Purchasing and Materials is now called Supply Management) and managerial titles and authorities. These changes are reflected throughout Purchasing Manual Issue 3.

Purchasing Manual Issue 3—Other Significant Changes

Chapter 1, Authority, Responsibility and Policy: 1.1.2.b Supply Management Policy Committee. The Supply Management Policy Committee (SMPC) replaces the Purchasing Policy Committee. SMPC membership has changed to reflect the SM organization.

1.4.1.b.4 Required Approvals has been revised to state that the Vice President (VP), Supply Management's (SM) approval of a proposed contract award or modification serves as the delegation of authority required by PM 1.4.2.d Actions Exceeding a Contracting Officer's Delegated Authority.

1.4.2.c Delegations of Authority has been revised to state that, unless specifically limited in his or her letter of delegation, a contracting officer may award a contract regardless of commodity group.

1.4.4.a.2 Appointment Authority has been revised to state that contracting officer appointment officials must keep a record of all letters of delegation, certificates of appointment, and documentation concerning a contracting officer's education, experience and training related to the individual CO's level.

1.4.4.b.3 Qualifications has been revised in a number of areas to (1) specify that a certification as a certified purchase manager from the Institute of Supply Management meets the certification requirement for level I contracting officer; and (2) establish new training requirements.

Chapter 2, Purchase Planning: 2.1.3.b.2 Responsibilities (Purchase Planning) has been revised to state that the purchase team has the responsibility to maintain and apply the cost and pricing models in order to optimize the total cost of ownership, and in 2.1.3.b.3, transportation planning matters have been added as areas in which materials professionals may offer expertise.

2.1.5.b Elements (Individual Purchase Plans) has been revised to add two elements (subparagraphs 7 and 21) that a purchase plan should include.

2.1.6.c.4 Reviews and Approvals (Noncompetitive Purchase Method) has been revised to clarify approval authority for noncompetitive purchases.

2.1.7.b.3 Developing Strategies (Supplier Selection Strategy) has been revised to state that purchase teams should take care to ensure that solicitations do not include unnecessary minimum standards, mandatory feature call outs or other inappropriate limitations on supplier selection.

2.2.1.c Clauses (Quality Requirements). This paragraph has been revised to discuss the use of new Clauses 2–1, Inspection and Acceptance and 2–2, Quality Management System. These clauses replace previous Clauses 2–1, Inspection and Acceptance—Supplies, 2–2, Quality Assurance I—Supplies, 2–3, Quality Assurance II—Supplies, 2–24, Inspection and Acceptance—Supplies—Nonfixed Price, 2–48, Inspection and Acceptance—Services, and 2–49, Quality Assurance—Services, all of which have been deleted.

2.2.5.f F.O.B. Points (Delivery and Acceptance). Subparagraph 1 has been revised to state that solicitations should require offerors to include both f.o.b. origin and destination prices for transportation analysis and that such analysis is available from field material

management specialists and Headquarters. Subparagraph 3 has been revised to add shipment base points to the areas that may be specified as f.o.b. destination.

2.2.10.c Sharing Savings (Value Engineering). This paragraph has been revised to change the sharing scheme to one that is based on a negotiated arrangement contained in the contract. Paragraph 2.2.10.e Evaluation has been revised to for clarity, and Clause 2–22, Value Engineering, has been revised to reflect these changes.

2.2.11 Price Reduction. This new section states that when they plan to award strategically-sourced or long-term contracts, purchase teams must consider the inclusion of new Clauses 2–48, Most Favored Customer Pricing and 2–49, Cost/Price Reduction. The new clauses are included in Appendix B.

2.2.12 Investment Recovery. This new section states that an effective and efficient investment recovery plan can further the Postal Service's supply chain management goals, and directs purchase teams to include new Provision 2–8, Investment Recovery, in solicitations when it is determined that investment recovery will play a significant role in the overall success of the purchase. The new provision is included in Appendix A.

2.4.4.h Provision (Cost-Reimbursement Contracts). This new paragraph requires purchase teams to include new Provision 2–9, Accounting System Guidelines—Cost Type Contracts, in all solicitations for cost-type contracts the estimated value of which is $100,000 or more. The provision requires pre-award review and approval of the potential supplier's cost accounting system by the Postal Service's Inspector General or representative, and delineates the elements required in such accounting systems. The new provision is included in Appendix A.

Chapter 3, Supplier Relations: 3.3.3.b Procurement Lists (Workshops for People who are Blind or Severely Disabled) has been revised to state that additions and deletions to the Procurement List are published in the **Federal Register** as they occur.

3.4.5 Department of Veterans Affairs has been revised to provide the proper name of this department.

3.7 Debarment, Suspension and Ineligibility. This subchapter has been revised extensively. Some of the highlights of the revision are:

3.7.1.a Definitions contains a new set of relevant definitions.

3.7.1.c Treatment of Suppliers on the Postal Service and GSA List has been rewritten and now states that suppliers proposed for debarment are treated the same as those which are debarred or suspended and excluded from receiving contracts unless other treatment is approved by the Vice President, Supply Management. In addition, the VP, SM, may direct the termination for default of any contracts with a supplier which has been debarred, suspended or made ineligible.

3.7.1.d Causes for Debarment has been rewritten to add to the causes for which a supplier may be debarred, and to state that the existence for several of the causes for debarment will be established by a preponderance of the evidence.

3.7.1.e Mitigating Factors is a new section, and contains a series of factors the VP, SM, should consider when deciding whether debarment is warranted.

3.7.1.f Period of Debarment has been revised in paragraph 2., to state that the VP, SM, may refer requests for removal from debarment or a reduction of the period of debarment to the Judicial Officer for a hearing and findings of fact which the VP will then consider.

3.7.1.g Procedural Requirements for Debarment has been revised to state that debarment decisions are made based on the preponderance of the evidence, and that, if there are questions regarding material facts, that the VP, SM, may (1) seek additional information or (2) request the Judicial Officer to hold fact-finding hearings on the matter. The VP, SM, may reject findings when they are deemed arbitrary or capricious or clearly erroneous.

3.7.1.m Solicitation Provision is a new section that requires that offerors complete a new paragraph e. of Provision 4–3, Representations and Certifications, when the contract value is expected to exceed $100,000.

Chapter 4, Purchasing: 4.2.2.e Solicitation Provisions. This paragraph has been revised to state (1) that when a purchase team decides to modify, supplement or add to Provision 4–1, Standard Solicitation Provisions, or paragraphs b. and c. of Provision 4–2, Evaluation, counsel need not be consulted if a provision already contained in Appendix A, Solicitations, will replace similar subject matter in Provision 4–1 or b. and c. of Provision 4–2; and (2) that counsel should be consulted when the evaluation scheme to be used in Provision 4–2 is unusual, particularly complex, or there are other circumstances under which such consultation is advisable. Similar changes are reflected in A.2.1, Solicitation Contents in Appendix A, Solicitations.

4.2.5.d.3 Documentation (Best Value Determinations) has been revised to state that this documentation should include the extent and result of any discussions with the supplier awarded the contract and any other offerors.

4.2.7.a Clause 4–1 General Terms and Conditions has been revised to state that replacing subject matter contained in this clause with the text of a PM clause addressing the same subject matter does not require consultation with counsel. Similar changes are reflected in B.2.1 in Appendix B, Contract Clauses.

4.2.7.b Clause 4–2 Contract Terms and Conditions Required To Implement Policies, Statutes, or Executive Orders has been revised to state (1) that neither this clause nor any of the clauses added by reference may be modified unless a deviation has been reviewed and approved by an individual at a higher level than the contracting officer who holds deviation approval authority; and (2) that any changes to paragraph b of this clause (Examination of Records) must be reviewed by assigned counsel and the Office of the Inspector General before a related deviation request is submitted.

4.2.7.d Modifying Clauses has been revised to agree with the revision to 4.2.7.a and 4.2.7.b, above.

4.5.5.a.6 Definitions (Information Technology) has been revised to provide a new definition of this term.

4.5.5.b.6 Security Considerations (Information Technology) has been revised to state that purchase teams ensure that specifications or statements of work for IT purchases address the security aspects of the Business Impact Assessment (BIA).

Chapter 5, Contract Pricing: 5.2.12.d Educational Institutions has been revised to reference the new Office of Management and Budget Circular (OMB Circular A–21) that establishes the indirect cost rates for cost-reimbursement contracts with educational institutions and to provide a new source for the Directory of Federal Contract Audit Offices.

Chapter 6, Contract Administration: 6.1.2.a.7 Contracting Officer Responsibilities (Contract Administration Functions) has been revised to state that, when appropriate, the contracting officer is responsible for including in the contract file the business reason for a particular action.

Chapter 7, Bonds, Insurance and Taxes: 7.1.8.g.1 Contract Modifications (Execution of Bonds) has been revised to state that, when a contract modification increases the contract price, the supplier and the surety must execute a consent of surety and increase the penal amount, and submit it to the contracting officer.

Chapter 8, Patents and Data Rights: No significant changes have been made in this Chapter.

Chapter 9, Labor Policies: 9.4.5.l Liquidated Damages has been revised to state that, under certain circumstances, when the VP, SM, finds that an assessment of liquidated damages is incorrect, the VP may adjust the damages, or release the supplier, lessor or subcontractor from liability when the amount of damages is $500 or less.

9.7.2.e Contracts With a Religious Corporation, Association, or Educational Institution or Society (Exempt Contracts) is a new paragraph that states that, when contracting with these types of organizations, it is not a violation of Section 202 of Executive Order 11246 to employ individuals of a certain religion to perform work connected with the carrying-on of such an entity. Previous paragraphs 9.7.2.e and 9.7.2.f are renumbered as 9.7.2.f and 9.7.2.g.

9.10 Veterans has been revised as a result of the passage of the Veterans' Employment Opportunities Act and the Secretary of Labor's related implementing regulations. Clause 9–14 Affirmative Action for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans has been similarly revised.

Appendix A, Solicitations: A.2.1 Solicitation Contents has been revised along the lines discussed in 4.2.2.e, above.

Provision 2–8 Investment Recovery is a new provision and has been added as discussed in 2.2.12 above.

Provision 2–9 Accounting System Guidelines—Cost Type Contracts is a new provision that has been added as discussed in 2.4.4.h above.

Provision 4–1 Standard Solicitation Provisions paragraph b., Period for Acceptance of Offers, has been deleted.

Provision 4–3 Representations and Certifications has been revised to include a new paragraph e (Certification Regarding Debarment, Proposed Debarment, and Other Matters) as discussed in 3.7 above.

Appendix B, Contract Clauses: B.2.1 Clause 4–1 General Terms and Conditions has been revised along the lines discussed in 4.2.7.d, above.

B.2.2 Clause 4–2 Contract Terms and Conditions Required To Implement Policies, Statutes, or Executive Orders has been revised along the lines discussed in 4.2.7.a and d, above.

Clauses 2–1 Inspection and Acceptance and 2–2 Quality Management System. As discussed in 2.2.1.c, above, this clause and Clause 2–2 replace previous Clauses 2–1, 2–2, 2–3, 2–24, 2–48 and 2–49.

Clause 2–9 Definition of Delivery Terms and Supplier's Responsibilities has been revised for clarity.

Clause 2–22 Value Engineering Incentive has been revised along the lines of 2.2.10.c above.

Clauses 2–48 Most Favored Customer Pricing and 2–49, Cost/Price Reduction are two new clauses as discussed in 2.2.11 above.

Clause 3–2 Participation of Small, Minority and Woman-Owned Businesses has been revised in b.(1) by stating that showing the amount of money paid to subcontractors during the reporting period is one of the methods by which suppliers report subcontracting activity.

Clause 4–1 General Terms and Conditions has been revised by adding new c.1.(e) which states that the delivery or performance schedule is one of the contractual elements the contracting officer may change under the Changes paragraph of this clause. Paragraph m. has also been revised to state that the debarment, suspension, or ineligibility of a supplier, its partners, officers, or principal owners may constitute an act of default under the contract, and that act will not be subject to notice and cure pursuant to any termination of default provision of the contract.

Clause 4–2 Contract Terms and Conditions Required To Implement Policies, Statutes, or Executive Orders. Paragraph b., Examination of Records, has been revised. In addition, no changes may be made to this paragraph before (1) consultation with assigned counsel and the Office of the Inspector General and (2) a deviation has been reviewed and approved by a higher level than the contracting officer who holds deviation approval authority.

Clause 4–5 Inspection of Professional Services has been revised by deleting the final sentence.

Clause 4–14 Software Development Warranty has been revised for clarity.

Clause 7–5 Errors and Omissions has been revised for clarity.

Clause 8–1 Patent Rights has been revised by removing the reference to Form 7398, Report of Inventions and Subcontracts (this form is obsolete) and by stating that the reports required under this clause must be in a form acceptable to the contracting officer.

Clause 9–14 Affirmative Action for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans has been revised to reflect the changes discussed in 9.10 above.

Appendices D Rules of Practice in Proceedings Relative to Debarment and Suspension From Contracting and E, Rules of Practice Before the Postal Service Board of Contract Appeals: These appendices have been revised to correct obsolete mailing addresses.

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service, Incorporation by reference.

■ In view of the considerations discussed above, the Postal Service hereby amends 39 CFR as follows:

■ 1. The authority citation for part 601 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

■ 2. Section 601.100 is revised to read as follows:

§ 601.100 Purchasing Manual; incorporation by reference.

(a) Section 552(a) of Title 5, U.S.C., relating to public information requirements of the Administrative Procedure Act, provides in pertinent part that ''* * * matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register.'' In conformity with that provision, with 39 U.S.C. section 410(b)(1), and as provided in this part, the U.S. Postal Service hereby incorporates by reference its Purchasing Manual (PM), Issue 3, dated December 25, 2003. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The PM is available for examination on the World-Wide Web at *http://www.usps.com/business.* You may inspect a copy at the U.S. Postal Service Library, 475 L'Enfant Plaza West SW., Washington, DC 20260–1641, 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.*

(b) The current Issue of the PM is incorporated by reference in paragraph (a) of this section. Successive issues of the PM are listed in the following table:

Purchasing manual	Date of issuance
Issue 1	January 31, 1997.
Issue 2	January 31, 2002.
Issue 3	December 25, 2003.

■ 3. Section 601.101 is revised to read as follows:

§ 601.101 Effective date.

The provisions of the Purchasing Manual Issue 3, effective December 25, 2003, are applicable with respect to all covered purchasing activities of the Postal Service.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 04–18772 Filed 8–18–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08–OAR–2004–UT–0002; FRL–7791–7]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Revisions to New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Utah on November 9, 2001, and September 16, 2003. The revisions incorporate new and revise existing definitions in the State's New Source Review (NSR) rules. The revisions update the State's NSR rules so that they are consistent with the revisions EPA made to its NSR rules on July 21, 1992. These revisions were referred to as the WEPCO rule (for the Wisconsin Electric Power Company court ruling). In the July 1992 action, EPA adopted a broad NSR exclusion for utility pollution control projects and an ''actual to future actual'' methodology for determining whether all other non-routine physical or operational changes at utilities (other than the replacement of a unit or addition of a new unit) are subject to NSR, and modified its regulations to reflect changes made by Congress in the 1990 Amendments to the Clean Air Act to the applicability of new source requirements to clean coal technology (CCT) and repowering projects, and to ''very clean'' units. The purpose of this action is to make the changes to the State's rule federally enforceable. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on October 18, 2004, without further notice, unless EPA receives adverse comment by September 20, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID R08–OAR–2004–UT–0002, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/index.jsp*. Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *daly.carl@epa.gov*.
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency, Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency, Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Nos. R08–OAR–2004–UT–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available at *http://docket.epa.gov/rmepub/index.jsp*, 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 EDOCKET, regulations.gov, or e-mail. The EPA's Regional Materials in EDOCKET and Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the Regional Materials in EDOCKET index at *http://docket.epa.gov/rmepub/index.jsp*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carl Daly, Air & Radiation Program, Mailcode 8P–AR, EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6416, *daly.carl@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
II. Background
III. Summary of SIP Revisions and EPA's Review
IV. Final Action
V. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *state* or *Utah* mean the State of Utah, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through Regional Materials in EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On July 21, 1992, EPA promulgated revisions to Federal PSD and nonattainment new source review (NSR) permitting requirements, as well as to the Federal new source performance standard (NSPS) requirements in 40 CFR part 60, regarding utility pollution control projects (57 FR 32314–32339). Specifically, EPA made changes to the definition of ''major modification'' in 40 CFR parts 51 and 52 to set forth the conditions under which the addition, replacement, or use at existing utility generating units of any system or device whose primary function is the reduction of air pollutants (including the switching to less polluting fuel where the primary purpose of the switch will be the reduction of air pollutants) will or will not subject the source to preconstruction review.

In addition, in the July 1992 notice, EPA amended its NSR regulations as they apply to utilities to (1) clarify the NSR baseline for determining whether a proposed physical or operational change will subject a utility to the preconstruction review requirements of these provisions; (2) set forth an actual-to-future actual methodology for determining whether a physical or operational change is subject to NSR; (3) provide further clarification of the existing regulatory requirement that only those increases in emission that actually result from the physical change or change in the method of operation can be considered in determining whether the proposed change subjects the utility to NSR requirements; and (4) implement sections 409 and 415 of title IV of the 1990 Amendments of the Clean Air Act which create special NSPS treatment for certain repowering projects and limited NSR exemptions for temporary and permanent CCT projects and for certain ''very clean'' units. Refer to the July 21, 1992, **Federal Register** document for further information.

States were not required to adopt revisions to implement these changes, although these changes are in effect in areas where the Federal PSD permitting regulations apply. Utah has opted to revise its NSR program to incorporate the changes to EPA's NSR rules promulgated on July 21, 1992.

III. Summary of SIP Revisions and EPA's Review

On November 9, 2001, and September 16, 2003, the State of Utah submitted formal revisions to its State Implementation Plan (SIP).[1] Specifically, in the general definition rule, the submittals revise the definitions of ''Actual Emissions'' and ''Major Modification'' and adds the following definitions: ''Clean Coal Technology,'' ''Clean Coal Technology Demonstration Project,'' ''Electric Utility Steam Generating Unit,'' ''Emissions Unit,'' ''Pollution Control Project,'' ''Reactivation of Very Clean Coal-Fired Electric Utility Steam Generating Unit,'' ''Repowering,'' ''Representative Actual Annual Emissions,'' and ''Temporary Clean Coal Technology Demonstration Project.'' In the prevention of significant deterioration (PSD) rule a definition for ''major modification'' was added.

We have reviewed the new and revised definitions submitted by Utah. We have found that the revisions are consistent with all of the regulatory revisions promulgated by EPA on July 21, 1992.

IV. Final Action

EPA is approving Utah's SIP revisions submitted on November 9, 2001, and September 16, 2003. Specifically, in the general definitions regulation, R307–101–2, we are approving the revisions to the definitions of ''Actual Emissions'' and ''Major Modification'' and the addition of the definitions: ''Clean Coal Technology,'' ''Clean Coal Technology Demonstration Project,'' ''Electric Utility Steam Generating Unit,'' ''Emissions Unit,'' ''Pollution Control Project,'' ''Reactivation of Very Clean Coal-Fired Electric Utility Steam Generating Unit,'' ''Repowering,'' ''Representative Actual Annual Emissions,'' and ''Temporary Clean Coal Technology Demonstration Project.'' In the PSD regulation, R307–405–1, we are approving the addition of a definition for ''Major Modification.''

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. EPA does not anticipate any adverse comments as this Utah SIP approval is only a change to bring Utah's current SIP into alignment with the NSR revisions EPA promulgated on July 21, 1992 (57 FR 32314). However, in the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective October 18, 2004, without further notice unless the Agency receives adverse comments by September 20, 2004. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not

[1] The September 16, 2003, submittal contains non-substantive changes to correct minor errors in the November 9, 2001, submittal.

institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Review

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 14, 2004.

Max H. Dodson,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(58) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(58) On November 9, 2001 and September 16, 2003 the State of Utah submitted revisions to its State Implementation Plan (SIP) to incorporate new and revise existing definitions in the new source review (NSR) rules. The revisions update the State's NSR rules so that they are consistent with the revisions EPA made to its NSR rules on July 21, 1992.

(i) Incorporation by reference.

(A) Revisions to the Utah Air Conservation Regulations, R307–101–2, the definitions ''Actual Emissions,'' ''Clean Coal Technology,'' ''Clean Coal Technology Demonstration Project,'' ''Electric Utility Steam Generating Unit,'' ''Emissions Unit,'' ''Pollution Control Project,'' and ''Representative Actual Annual Emissions,'' effective 7/12/01.

(B) Revisions to the Utah Air Conservation Regulations, R307–101–2, the definitions ''Major Modification,'' ''Reactivation of Very Clean Coal-Fired Electric Utility Steam Generating Unit,'' ''Repowering,'' and ''Temporary Clean Coal Technology Demonstration Project,'' effective 6/1/03.

(C) Revisions to the Utah Air Conservation Regulations, R307–405–1, the definition ''Major Modification'' effective 6/1/03.

[FR Doc. 04–18936 Filed 8–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN73–3; FRL–7794–8]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a site-specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for Lafarge Corporation's (Lafarge) facility located on Red Rock Road in Saint Paul, Ramsey County, Minnesota. By its submittal dated July 18, 2002, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Lafarge's State operating permit into the Minnesota PM SIP. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this rulemaking action.

DATES: This rule is effective September 20, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. MN–73. All documents in the docket are listed in the index. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information where disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. The Docket Facility is open during normal business hours, Monday through Friday, excluding legal holidays. We recommend that you telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch, United States Environmental Protection Agency, Region 5, Mailcode AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 353–8328. E-mail address: *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. Does this Action Apply to Me?
II. What Action Is EPA Taking Today?
1. Why Is EPA Taking This Action?
III. Background on Minnesota Submittal
1. What Is the Background for This Action?
2. What Information Did Minnesota Submit, and What Were its Requests?
3. What Is a ''Title I Condition?''
IV. Final Rulemaking Action
V. Statutory and Executive Order Reviews

General Information

I. Does This Action Apply to Me?

This action applies to a single source, Lafarge Corporation's facility located on Red Rock Road in Saint Paul, Ramsey County, Minnesota.

II. What Action Is EPA Taking Today?

In this action, EPA is approving into the Minnesota PM SIP certain portions of Minnesota Air Emission Permit No. 12300353–002, issued to Lafarge Corporation—Red Rock Terminal on May 7, 2002. Specifically, EPA is only approving into the SIP those portions of the permit cited as ''Title I condition: SIP for PM10 NAAQS.''

1. Why Is EPA Taking This Action?

EPA is taking this action because the State's request does not change any of the emission limitations currently in the SIP. The revised permit includes the addition of a pneumatic vacuum pump and a new cement silo. The revision to the SIP does not approve any new construction or allow an increase in emissions, thereby providing for attainment and maintenance of the PM National Ambient Air Quality Standards (NAAQS) and satisfying the applicable PM requirements of the Act.

The pneumatic vacuum pump, which was in place and already controlled by a baghouse, had inadvertently been omitted from the Red Rock Road permit approved into the SIP by EPA in 1999. After consulting EPA, MPCA was advised that a major amendment to the permit was not needed to include this existing unit and that the pneumatic vacuum pump unit should be added into the permit during the next major amendment. Therefore, MPCA included the emission unit and baghouse in the 2002 permit amendment.

The 2002 permit includes a major amendment authorizing the additional emission point associated with a new cement silo. The silo emissions are to be controlled by a baghouse located on the top of the silo. Although actual emissions of PM from the facility would most likely decrease, the installation of the new unit did change the modeling parameters for the facility, thereby requiring a revision to the SIP.

III. Background on Minnesota Submittal

1. What Is the Background for This Action?

Lafarge's Red Rock Road facility is located at 1363 Red Rock Road in Saint Paul, Ramsey County, Minnesota. On July 22, 1998, MPCA submitted to EPA a SIP revision for Ramsey County, Minnesota, for the control of PM emissions from certain sources located along Red Rock Road. Included in this submittal was a State operating permit for Lafarge Corporation (Air Emission Permit No. 12300353–001 issued by MPCA on April 14, 1998), which includes and identifies the Title I SIP conditions for the Red Rock Road facility. The EPA took final action approving the Lafarge Red Rock Road permit into the PM SIP on August 13, 1999 (64 FR 44131).

2. What Information Did Minnesota Submit, and What Were its Requests?

The SIP revision submitted by MPCA on July 18, 2002, consists of a revised State operating permit issued to the Lafarge Red Rock Road facility. The State has requested that EPA approve the following:

''(1) The inclusion of only the portions of the revised Lafarge-Rock Terminal permit cited as ''Title I condition: SIP for PM10 NAAQS'' into the Minnesota PM SIP.''

3. What Is a ''Title I Condition?''

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in State-issued permits are not federally enforceable because the permits expire. The State then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's Title V permitting rule, approved into the State SIP on May 2, 1995 (60 FR 21447), includes the term ''Title I condition'' which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent. A ''Title I condition'' is defined as ''any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the State implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act * * *.'' The rule also states that ''Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration

of the other conditions of the permit.'' Further, ''any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit.''

Minnesota has since resumed using permits as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in the permit submitted by MPCA are cited as ''Title I condition: SIP for PM10 NAAQS,'' therefore assuring that the SIP requirements will remain permanent and enforceable. In addition, EPA reviewed the State's procedure for using permits to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Act (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA). The MPCA has committed to using this procedure if the Title I SIP conditions in the permit issued to the Lafarge Red Rock Road facility and included in the SIP submittal need to be revised in the future.

IV. Final Rulemaking Action

EPA is approving the site-specific SIP revision for the Lafarge Red Rock Road facility, located in Saint Paul, Ramsey County, Minnesota. Specifically, EPA is approving into the SIP only those portions of Lafarge's State operating permit cited as ''Title I condition: SIP for PM10 NAAQS.''

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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).

Regulatory Flexibility Act

This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry our policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the State to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this 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.

Governmental Interference With Constitutionally Protected Property Rights

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, and has determined that the rule's requirements do not constitute a taking.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by October 18, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 21, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Section 52.1220 is amended by adding paragraph (c)(64) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(64) On July 18, 2002, the State of Minnesota submitted a site-specific revision to the Minnesota particulate matter (PM) SIP for the Lafarge Corporation (Lafarge) Red Rock Road facility, located in Saint Paul, Ramsey County, Minnesota. Specifically, EPA is approving into the PM SIP only those portions of the Lafarge Red Rock Road facility state operating permit cited as ''Title I condition: SIP for PM10 NAAQS.''

(i) Incorporation by reference. AIR EMISSION PERMIT NO. 12300353–002, issued by the Minnesota Pollution Control Agency (MPCA) to Lafarge Corporation—Red Rock Terminal on May 7, 2002, Title I conditions only.

[FR Doc. 04–18953 Filed 8–18–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief Executive Officer of community	Effective date of modification	Community number
Florida: Duval (FEMA Docket No. D–7549).	City of Jacksonville	November 21, 2003, November 28, 2003, *The Florida Times-Union*.	The Honorable John Peyton, Mayor of the City of Jacksonville, 4th Floor, City Hall at St. James, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	November 10, 2003	120077 E
Florida: Walton (FEMA Docket No. D–7553).	Unincorporated Areas.	January 1, 2004, January 8, 2004, *Defuniak Springs Herald-Breeze*.	Mr. Larry Jones, Chairman of the Walton County Board of Commissioners, P.O. Drawer 1355, Defuniak Springs, Florida 32435.	April 8, 2004	120317 F
Georgia: Gwinnett (FEMA Docket No. D–7551).	Unincorporated Areas.	January 8, 2004, January 15, 2004, *Gwinnett Daily Post*.	Mr. F. Wayne Hill, Chairman of the Gwinnett County Board of Commissioners, Justice and Administration Center, 75 Langley Drive, Lawrenceville, Georgia 30045.	December 29, 2003	130322 C
Georgia: Bibb and Jones (FEMA Docket No. D–7551).	City of Macon and Bibb County.	December 31, 2003, January 7, 2004, *The Macon Telegraph*.	The Honorable C. Jack Ellis, Mayor of the City of Macon, 700 Poplar Street, Macon, Georgia 31201.	April 7, 2004	130011 E
Georgia: Oconee (FEMA Docket No. D–7549).	City of Watkinsville	December 4, 2003, December 11, 2003, *Oconee Enterprise*.	The Honorable W. B. Hardigree, Mayor of the City of Watkinsville, P.O. Box 27, Watkinsville, Georgia 31827.	May 20, 2004	130369 A
Massachusetts: Middlesex (FEMA Docket No. D–7551).	Town of Andover ...	December 9, 2003, December 16, 2003, *The Eagle-Tribune*.	Mr. Reginald S. Stapczynski, Manager of the Town of Andover, Andover Town Office, 36 Bartlet Street, Andover, Massachusetts 01810.	March 16, 2004	250076 B
Massachusetts: Middlesex (FEMA Docket No. D–7551).	Town of Wilmington	December 9, 2003, December 16, 2003, *The Sun*.	Mr. Michael Caira, Manager of the Town of Wilmington, Wilmington Town Hall, 121 Glen Road, Wilmington, Massachusetts 01887.	March 16, 2004	250227 C&D
Mississippi: DeSoto (FEMA Docket No. D–7553).	City of Southaven ..	January 1, 2004, January 8, 2004, *The DeSoto County Tribune*.	The Honorable Charles G. Davis, Mayor of the City of Southaven, 8710 Northwest Drive, Southaven, Mississippi 38671.	April 8, 2004	280331 F
New Jersey: Union (FEMA Docket No. D–7549).	Borough of Roselle	November 14, 2003, November 21, 2003, *Home News Tribune*.	The Honorable Joseph E. Croteau, Mayor of the Borough of Roselle, 210 Chestnut Street, Roselle, New Jersey 07203.	February 20, 2004	340472 A
North Carolina: Gaston (FEMA Docket No. D–7551).	City of Belmont	December 8, 2003, December 15, 2003, *The Gaston Gazette*.	The Honorable Billy W. Joye, Jr., Mayor of the City of Belmont, P.O. Box 431, Belmont, North Carolina 28012.	December 1, 2003	370320 E
North Carolina: Gaston (FEMA Docket No. D–7551).	Unincorporated Areas.	December 8, 2003, December 15, 2003, *The Gaston Gazette*.	Mr. Jan Winters, Gaston County Manager, P.O. Box 1578, Gastonia, North Carolina 28053.	December 1, 2003	370099 E
North Carolina: Gaston (FEMA Docket No. D–7551).	City of Mount Holly	December 8, 2003, December 15, 2003, *The Gaston Gazette*.	The Honorable Robert Black, Mayor of the City of Mount Holly, P.O. Box 406, Mount Holly, North Carolina 28120.	December 1, 2003	370102 E
Pennsylvania: Lebanon (FEMA Docket No. D–7551).	City of Lebanon	January 2, 2004, January 9, 2004, *Lebanon Daily News*.	The Honorable Robert A. Anspach, Mayor of the City of Lebanon, 400 South Eight Street, Lebanon, Pennsylvania 17042.	April 9, 2004	420573 B
Pennsylvania: Lebanon (FEMA Docket No. D–7551).	Township of South Lebanon.	January 2, 2004, January 9, 2004, *Lebanon Daily News*.	Mr. Curtis Kulp, Township of South Lebanon Manager, 1800 South Fifth Avenue, Lebanon, Pennsylvania 17042.	April 9, 2004	420581 C
Pennsylvania: Montgomery (FEMA Docket No. D–7551).	Township of Springfield.	December 17, 2003, December 24, 2003, *Ambler Gazette*.	Mr. Donald Berger, Township of Springfield Manager, 1510 Papermill Road, Wyndmoor, Pennsylvania 19118.	December 10, 2003	425388 E

State and county	Location	Dates and name of newspaper where notice was published	Chief Executive Officer of community	Effective date of modification	Community number
Pennsylvania: Montgomery (FEMA Docket No. D–7551).	Township of Upper Dublin.	December 17, 2003, December 24, 2003, *Ambler Gazette*.	Mr. Paul Leonard, Township of Upper Dublin Manager, 801 Loch Alsh Avenue, Fort Washington, Pennsylvania 19304.	December 10, 2003	420708 E
Pennsylvania: Montgomery (FEMA Docket No. D–7551).	Township of Whitemarsh.	December 17, 2003, December 24, 2003, *Times Herald*.	Mr. Lawrence J. Gregan, Township of Whitemarsh Manager, 616 Germantown Pike, Lafayette Hill, Pennsylvania 19444–1821.	December 10, 2003	420712 E
South Carolina: Horry (FEMA Docket No. D–7551).	Unincorporated Areas.	December 29, 2003, January 5, 2004, *The Sun News*.	Mr. Danny Knight, Horry County Administrator, P.O. Box 1236, Conway, South Carolina 29528.	December 22, 2003	450104 H
Tennessee: Rutherford (FEMA Docket No. D–7551).	City of LaVergne	January 5, 2004, January 12, 2004, *The Daily News Journal*.	The Honorable Mike Webb, Mayor of the City of LaVergne, 5093 Murfreesboro Road, LaVergne, Tennessee 37086.	December 29, 2003	470167 E
Virginia: Fauquier (FEMA Docket No. D–7551).	Unincorporated Areas.	January 8, 2004, January 15, 2004, *Fauquier Citizen*.	Mr. G. Robert Lee, Fauquier County Administrator, 40 Culpeper Street, Warrenton, Virginia 20186.	December 23, 2003	510055 A
Wisconsin: Dane (FEMA Docket No. D–7551).	Unincorporated Areas.	November 20, 2003, November 27, 2003, *Wisconsin State Journal*.	Ms. Kathleen Falk, Dane County Executive, City-County Building, Room 421, 210 Martin Luther King, Jr., Boulevard, Madison, Wisconsin 53709.	February 26, 2004	550077 F
Wisconsin: Dane (FEMA Docket No. D–7551).	Village of Mazomanie.	November 20, 2003, November 27, 2003, *News-Sickle-Arrow*.	Mr. Jeff Wirth, Mazomanie Village President, 133 Crescent Street, Mazomanie, Wisconsin 53560.	February 26, 2004	550085 F

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 10, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–19008 Filed 8–18–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and names of newspaper where notice was published	Chief Executive Officer of community	Effective date of modification	Community number
Illinois: Adams (Case No. 03–05–5163P) (FEMA Docket No. P7632).	Unincorporated Areas.	December 3, 2003, December 10, 2003, *Quincy Herald-Whig.*	Mr. Mike McLaughlin, Adams County Board Chairman, Adams County Courthouse, 507 Vermont Street, Quincy, IL 62301.	March 10, 2004	170001
Illinois: Calhoun (Case No. 03–05–5163P) (FEMA Docket No. P7632).	Unincorporated Areas.	December 3, 2003, December 10, 2003, *Calhoun News-Herald.*	Mr. Vince Tepen, Calhoun County, Board of County Commissioners, P.O. Box 187, Hardin, IL 62047.	March 10, 2004	170018
Illinois: Madison (Case No. 03–05–5172P) (FEMA Docket No. P7632).	Village of Hartford ..	November 19, 2003, November 26, 2003, *The Telegraph.*	The Hon. William Moore, Jr., Mayor, Village of Hartford, 140 West Hawthorne, Hartford, IL 62048.	December 8, 2003	170444
Illinois: Pike (Case No. 03–05–5163P) (FEMA Docket No. P7632).	Village of Hull	December 2, 2003, December 9, 2003, *The Paper.*	The Honorable Kirk Rued, Mayor, Village of Hull, Hull Village Hall, P.O. Box 70, Hull, IL 62343.	March 10, 2004	170553
Illinois: Madison (Case No. 03–05–5172P) (FEMA Docket No. P7632).	Unincorporated Areas.	November 19, 2003, November 26, 2003, *The Telegraph.*	The Honorable Alan J. Dunstan, Madison County Board Chairman, Madison County Admin. Building, 157 N. Main Street, Suite 165, Edwardsville, IL 62025–1963.	December 8, 2003	170436
Illinois: Pike (Case No. 03–05–5163P) (FEMA Docket No. P7632).	Unincorporated Areas.	December 3, 2003, December 10, 2003, *The Pike Press.*	Mr. Scott Syrcle, Pike County Board Chairman, 100 East Washington Street, Pittsfield, IL 62363.	March 10, 2004	170551
Illinois: Pike (Case No. 03–05–5163P) (FEMA Docket No. P7632).	Village of Pleasant Hill.	December 3, 2003, December 10, 2003, *The Pike Press.*	Mr. William R. Graham, President, Village of Pleasant Hill, Village Hall, 104 West Quincy Street, Pleasant Hill, IL 62366.	March 10, 2004	170558
Illinois: Madison (Case No. 03–05–5172P) (FEMA Docket No. P7632).	Village of Roxana ..	November 19, 2003, November 26, 2003, *The Telegraph.*	The Honorable Fred Hubbard, President, Village of Roxana, 400 South Central Avenue, Roxana, IL 62084.	December 8, 2003	170448
Illinois: Kendall (Case No. 03–05–0545P) (FEMA Docket No. P7630).	Village of Oswego ..	October 23, 2003, October 30, 2003, *The Ledger-Sentinel.*	Mr. Craig Weber, President, Village of Oswego, 113 Main Street, Oswego, IL 60543.	October 6, 2003	170345

State and county	Location	Dates and names of newspaper where notice was published	Chief Executive Officer of community	Effective date of modification	Community number
Indiana: Lake (Case No. 03–05–5175P) (FEMA Docket No. P7630).	Town of Griffith	October 23, 2003, October 30, 2003, *The Times*.	The Honorable Stanley Dobosz, Town Council President, Town of Griffith, 111 North Broad Street, Griffith, IN 46319.	January 29, 2004 ...	185175
Indiana: Lake (Case No. 03–05–5174P) (FEMA Docket No. P7630).	Town of Highland ...	October 23, 2003, October 30, 2003, *The Times*.	The Honorable Mark Herak, Town Council President, Town of Highland, 3333 Ridge Road, Highland, IN 46322.	January 29, 2004 ...	185176
Indiana: Lake (Case No. 03–05–3366P) (FEMA Docket No. P7630).	Unincorporated Areas.	October 23, 2003, October 30, 2003, *The Times*.	The Honorable Gerry J. Scheub, President, Lake County, Board of Commissioners, 2293 North Main Street, 3rd Floor, Building A, Crown Point, IN 46307.	January 29, 2004 ...	180126
Iowa: Johnson (Case No. 03–07–105P) (FEMA Docket No. P7632).	City of Coralville	November 7, 2003, November 14, 2003, *Iowa City Press-Citizen*.	The Honorable Jim Fausett, Mayor, City of Coralville, 1512 7th Street, Coralville, IA 52241.	February 13, 2004	190169
Kansas: Douglas (Case No. 03–07–1276P) (FEMA Docket No. P7632).	City of Lawrence	November 7, 2003, November 14, 2003, *Lawrence Journal World*.	The Hon. David M. Dunfield, Mayor, City of Lawrence, P.O. Box 708, 6 East 6th Street, Lawrence, KS 66044.	February 13, 2004	200090
Louisiana: East Baton Rouge Parish (Case No. 03–06–827P) (FEMA Docket No. P7630).	City of Zachary	October 16, 2003, October 23, 2003, *The Zachary Plainsman*.	The Honorable Charlene Smith, Mayor, City of Zachary, 4700 Main Street, Zachary, LA 70791.	September 30, 2003.	220061
Michigan: Macomb (Case No. 03–05–3367P) (FEMA Docket No. P7630).	City of Fraser	October 31, 2003, November 7, 2003, *The Macomb Daily*.	The Hon. Edmund T. Adamczyk, Mayor, City of Fraser, City Hall, 33000 Garfield Road, Fraser, MI 48026.	October 17, 2003 ...	260122
Michigan: Oakland (Case No. 03–05–0535P) (FEMA Docket No. P7632).	City of Troy	December 4, 2003, December 11, 2003, *The Troy Times*.	The Honorable Matt Pryor, Mayor, City of Troy, 500 West Big Beaver Road, Troy, MI 48084.	March 11, 2004	260180
Minnesota: Carver (Case No. 02–05–0831P) (FEMA Docket No. P7630).	Unincorporated Areas.	October 23, 2003, October 30, 2003, *The Waconia Patriot*.	Mr. David Hemze, Acting Administrator, Carver County, Carver County Courthouse, 600 East Fourth Street, Chaska, MN 55318.	January 29, 2004 ...	270049
Minnesota: Le Sueur (Case No. 03–05–1835P) (FEMA Docket No. P7632).	City of New Prague	December 4, 2003, December 11, 2003, *The New Prague Times*.	The Honorable Craig Sindelar, Mayor, City of New Prague, 118 Central Avenue, New Prague, MN 56071.	March 11, 2004	270249
Minnesota: Sherburne (Case No. 03–05–3980P) (FEMA Docket No. P7632).	Unincorporated Areas.	December 19, 2003, December 26, 2003, *St. Cloud Times*.	Mr. Brian Bensen, Sherburne County Administrator, Sherburne County Government Center, 13880 Highway 10, Elk River, MN 55330.	December 3, 2003	270435
Missouri: St. Louis (Case No. 03–07–894P) (FEMA Docket No. P7630).	Unincorporated Areas.	October 22, 2003, October 29, 2003, *St. Louis Post Dispatch*.	Mr. Buzz Westfall, St. Louis County Executive, 41 South Central Avenue, St. Louis, MO 63105.	January 28, 2004 ...	290327
New Mexico: Bernalillo (Case No. 04–06–241P) (FEMA Docket No. P7632).	City of Albuquerque	December 22, 2003, December 29, 2003, *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	November 20, 2003	350002

State and county	Location	Dates and names of newspaper where notice was published	Chief Executive Officer of community	Effective date of modification	Community number
New Mexico: Bernalillo (Case No. 04–06–245P) (FEMA Docket No. P7632).	City of Albuquerque	December 22, 2003, December 29, 2003, *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	November 20, 2003	350002
New Mexico: Bernalillo (Case No. 04–06–245P) (FEMA Docket No. P7632).	City of Albuquerque	December 22, 2003, December 29, 2003, *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	November 20, 2003	350002
New Mexico: Bernalillo (Case No. 04–06–246P) (FEMA Docket No. P7632).	City of Albuquerque	December 22, 2003, December 29, 2003, *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	November 20, 2003	350002
New Mexico: Bernalillo (Case No. 03–06–1734P) (FEMA Docket No. P7630).	City of Albuquerque	October 23, 2003, October 30, 2003, *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	October 9, 2003	350002
New Mexico: Bernalillo (Case No. 03–06–1742P) (FEMA Docket No. P7632).	City of Albuquerque	November 6, 2003, November 13, 2003, *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	October 21, 2003 ...	350002
New Mexico: Bernalillo (Case No. 03–06–2528P) (FEMA Docket No. P7630).	Unincorporated Areas.	September 30, 2003, October 7, 2003, *Albuquerque Journal*.	Mr. Tom Rutherford, Chairman, Bernalillo County, One Civic Plaza NW., Albuquerque, NM 87102.	January 6, 2004	350001
New Mexico: Bernalillo (Case No. 03–06–1742P) (FEMA Docket No. P7632).	Unincorporated Areas.	November 6, 2003, November 13, 2003, *Albuquerque Journal*.	Mr. Tom Rutherford, Chairman, Bernalillo County, One Civic Plaza, NW., Albuquerque, NM 87102.	October 21, 2003 ...	350001
New Mexico: Bernalillo (Case No. 04–06–241P) (FEMA Docket No. P7632).	Unincorporated Areas.	December 22, 2003, December 29, 2003, *Albuquerque Journal*.	Mr. Tom Rutherford, Chairman, Bernalillo County, One Civic Plaza, NW., Albuquerque, NM 87102.	November 20, 2003	350001
New Mexico: Bernalillo (Case No. 04–06–242P) (FEMA Docket No. P7632).	Unincorporated Areas.	December 22, 2003, December 29, 2003, *Albuquerque Journal*.	Mr. Tom Rutherford, Chairman, Bernalillo County, One Civic Plaza, NW., Albuquerque, NM 87102.	November 20, 2003	350001
New Mexico: Bernalillo (Case No. 04–06–243P) (FEMA Docket No. P7632).	Unincorporated Areas.	December 22, 2003, December 29, 2003, *Albuquerque Journal*.	Mr. Tom Rutherford, Chairman, Bernalillo County, One Civic Plaza, N.W., Albuquerque, NM 87102.	December 4, 2003	350001
Ohio: Allen (Case No. 03–05–0444P) (FEMA Docket No. P7632).	Allen County	December 22, 2003, December 29, 2003, *The Lima News*.	Mr. Fred Eldridge, Allen County Administrator, 301 North Main, Lima, OH 45802.	March 29, 2004	390758
Ohio: Delaware (Case No. 03–05–2574P) (FEMA Docket No. P7632).	Village of Powell	November 19, 2003, November 26, 2003, *Olentangy Valley News*.	The Honorable Art Schultz, Mayor, Village of Powell, 47 Hall Street, Powell, OH 43065.	February 25, 2004	390626
Oklahoma: Oklahoma (Case No. 03–06–691P) (FEMA Docket No. P7632).	Unincorporated Areas.	November 18, 2003, November 25, 2003, *The Daily Oklahoman*.	Mr. Stan Inman, Chairman, Oklahoma County Commission, 320 Robert S. Kerr Avenue, Suite 621, Oklahoma City, OK 73102.	February 24, 2004	400466

State and county	Location	Dates and names of newspaper where notice was published	Chief Executive Officer of community	Effective date of modification	Community number
Oklahoma: Rogers (Case No. 03–06–1392P) (FEMA Docket No. P7632).	Unincorporated Areas.	August 29, 2003, September 5, 2003, *Claremore Daily Progress*.	Mr. Gerry Payne, Chairman, Board of Commissioners, 219 South Missouri, Claremore, OK 74017.	September 12, 2003.	405379
Oklahoma: Tulsa (Case No. 03–06–1541P) (FEMA Docket No. P7630).	City of Tulsa	October 17, 2003, October 24, 2003, *Tulsa World*.	The Honorable Bill LaFortune, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, OK 74103.	October 1, 2003	405381
Oklahoma: Tulsa (Case No. 03–06–1945P) (FEMA Docket No. P7630).	City of Tulsa	October 24, 2003, October 31, 2003, *Tulsa World*.	The Honorable Bill LaFortune, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, OK 74103.	October 9, 2003	405381
Texas: Johnson (Case No. 03–06–060P) (FEMA Docket No. P7630).	City of Burleson	October 22, 2003, October 29, 2003, *The Burleson Star*.	The Honorable Byron Black, Mayor, City of Burleson, 141 West Renfro, Burleson, TX 76028.	January 28, 2004 ...	485459
Texas: Johnson (Case No. 03–06–1544P) (FEMA Docket No. P7632).	City of Burleson	December 3, 2003, December 10, 2003, *The Burleson Star*.	The Honorable Byron Black, Mayor, City of Burleson, 141 West Renfro, Burleson, TX 76028.	March 10, 2004	485459
Texas: Dallas (Case No. 03–06–435P) (FEMA Docket No. P7630).	City of Carrollton	October 24, 2003, October 31, 2003, *Northwest Morning News*.	The Honorable Mark Stokes, Mayor, City of Carrollton, 1945 E. Jackson Road, Carrollton, TX 75006.	October 7, 2003	480167
Texas: Dallas (Case No. 03–06–838P) (FEMA Docket No. P7632).	City of Carrollton	November 14, 2003, November 21, 2003, *Northwest Morning News*.	The Honorable Mark Stokes, Mayor, City of Carrollton, 1945 E. Jackson Road, Carrollton, TX 75006.	October 30, 2003 ...	480167
Texas: Dallas (Case No. 02–06–2440P) (FEMA Docket No. P7630).	City of Cedar Hill ...	October 17, 2003, October 24, 2003, *Dallas Morning News*.	The Honorable Robert Franke, Mayor, City of Cedar Hill, P.O. Box 96, Cedar Hill, TX 75106.	January 23, 2004 ...	480168
Texas: Tarrant (Case No. 02–06–2311P) (FEMA Docket No. P7630).	City of Fort Worth ..	October 21, 2003, October 28, 2003, *The Star Telegram*.	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	October 9, 2003	480596
Texas: Tarrant (Case No. 03–06–1376P) (FEMA Docket No. P7630).	City of Fort Worth ..	October 22, 2003, October 29, 2003, *The Star Telegram*.	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	October 7, 2003	480596
Texas: Denton (Case No. 03–06–1926P) (FEMA Docket No. P7630).	Town of Flower Mound.	October 29, 2003, November 5, 2003, *Flower Mound Leader*.	The Honorable Lori DeLuca, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028.	October 15, 2003 ...	480777
Texas: Harris (Case No. 03–06–405P) (FEMA Docket No. P7632).	Unincorporated Areas.	November 11, 2003, November 18, 2003, *The Houston Chronicle*.	The Hon. Robert A. Eckels, Judge, Harris County, 1001 Preston, Suite 911, Houston, TX 77002.	February 17, 2004	480287
Texas: Denton (Case No. 03–06–435P) (FEMA Docket No. P7630).	City of Hebron	October 22, 2003, October 29, 2003, *The Carrollton Leader*.	The Honorable Kelly Clem, Mayor, Town of Hebron, 4216 Charles Street, Carrollton, TX 75010.	October 7, 2003	481495
Texas: Hidalgo (Case No. 03–06–1738P) (FEMA Docket No. P7632).	Unincorporated Areas.	December 10, 2003, December 17, 2003, *Edinburg Daily Review*.	The Honorable Ramon Garcia, Judge, Hidalgo County, 100 East Cano Street, Edinburg, TX 78539.	March 17, 2004	480334

State and county	Location	Dates and names of newspaper where notice was published	Chief Executive Officer of community	Effective date of modification	Community number
Texas: Harris (Case No. 03–06–405P) (FEMA Docket No. P7632).	City of Houston	November 11, 2003, November 18, 2003, *The Houston Chronicle*.	The Honorable Bill White, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	February 17, 2004	480296
Texas: Hays (Case No. 03–06–1735P) (FEMA Docket No. P7632).	City of Kyle	December 10, 2003, December 17, 2003, *The Kyle Eagle*.	The Honorable James Adkins, Mayor, City of Kyle, 300 West Center, Kyle, TX 78640.	November 17, 2003	481108
Texas: Hidalgo (Case No. 03–06–1738P) (FEMA Docket No. P7632).	City of La Joya	December 10, 2003, December 17, 2003, *Edinburg Daily Review*.	The Honorable Billy Leo, Mayor, City of La Joya, 100 West Expressway 83, La Joya, TX 78560.	March 17, 2004	480341
Texas: Tarrant (Case No. 03–06–444P) (FEMA Docket No. P7630).	City of North Richland Hills.	October 22, 2003, October 29, 2003, *The Northeast Tarrant, County Morning News*.	The Hon. T. Oscar Trevino, Jr., Mayor, City of N. Richland Hills, 7301 North East Loop 820, North Richland Hills, TX 76180.	October 7, 2003	480607
Texas: Harris (Case No. 03–06–1531P) (FEMA Docket No. P7632).	City of Pasadena ...	November 11, 2003, November 18, 2003, *The Pasadena Citizen*.	The Honorable John Manlove, Mayor, City of Pasadena, City Hall, 1211 Southmore, Pasadena, TX 77502.	February 17, 2004	480307
Texas: Collin (Case No. 03–06–407P) (FEMA Docket No. P7630).	City of Plano	October 29, 2003, November 5, 2003, *Plano Star Courier*.	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75086–0358.	February 4, 2004 ...	480140
Texas: Dallas (Case No. 03–06–427P) (FEMA Docket No. P7632).	City of Richardson	December 4, 2004, December 11, 2003, *The Richardson Morning News*.	The Honorable Gary A. Slagel, Mayor, City of Richardson, P.O. Box 830309, Richardson, TX 75083–0309.	November 12, 2003	480184
Texas: Bexar (Case No. 03–06–039P) (FEMA Docket No. P7632).	City of San Antonio	December 5, 2003, December 12, 2003 *San Antonio Express News*.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966.	March 12, 2004	480045
Texas: Hays (Case No. 02–06–1681P) (FEMA Docket No. P7630).	City of San Marcos	October 17, 2003, October 24, 2003, *San Marcos Daily Record*.	The Hon. Robert Habingreither, Mayor, City of San Marcos, 630 East Hopkins, San Marcos, TX 78666.	September 30, 2003.	485505

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 10, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–19009 Filed 8–18–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–D–7559]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection

at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65 —[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as shown below:

State and county	Location	Dates and name of newspaper where notice was published	Chief Executive Officer of community	Effective date of modification	Community number
Alabama: Houston	City of Dothan	May 13, 2004, May 20, 2004, *The Dothan Eagle*.	The Honorable Chester L. Sowell, III, Mayor of the City of Dothan, P.O. Box 2128, Dothan, Alabama 36302.	May 5, 2004	010104 E
Alabama: Jefferson	Unincorporated Areas.	June 1, 2004, June 8, 2004, *The Birmingham News*.	Mr. Larry Langford, President of the Jefferson County Commission, 716 Richard Arrington Jr. Boulevard North, Birmingham, Alabama 35203–0005.	September 7, 2004	010217 E
Connecticut: Fairfield.	Town of Greenwich	May 4, 2004, May 11, 2004, *Greenwich Time*.	Mr. Jim Lash, Town of Greenwich First Selectman, Town Hall, 101 Field Point Road, Greenwich, Connecticut 06830.	April 26, 2004	090008 C
Connecticut: Tolland.	Town of Somers	June 4, 2004, June 11, 2004, *Journal Inquirer*.	Mr. David A. Pinney, Town of Somers First Selectman, Somers Town Hall, 600 Main Street, Somers, Connecticut 06071.	May 27, 2004	090112 B
Delaware: New Castle.	Unincorporated Areas.	May 10, 2004, May 17, 2004, *The News Journal*.	Mr. Thomas P. Gordon, New Castle County Executive, New Castle County Government Center, 87 Reads Way, New Castle, Delaware 19720.	August 16, 2004	105085 G
Florida: Duval	City of Jacksonville	April 19, 2004, April 26, 2004, *The Florida Times-Union*.	The Honorable John Peyton, Mayor of the City of Jacksonville, City Hall at St. James, 4th Floor, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	July 26, 2004	120077 E
Florida: Polk	Unincorporated Areas.	April 20, 2004, April 27, 2004, *The Ledger*.	Mr. Michael Herr, Polk County Manager, 330 West Church Street, P.O. Box 9005, Drawer CS–10, Bartow, Florida 33831–9005.	July 27, 2004	120261 F

State and county	Location	Dates and name of newspaper where notice was published	Chief Executive Officer of community	Effective date of modification	Community number
Florida: Polk	Unincorporated Areas.	June 14, 2004, June 21, 2004, *The Ledger*.	Mr. Michael Herr, Polk County Manager, 330 West Church Street, P.O. Box 9005, Drawer CA01, Bartow, Florida 33831–9005.	June 7, 2004	120261 F
Georgia: Harris	Unincorporated Areas.	June 3, 2004, June 10, 2004, *Harris County Journal*.	Ms. Carol Silva, Harris County Manager, P.O. Box 365, Hamilton, Georgia 31811.	May 25, 2004	130338 A
Georgia: Chatham	City of Savannah ...	June 10, 2004, June 17, 2004, *Savannah Morning News*.	The Honorable Otis S. Johnson, Ph.D., Mayor of the City of Savannah, P.O. Box 1027, Savannah, Georgia 31402.	June 3, 2004	135163 C
Illinois: DuPage	Village of Lisle	June 7, 2004, June 14, 2004, *Daily Herald*.	The Honorable Joseph Broda, Mayor of the Village of Lisle, 925 Burlington Avenue, Lisle, Illinois 60532–1838.	September 13, 2004.	170211 B
Kentucky	Lexington-Fayette Urban County Government.	April 23, 2004, April 30, 2004, *Lexington Herald-Leader*.	The Honorable Teresa Isaac, Mayor of the Lexington-Fayette Urban County Government, 200 East Main Street, 12th Floor, Lexington-Fayette Government Building, Lexington, Kentucky 40507.	July 30, 2004	210067 C
Maryland: Harford ..	Unincorporated Areas.	June 18, 2004, June 25, 2004, *The Aegis*.	Mr. James M. Harkins, Harford County Executive, 220 South Main Street, Bel Air, Maryland 21014.	September 24, 2004.	240040 D
Massachusetts: Barnstable.	Town of Falmouth ..	April 23, 2004, April 30, 2004, *Cape Cod Times*.	Mr. Robert L. Whritenour, Jr., Falmouth Town Administrator, 59 Town Hall Square, Falmouth, Massachusetts 02540.	April 16, 2004	255211 G
New Jersey: Camden.	Township of Winslow.	March 31, 2004, April 7, 2004, *The Jersey Journal*.	The Honorable Sue Ann Metzner, Mayor of the Township of Winslow, 125 South Route 73, Winslow, New Jersey 08037.	August 20, 2004	340148 B
North Carolina: Durham.	Unincorporated Areas.	May 28, 2004, June 4, 2004, *The Herald-Sun*.	Mr. Michael M. Ruffin, Durham County Manager, 200 East Main Street, 2nd Floor, Durham, North Carolina 27701.	May 21, 2004	370085 G
North Carolina: Cumberland.	City of Fayetteville	May 6, 2004, May 13, 2004, *Fayetteville Observer*.	Mr. Roger Stancil, Fayetteville City Manager, P.O. Box 1846, Fayetteville, North Carolina 28301.	August 13, 2004	370077 B
Puerto Rico	Commonwealth	May 14, 2004, May 21, 2004, *The San Juan Star*.	The Honorable Sila M. Calderon, Governor of the Commonwealth of Puerto Rico, Office of the Governor, P.O. Box 9020082, San Juan, Puerto Rico 00902–0082.	May 5, 2004	720000 C
South Carolina: Richland.	Unincorporated Areas.	April 20, 2004, April 27, 2004, *The State*.	Mr. T. Cary McSwain, Richland County Administrator, 2020 Hampton Street, P.O. Box 192, Columbia, South Carolina 29202.	July 27, 2004	450170 H

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 10, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–19010 Filed 8–18–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The

respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate, has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67 [AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
ILLINOIS	
DuPage County (FEMA Docket No. D–7568)	
Des Plaines River:	
At southern County boundary along Chicago Sanitary Canal	*594
At southern County boundary along Chicago Sanitary Canal	*595
DuPage County (Unincorporated Areas), Village of Lemont	
West Branch Tributary No. 4:	
Approximately 600 feet upstream of Timber Lane	*744
Approximately 925 feet upstream of Timber Lane	*744
Village of Carol Stream	
East Branch Tributary No. 2:	
Approximately 250 feet upstream of the confluence with East Branch DuPage River	*694
Approximately 1,400 feet upstream of Main Street	*723
Village of Glendale Heights	
Ginger Creek:	
At confluence with Salt Creek	*655
Approximately 1,000 feet upstream of Myers Road	*699
Village of Oak Brook	
Mays Lake Tributary:	
Approximately 1,350 feet upstream of confluence with Ginger Creek	*672
Approximately 1,565 feet upstream of Mays Lake Culvert	*718
Village of Oak Brook	
Briarwood Ditch:	
Approximately 1,200 feet upstream of confluence with Ginger Creek	*671
Approximately 500 feet upstream of Kingston Road	*672
Village of Oak Brook	
Midwest Club Tributary:	
At confluence with Ginger Creek	*696
Approximately 550 feet upstream of Oak Brook Road	*702
Village of Oak Brook	
Lombard Tributary:	
Approximately 500 feet upstream of confluence with Ginger Creek	*701
Approximately 670 feet upstream of Royal Valley Drive	*703
Village of Oak Brook	
Heritage Oaks Tributary:	
At the confluence with Ginger Creek	*699
Approximately 750 feet upstream of Ginger Creek	*699
Salt Creek:	
Approximately 100 feet upstream of York Road	*645
Downstream side of Frontage Road	*662
Village of Oak Brook, City of Oak Brook Terrace	
Midwest Club Tributary Ponding Area:	
Approximately 50 feet southwest of the intersection of CT 20 and Midwest Club Parkway	*702
Village of Oak Brook	
For all communities listed above, maps are available for inspection at the DuPage County Department of Development and Environmental Concerns, 2nd floor, 421 North County Farm Road, Wheaton, Illinois.	
KENTUCKY	
Boyd County (FEMA Docket No. D–7590)	
Ohio River:	
Approximately 0.8 mile upstream of the downstream county boundary	*546
At upstream county boundary	*549
City of Ashland, City of Catlettsburg, Boyd County (Unincorporated Areas)	
Keys Creek:	
From the confluence with Ohio River	*549
Just upstream of Catlett Creek Road	*549
City of Ashland, Boyd County (Unincorporated Areas)	
City of Ashland	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
Maps available for inspection at the Ashland Department of Planning and Community Development, 1700 Greenup Avenue, Room 208, Ashland, Kentucky.	
City of Catlettsburg	
Maps available for inspection at the Catlettsburg City Hall, 216 26th Street, Catlettsburg, Kentucky.	
Boyd County (Unincorporated Areas)	
Maps available for inspection at the Boyd County Courthouse, 2800 Louisa Street, Catlettsburg, Kentucky.	
Bracken County (FEMA Docket No. D–7590)	
Ohio River:	
At the downstream County boundary	*506
Approximately 125 feet upstream of the upstream County boundary	*512
City of Augusta, Bracken County (Unincorporated Areas)	
Bracken Creek:	
At the confluence with the Ohio River	*510
Approximately 1,100 feet upstream of State Route 8	*510
Bracken County (Unincorporated Areas)	
City of Augusta	
Maps available for inspection at the Augusta City Office, 219 Main Street, Augusta, Kentucky.	
Bracken County (Unincorporated Areas)	
Maps available for inspection at the Bracken County Courthouse, 116 West Miami, Brooksville, Kentucky.	
Bullitt County (FEMA Docket No. D–7592)	
Brooks Run:	
At the confluence with Floyds Fork	•454
Approximately 200 feet upstream of State Route 1020	•515
Bullitt County (Unincorporated Areas), City of Fox Chase, City of Hillview, City of Pioneer Village	
Brier Creek:	
A ponding area extending from the confluence with Pond Creek to approximately 1,520 feet upstream of the Railroad	•431
Bullitt County (Unincorporated Areas)	
Bullitt Lick Creek—Mud Run:	
At the confluence with Salt River	•447
Approximately 565 feet upstream of Blue Lick Creek Road	•447
City of Shepherdsville	
Floyds Fork:	
At the confluence with Salt River	•450
Approximately 3.3 miles upstream of State Highway 44	•454
City of Hillview, City of Shepherdsville	
Knob Creek:	
At the confluence with Pond Creek	•431
Approximately 1.3 miles upstream of State Route 44	•456
Bullitt County (Unincorporated Areas)	
Knob Creek Tributary:	
At the confluence with Knob Creek	•444
Approximately 1 mile upstream of Shuffet Lane	•494
Long Lick Creek:	
At the confluence with Salt River	•446
Approximately 4,100 feet upstream of Happy Hallow Road	•487
Ohio River:	
At the confluence of Salt River	•443
Approximately 1.4 miles upstream of the confluence of Salt River	•443
Pond Creek:	
A ponding area extending from the pump station to the confluence of Brier Creek	•431
Salt River:	
At the confluence of Bullitt Lick Creek	•447
Approximately 1.1 miles upstream of the confluence of Bullitt Lick Creek	•447
Bullitt County (Unincorporated Areas)	
Whittaker Run:	
At the confluence with Salt River	•461
Approximately 700 feet upstream of U.S. Route 31 East	•490
Bullitt County (Unincorporated Areas)	
Maps available for inspection at the Bullitt County Planning Commission, 214 Frank E. Simon Avenue, Shepherdsville, Kentucky.	
City of Fox Chase	
Maps available for inspection at the Fox Chase City Hall, 4814 Fox Chase Drive, Shepherdsville, Kentucky.	
City of Hillview	
Maps available for inspection at the Hillview City Hall, 298 Prairie Drive, Louisville, Kentucky.	
City of Pioneer Village	
Maps available for inspection at the Pioneer Village City Hall, 4700 Summitt Drive, Louisville, Kentucky.	
City of Shepherdsville	
Maps available for inspection at the Shepherdsville City Hall, 170 Frank E. Simon Avenue, Shepherdsville, Kentucky.	
Campbell County (FEMA Docket No. D–7590)	
Ohio River:	
Approximately 4.1 miles upstream of Louisville and Nashville Railroad Bridge	*501
At upstream County boundary	*506
Cities of California, Fort Thomas, Melbourne, Mentor and Silver Grove, and Campbell County (Unincorporated Areas)	
Moock Road Tributary:	
Approximately 100 feet upstream of Bentwood Hills Drive	*502
Approximately 2,050 feet upstream of Bentwood Hills Drive	*521
City of Southgate	
Four Mile Creek:	
Approximately 900 feet upstream of the confluence of Owl Creek	*503
Approximately 0.6 mile upstream of the confluence of Owl Creek	*503
City of Melbourne	
Woodlawn Creek:	
Approximately 325 feet downstream of the confluence of Woodlawn Creek Tributary 2	*517
Approximately 450 feet upstream of Wilson Road	*518
City of Woodlawn	
Woodlawn Creek Tributary 2:	
Approximately 225 feet upstream of the confluence with Woodlawn Creek	*517
Approximately 340 feet downstream of Grand Avenue	*517
City of Woodlawn	
City of California	
Maps available for inspection at the California City Clerk's Office, 45 Madison Street, California, Kentucky.	
Campbell County (Unincorporated Areas)	
Maps available for inspection at the Campbell County Fiscal Court, Planning and Zoning Department, 24 West Fourth Street, Newport, Kentucky.	
City of Fort Thomas	
Maps available for inspection at the Fort Thomas City Office, 130 North Fort Thomas Avenue, Fort Thomas, Kentucky.	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
City of Melbourne	
Maps available for inspection at the Melbourne City Hall, 502 Garfield Avenue, Melbourne, Kentucky.	
City of Mentor	
Maps available for inspection at the Campbell County Fiscal Court, Planning and Zoning Department, 24 West Fourth Street, Newport, Kentucky.	
City of Silver Grove	
Maps available for inspection at the Silver Grove City Hall, 308 Oak Street, Silver Grove, Kentucky.	
City of Southgate	
Maps available for inspection at the Southgate City Hall, 122 Electric Avenue, Southgate, Kentucky.	
City of Woodlawn	
Maps available for inspection at the Campbell County Fiscal Court, Planning and Zoning Department, 24 West Fourth Street, Newport, Kentucky.	
Greenup County (FEMA Docket No. D–7590)	
Ohio River:	
Approximately 1.2 miles upstream of downstream County boundary	*536
At upstream County boundary	*546
Cities of Greenup, Russell, Worthington, Wurtland, and Greenup County (Unincorporated Areas)	
Lower White Oak Creek:	
At the confluence with Tygarts Creek	*537
Approximately 1,660 feet upstream of State Highway 1134	*537
Greenup County (Unincorporated Areas)	
White Oak Creek:	
Approximately 325 feet downstream of U.S. Highway 23	*546
Approximately 330 feet downstream of State Route 693	*546
Cities of Bellefonte and Russell	
Tygarts Creek:	
Entire length within community	*537
Greenup County (Unincorporated Areas)	
City of Bellefonte	
Maps available for inspection at the Bellefonte City Hall, 705 Bellefonte Princess Road, Ashland, Kentucky.	
Greenup County (Unincorporated Areas)	
Maps available for inspection at the Greenup County Courthouse, Room 102, Greenup, Kentucky.	
City of Greenup	
Maps available for inspection at the Greenup City Hall, 1005 Walnut Street, Greenup, Kentucky.	
City of Russell	
Maps available for inspection at the Russell City Hall, 410 Ferry Street, Russell, Kentucky.	
City of Worthington	
Maps available for inspection at the Worthington City Hall, 512 Ferry Street, Worthington, Kentucky.	
City of Wurtland	
Maps available for inspection at the Wurtland City Hall, 500 Wurtland Avenue, Wurtland, Kentucky.	
Lewis County (FEMA Docket No. D–7590)	
Ohio River:	
Approximately 0.5 mile upstream of the County boundary	*519
Approximately 4.7 miles downstream of the County boundary	*534
Town of Concord, City of Vanceburg, Lewis County (Unincorporated Areas)	
Kinniconick Creek:	
Approximately .07 mile downstream of McDowell Creek Road	*533
Approximately 8 miles upstream of State Route 59	678
Lewis County (Unincorporated Areas)	
Town of Concord	
Maps available for inspection at the Concord Town Hall, Route 2, Vanceburg, Kentucky.	
Lewis County (Unincorporated Areas)	
Maps available for inspection at the Lewis County Courthouse, 514 Second Street, Vanceburg, Kentucky.	
City of Vanceburg	
Maps available for inspection at the Vanceburg City Hall, 615 2nd Street, Vanceburg, Kentucky.	
Mason County (FEMA Docket No. D–7590)	
Ohio River:	
Approximately 0.28 mile downstream of *512 the downstream county boundary	*512
Approximately 0.04 mile upstream of the upstream county boundary	*518
City of Dover, City of Maysville, Mason County (Unincorporated Areas)	
City of Dover	
Maps available for inspection at the Dover City Hall, 2060 Lucretia Street, Dover, Kentucky.	
Mason County (Unincorporated Areas)	
Maps available for inspection at the Mason County Judge/Executive's Office, 219 Court Street, Maysville, Kentucky.	
City of Maysville	
Maps available for inspection at the Maysville City Hall, 216 Bridge Street, Maysville, Kentucky.	
Pendleton County (FEMA Docket No. D–7584)	
Ohio River:	
Approximately 475 feet downstream of the downstream county boundary	*506
Approximately 425 feet upstream of the upstream county boundary	*506
Pendleton County (Unincorporated Areas)	
Licking River:	
At the confluence of Grassy Creek	*530
Approximately 1.09 miles upstream of State Route 22	*556
South Fork Licking River:	
At the confluence with Licking River	*555
Approximately 1.32 miles upstream of U.S. Route 27	*559
Pendleton County (Unincorporated Areas)	
Maps available for inspection at the Pendleton County Judge's Office, 233 Main Street, Falmouth, Kentucky.	
NORTH CAROLINA	
Camden County (FEMA Docket No. D–7584)	
Areneuse Creek:	
At the upstream side of NC 343	*6
Approximately 150 feet downstream of Smith Corner Road	*6
Camden County (Unincorporated Areas)	
Joyce Creek:	
At the confluence with Dismal Swamp Canal	*6
Approximately 100 feet upstream of Keeter Barn Road	*9
Joyce Creek Tributary 1:	
At the confluence with Joyce Creek	*7

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
Approximately 1.8 miles upstream of the confluence with Joyce Creek	*8
Mill Dam Creek:	
At NC 343	*6
Approximately 1.0 miles upstream of Ivy Neck Road	*6
Mill Dam Creek Tributary 1:	
At the confluence with Mill Dam Creek	*6
Approximately 60 feet downstream of NC 343	*6
Mill Dam Creek Tributary 2:	
At the confluence with Mill Dam Creek	*6
Approximately 0.7 mile upstream of Mercer Drive	*7
Mill Dam Creek Tributary 3:	
At the confluence with Mill Dam Creek	*6
Approximately 0.3 mile upstream of Ivy Neck Road	*6
Mill Dam Creek Tributary 4:	
At the confluence with Mill Dam Creek	*6
Approximately 0.7 mile upstream of Bushell Road	*6
Pasquotank River:	
Approximately 5.9 miles upstream of the confluence of Sawyers Creek	*5
Approximately 8.1 miles upstream of Morgans Corner Road	*13
Sawyers Creek:	
At the downstream side of Scotland Road	•5
Approximately 0.6 mile upstream of Trafton Road	•8
Sawyers Creek Tributary 2:	
At U.S. Highway 158/NC 34	•5
Approximately 1.3 miles upstream of U.S. Highway 158/NC 34	•6
Sawyers Creek Tributary 3:	
At the downstream side of U.S. Highway 158/NC 34	•5
Approximately 0.5 mile upstream of U.S. Highway 158/NC 34	•6
Sawyers Creek Tributary 4:	
At the downstream side of Scotland Road	•5
Approximately 1,600 feet upstream of Scotland Road	•6
Sawyers Creek Tributary 5:	
At the confluence with Sawyers Creek	•5
Approximately 400 feet downstream of Bourbon Street	•6
Camden County (Unincorporated Areas)	
Maps available for inspection at the Camden County Offices, 117 North NC 343, Camden, North Carolina.	
Pasquotank County (FEMA Docket No. D–7584)	
East Branch Knobbs Creek Tributary:	
At West Ehringhaus Street	•8
Approximately 550 feet upstream of Roanoke Avenue	•9
City of Elizabeth City, Pasquotank County (Unincorporated Areas)	
Halls Creek:	
Approximately 0.5 mile upstream of Halls Creek Road	•6
Approximately 0.3 mile upstream of Simpson Ditch Road	•9
Pasquotank County (Unincorporated Areas)	
Halls Creek Tributary 1:	
At the confluence with Halls Creek	•6
Approximately 2.0 miles upstream of the confluence with Halls Creek	•9
Knobbs Creek:	
At Creek Road	•6
Approximately 0.6 mile upstream of Berea Church Road	•7
City of Elizabeth City, Pasquotank County (Unincorporated Areas)	
Knobbs Creek Tributary:	
Approximately 0.2 mile upstream of Providence Road	•7
Approximately 0.8 mile upstream of U.S. Highway 17	•9
Little River:	
Approximately 1.4 miles upstream of U.S. Highway 17	•9
Approximately 2.7 miles upstream of Foreman Bundy Road	•10
Pasquotank County (Unincorporated Areas)	
New Begun Creek:	
At Florida Road	•5
Approximately 250 feet downstream Pitts Chapel Road	•6
Newland Drainage Canal:	
At the confluence with Pasquotank River	•7
Approximately 500 feet downstream of Newland Road	•14
Newland Drainage Canal Tributary 1:	
At the confluence with Newland Drainage Canal	•7
Approximately 0.4 mile upstream of Brothers Lane	•11
Newland Drainage Canal Tributary 1A:	
At the confluence with Newland Drainage Canal Tributary 1	•7
Approximately 500 feet downstream of Blindman Road	•8
Pasquotank River:	
Approximately 9.1 miles upstream of U.S. Highway 158	•5
Approximately 6.6 miles upstream of the confluence with Newland Drainage Canal	•13
Pasquotank River Tributary 3:	
At the confluence with Pasquotank River	•6
Approximately 500 feet downstream of U.S. Highway 17	•10
Symonds Creek:	
Just upstream of Nixonton Road	•5
Approximately 0.4 mile upstream of Nixonton Road	•6
Symonds Creek Tributary 2:	
At the confluence with Symonds Creek	•5
Approximately 0.8 mile upstream of the confluence with Symonds Creek	•6
Pasquotank County (Unincorporated Areas)	
City of Elizabeth City	
Maps available for inspection at the Elizabeth City Inspections Department, 306 East Colonial Avenue, Elizabeth City, North Carolina.	
Pasquotank County (Unincorporated Areas)	
Maps available for inspection at the Pasquotank County Planning Department, 206 East Main Street, 2nd Floor, Elizabeth City, North Carolina.	
SOUTH CAROLINA	
Charleston County (FEMA Docket No. D–7578)	
Charleston Harbor/Atlantic Ocean:	
Approximately 500 feet east along Clearview Drive from the intersection of Clearview Drive and Beauregard Street	*13
Approximately 0.9 mile southwest of the intersection of Garland Road and Bay View Drive	*17
Charleston County (Unincorporated Areas), Town of Mount Pleasant, City of Charleston	
Wando River/Atlantic Ocean:	
Approximately 2,000 feet west of the intersection of Sugar Cane Way and 6th Street	*13
Approximately 1,800 feet north of the intersection of Molasses Lane and Hobcaw Drive	*16
Town of Mount Pleasant, City of Charleston	
Ashley River/Atlantic Ocean:	
Approximately 0.4 mile east of the intersection of Albemarle Road and Ashley Point Road	*13
Approximately 1,600 feet east of the intersection of Mill Street and Albemarle Road	*16
City of North Charleston, City of Charleston	
Cooper River/Atlantic Ocean:	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
Approximately 0.8 mile southeast of the intersection of Partridge Avenue and Juneau Street	*12
At the confluence with Wando River and Charleston Harbor	*17
City of North Charleston, City of Charleston	
Charleston County (Unincorporated Areas)	
Maps available for inspection at the Charleston County Building Services, 4045 Bridge View Drive, North Charleston, South Carolina 29405–7464.	
City of Charleston	
Maps available for inspection at the Charleston City Hall, 75 Calhoun Street, Division 301, Charleston, South Carolina 29401.	
City of North Charleston	
Maps available for inspection at the North Charleston City Hall, 4900 Lacrosse Road, North Charleston, South Carolina 29406–6501.	
Greenville County (FEMA Docket No. D–7578)	
Big Durbin Creek Tributary 1:	
At the confluence with Big Durbin Creek	•787
Approximately 650 feet upstream of the confluence with Big Durbin Creek	•789
Greenville County (Unincorporated Areas), City of Simpsonville	
Gilder Creek:	
At the confluence with Enoree River	•676
Approximately 450 feet upstream of McDougal Court	•907
Greenville County (Unincorporated Areas), City of Mauldin	
Gilder Creek Tributary 1:	
At the confluence with Gilder Creek	•813
Approximately 750 feet upstream of the confluence with Gilder Creek	•815
City of Mauldin	
Gilder Creek Tributary 2:	
At the confluence with Gilder Creek	•825
Approximately 550 feet upstream of the confluence with Gilder Creek	•825
Gilder Creek Tributary 3:	
At the confluence with Gilder Creek	•825
Approximately 1,500 feet upstream of the confluence with Gilder Creek	•827
Gilder Creek Tributary 3A:	
Approximately 50 feet upstream of the confluence with Gilder Creek Tributary 3	•829
Approximately 150 feet upstream of U.S. Interstate 385	•890
Gilder Creek Tributary 4:	
At confluence with Gilder Creek	•798
Approximately 1,085 feet upstream of Substation Dam	•931
Baker Creek:	
At the confluence with Huff Creek	•693
Approximately 190 feet upstream of Greybridge Road	•780
Greenville County (Unincorporated Areas)	
Brushy Creek Tributary 2:	
At the confluence with Brushy Creek	•841
Approximately 40 feet upstream of Meyers Drive	•894
City of Greenville	
Enoree River Tributary 1:	
Approximately 150 feet upstream of the confluence with Enoree River	•780
Approximately 2,540 feet upstream of East Suber Road	•890
Greenville County (Unincorporated Areas), City of Greer	
Enoree River Tributary 2:	
Just upstream of East Suber Road	•820
Approximately 175 feet upstream of Hood Road	•903
Graze Creek:	
Approximately 650 feet upstream of Brown Lane	•737
Approximately 400 feet upstream of McKinney Road	•782
Greenville County (Unincorporated Areas)	
Grove Creek:	
At Emily Lane	•772
Approximately 75 feet upstream of Fairview Boulevard	•848
Huff Creek:	
At the confluence with Reedy River	•656
Approximately 1.25 miles upstream of West Georgia Road	•756
Laurel Creek:	
At the confluence with Reedy River	•768
Approximately 200 feet upstream of Interstate 85	•878
Greenville County (Unincorporated Areas), City of Greenville, City of Mauldin	
Laurel Creek Tributary:	
At the confluence with Laurel Creek	•781
Approximately 0.95 mile upstream of Ridge Road	•868
Greenville County (Unincorporated Areas), City of Greenville	
Little Creek:	
At the confluence with Huff Creek	•664
Approximately 3,800 feet upstream of the dam	•778
Greenville County (Unincorporated Areas)	
Payne Branch:	
At the county boundary	•681
Approximately 120 feet upstream of Tall Pines Road	•750
Reedy River:	
Approximately 1.0 mile downstream of the confluence with Huff Creek	•650
Approximately 3,100 feet upstream of Log Shoals Road	•744
Reedy River Tributary 4:	
Approximately 1,235 feet upstream of the confluence with Reedy River	•746
Approximately 175 feet upstream of Owens Lane	•903
Greenville County (Unincorporated Areas), City of Mauldin	
Reedy River Tributary 5:	
At the confluence with Reedy River Tributary 4	•799
Approximately 1.26 miles upstream of Ashmore Bridge Road	•900
Richland Creek Tributary 1:	
At the confluence with Richland Creek	•855
Approximately 175 feet upstream of Azalea Court	•965
City of Greenville	
Richland Creek Tributary 1A:	
At the confluence with Richland Creek Tributary 1	•881
Approximately 500 feet upstream of Keith Drive	•947
Richland Creek Tributary 1B:	
At the confluence with Richland Creek Tributary 1	•960
Approximately 65 feet upstream of Greenland Drive/Dera Drive	•979
Rock Creek:	
Approximately 1,050 feet downstream of Alder Drive	•743
Approximately 1,760 feet upstream of Capewood Road	•772
Greenville County (Unincorporated Areas)	
Rocky Creek:	
At the confluence with Enoree River	•712
Approximately 490 feet upstream of Frontage Road	•1,001
Greenville County (Unincorporated Areas), City of Greenville	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
South Tyger River:	
Approximately 200 feet downstream of State Route 14	•822
Approximately 180 feet upstream of State Route 414	•928
Greenville County (Unincorporated Areas)	
City of Greenville	
Maps available for inspection at the Greenville City Hall, 206 South Main Street, Greenville, South Carolina.	
Greenville County (Unincorporated Areas)	
Maps available for inspection at the Greenville County Codes Department, 301 University Ridge, Greenville, South Carolina.	
City of Greer	
Maps available for inspection at the Greer City Hall, 106 South Main Street, Greer, South Carolina.	
City of Mauldin	
Maps available for inspection at the Mauldin City Hall, 5 East Butler Avenue, Mauldin, South Carolina.	
City of Simpsonville	
Maps available for inspection at the Simpsonville City Hall, 118 Northeast Main Street, Simpsonville, South Carolina.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: August 10, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–19011 Filed 8–18–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: *Effective Date:* The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of BFEs and modified BFEs for each community listed.

These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

■ Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Communities affected
Little Blue River:		
Approximately 6,650 feet downstream of U.S. Highway 81	*1,440	Thayer County, City of Hebron (FEMA Docket No. P7643)

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Communities affected
Approximately 14,320 feet upstream of South First Street	*1,459	

ADDRESSES

Thayer County, Nebraska (Unincorporated Areas)

Maps are available for inspection at the Thayer County Courthouse, 225 North Fourth Street, Hebron, Nebraska.

City of Hebron, Thayer County, Nebraska

Maps are available for inspection at City Hall, City of Hebron, 216 Lincoln Avenue, Hebron, Nebraska.

* National Geodetic Vertical Datum.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 10, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–19012 Filed 8–18–04; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2508; MB Docket No. 04–127, RM–10941; MB Docket No. 04–128, RM–10942; MB Docket No. 04–129, RM–10943; MB Docket No. 04–130, RM–10944; MB Docket No. 04–131, RM–10945; MB Docket No. 04–132, RM–10946; MB Docket No. 04–133, RM–10947; MB Docket No. 04–135, RM–10949, RM–10950; MB Docket No. 04–136, RM–10951; MB Docket No. 04–137, RM–10952; MB Docket No. 04–138, RM–10953, RM–10954]

Radio Broadcasting Services; Augusta, WI, Barnwell, SC, Burnet, TX, Denver City, TX, Fountain Green, UT, Hayward, WI, Liberty, PA, Shenandoah, VA, St. Marys, WV, Susquehanna, PA, and Van Alstyne, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants eleven reservation proposals requesting to amend the FM Table of Allotments by reserving certain vacant FM allotments for noncommercial educational use in Augusta, WI, Barnwell, SC, Burnet, TX, Denver City, TX, Fountain Green, UT, Hayward, WI, Liberty, PA, Shenandoah, VA, St. Marys, WV, Susquehanna, PA, and Van Alstyne, TX. *See* 69 FR 26061, published May 11, 2004. At the request of Youngshine Media, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 298A at Liberty, Pennsylvania for noncommercial educational use. The reference coordinates for Channel *298A at Liberty are 41–29–28 North Latitude and 77–12–22 West Longitude. At the request of American Family Association, the Audio Division grants a petition requesting to reserve vacant Channel 227A at Susquehanna, Pennsylvania for noncommercial educational use. The reference coordinates for Channel *227A at Susquehanna are 41–55–44 North Latitude and 75–31–50 West Longitude. At the request of American Family Association, the Audio Division grants a petition requesting to reserve vacant Channel 256C3 at Barnwell, South Carolina for noncommercial educational use. The reference coordinates for Channel *256C3 at Barnwell are 33–24–29 North Latitude and 81–16–43 West Longitude. *See* **SUPPLEMENTARY INFORMATION**, *infra*.

DATES: Effective September 27, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket Nos. 04–127, 04–128, 04–129, 04–130, 04–131, 04–132, 04–133, 04–135, 04–136, 04–137, 04–138 adopted August 10, 2004 and released August 12 , 2004. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail *http://www.BCPIWEB.com*. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

At the request of American Family Association, the Audio Division grants a petition requesting to reserve vacant Channel 240A at Burnet, Texas for noncommercial educational use. The reference coordinates for Channel *240A at Burnet are 30–51–05 North Latitude and 98–17–35 West Longitude. At the request of American Family Association, the Audio Division grants a petition to reserve vacant Channel 248C2 at Denver City, Texas for noncommercial educational use. The reference coordinates for Channel *248C2 at Denver City are 33–01–53 North Latitude and 102–48–47 West Longitude. At the request of American Family Association, the Audio Division grants a petition requesting to reserve vacant Channel 260A at Van Alstyne, Texas for noncommercial educational use. The reference coordinates for Channel *260A at Van Alstyne are 33–27–08 North Latitude and 96–27–21 West Longitude. At the request of Intermountain Educational Communications, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 260A at Fountain Green, Utah for noncommercial educational use. The reference coordinates for Channel *260A at Fountain Green are 39–37–42 North Latitude and 111–38–24 West Longitude. At the request of Sister Sherry Lynn Foundation, Inc. and American Family Association, the Audio Division grants petitions requesting to reserve vacant Channel 296A at Shenandoah, Virginia for noncommercial educational use. The reference coordinates for Channel *296A at Shenandoah are 38–30–00 North Latitude and 78–36–33 West Longitude. At the request of Starboard Media Foundation, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 268C3 at Augusta, Wisconsin for noncommercial educational use. The reference coordinates for Channel *268C3 at Augusta are 44–40–11 North Latitude and 90–57–55 West Longitude. At the request of Starboard Media Foundation, Inc., the Audio Division grants a petition requesting to reserve vacant Channel 232C2 at Hayward, Wisconsin for noncommercial educational use. The

reference coordinates for Channel *232C2 at Hayward are 46–15–04 North Latitude and 91–23–01 West Longitude. At the request of Fine Arts Radio, Inc. and West Virginia Educational Broadcasting Authority, the Audio Division grants petitions requesting to reserve vacant Channel 287A at St. Marys, West Virginia for noncommercial educational use. The reference coordinates for Channel *287A at St. Marys are 39–18–03 North Latitude and 81–15–19 West Longitude.

The FM Table of Allotments currently lists Channel 257C1 at Barnwell, South Carolina, however, the Audio Division substituted Channel 257C1 for Channel 256C3 at Barnwell, SC, reallotted Channel 257C1 to Pembroke, Georgia, and modified the license of Station WBAW to specify operation on Channel 257C1 at Pembroke in MM Docket No. 00–18. As such, Channel 256C3 was allotted to Barnwell, SC as a replacement service not Channel 257C1. *See* 66 FR 55596, published November 2, 2001.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Pennsylvania is amended by adding Channel *298A and by removing Channel 298A at Liberty; and by adding Channel *227A and by removing Channel 227A at Susquehanna.

■ 3. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Channel *256C3 and by removing Channel 257C1 at Barnwell.

■ 4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel *240A and by removing Channel 240A at Burnet; by adding Channel *248C2 and by removing Channel 248C2 at Denver City; by adding Channel *260A and by removing Channel 260A at Van Alstyne.

■ 5. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Channel *260A and by removing Channel 260A at Fountain Green.

■ 6. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Channel *296A and by removing Channel 296A at Shenandoah.

■ 7. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Channel *287A and by removing Channel 287A at St. Marys.

■ 8. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Channel *268C3 and by removing Channel 268C3 at Augusta; and by adding Channel *232C2 and by removing Channel 232C2 at Hayward.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–19023 Filed 8–18–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2462; MB Docket No.03–98; RM–10688]

Radio Broadcasting Services; Sellersburg and Seymour, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 230A from 229B at Seymour, Indiana and reallots Channel 230A from Seymour to Sellersburg, Indiana, and modifies the license for Station WQKC to specify operation Channel 230A at Sellersburg, Indiana, in response to a petition filed by of INDY LICO, Inc., licensee of Station WGRL(FM), Noblesville, Indiana, and S.C.I. Broadcasting, Inc., licensee of Station WQKC(FM). See 68 FR 35617, June 16, 2003. Channel 23A can be reallotted to Sellersburg in compliance with the Commission's minimum distance separation requirements at a site11.5 kilometers (7.1 miles) south of the community. The coordinates for Channel 230A at Sellerseburg are 38–17–41 NL and 85–45–07 WL. Oppositions filed by Evangel Schools, Inc., and Eric Heyob are denied.

DATES: Effective September 23, 2004.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 03–98, adopted August 4, 2004, and released August 9, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Seymour, Channel 229B and by adding Sellersburg, Channel 230A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–19024 Filed 8–18–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2507; MM Docket No. 02–40; RM–10377, RM–10508]

Radio Broadcasting Services; Goldsboro, Louisburg, Rolesville, and Smithfield, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 67 FR 10872 (March 11, 2002), this *Report and Order* reallots Channel 272A, Station WKIX(FM), Goldsboro, North Carolina to Smithfield, North Carolina, and modifies Station WKIX(FM)'s license accordingly. The Commission approved the withdrawal of a counterproposal to reallot Channel 273A from Station WHLQ(FM), Louisburg, North Carolina, to Rolesville, North Carolina. The coordinates for Channel 272A at

Smithfield, North Carolina, are 35–28–21 NL and 78–19–43 WL, with a site restriction of 4.1 kilometers (2.5 miles) south of Smithfield.

DATES: Effective September 27, 2004.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 02–40, adopted August 10, 2004, and released August 12, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 272A at Goldsboro and by adding Smithfield, Channel 272A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–19027 Filed 8–18–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 383

[Docket No. FMCSA–2001–11117]

RIN 2126–AA70

Limitations on the Issuance of Commercial Driver's Licenses With a Hazardous Materials Endorsement

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule; delay of compliance date.

SUMMARY: FMCSA issues this rule to amend the compliance date in its Interim final rule (IFR) published in the May 5, 2003 **Federal Register** regarding limitations on State issuance of a commercial driver's license (CDL) with a hazardous materials endorsement. States must not issue, renew, transfer or upgrade a CDL with a hazardous materials endorsement unless the Transportation Security Administration (TSA) has first conducted a background records check of the applicant and determined the applicant does not pose a security risk warranting denial of the hazardous materials endorsement. FMCSA is changing the date by which States must comply with TSA regulations to coincide with the new compliance date established by TSA. The compliance date is changed from April 1, 2004, to January 31, 2005.

DATES: *Effective:* This rule is effective on September 20, 2004. *Compliance:* States must comply with this rule by January 31, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Safety Programs, (202) 366–9579, FMCSA, 400 7th Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 requires FMCSA to comply with small entity requests for information or advice about compliance with statutes and regulations within FMCSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for information or advice. You can get further information regarding the Small Business Regulatory Enforcement Fairness Act on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Summary of Today's Action

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act [Public Law 107–56, 115 Stat. 272] was enacted on October 25, 2001. Section 1012 of the USA PATRIOT Act amended 49 U.S.C. Chapter 51 by adding a new sec. 5103a titled ''Limitation on issuance of hazmat licenses.'' Section 5103a(a)(1) provides:

> A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license.

FMCSA shares with TSA responsibility for implementing sec. 1012 of the USA PATRIOT Act.

For reasons described in its April 6, 2004 final rule (*Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License; Final Rule*, 69 FR 17969), TSA is amending the April 1, 2004, deadline for States to begin collecting fingerprints from a driver requesting authority to transport hazardous materials in commerce. The new compliance date is January 31, 2005. Therefore, FMCSA revises the compliance date for hazardous materials security requirements published in its companion IFR (68 FR 23844, May 5, 2003) from April 1, 2004 to January 31, 2005 to coincide with the new TSA deadline.

Rulemaking Analyses and Notices

Justification for Immediate Adoption

FMCSA is issuing this IFR without prior notice and opportunity to comment pursuant to its authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)). This provision allows the agency to issue a final rule without notice and opportunity to comment when the agency for good cause finds that notice and comment procedures are ''impracticable, unnecessary or contrary to the public interest.'' This amended IFR is ministerial in nature. It changes the date on which States are required to collect fingerprints from individuals who are applying for, renewing, upgrading or transferring a CDL with a hazardous materials endorsement. Because the rule relieves a burden on stakeholders by extending the compliance date, FMCSA has concluded

that it is within the scope of the May 5, 2003, IFR and that further notice and comment on this issue are unnecessary.

The agency intends to issue a final rule at a later date and will respond to comments to the May 5, 2003 IFR at that time.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of the Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) because of significant public interest. This rule does not impose any costs on any public, private, or government sector, therefore further economic analysis is unnecessary. The Office of Management and Budget has completed its review of this rule under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The Regulatory Flexibility Act requires agencies to review rules to determine if they have ''a significant economic impact on a substantial number of small entities.'' I certify that the final rule will not have a significant economic impact on a substantial number of small entities. As noted above, this final rule applies only to State governments and does not impose any costs on any public, private, or government sector.

Executive Order 13132 (Federalism)

Executive Order 13132 requires FMCSA 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 the Executive Order, FMCSA may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the federal statute.

Although this amended interim final rule potentially has direct effects on the States, they are not substantial because the rule will allow States more time to comply with the TSA regulation published on April 6, 2004 (69 FR 17969), and thus avoid the withholding of Federal-aid highway funds that could result from non-compliance with the TSA rule. FMCSA has determined that this amended interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

The provisions of 49 U.S.C. 31314 require DOT to withhold certain Federal-aid highway funds from States that fail to comply substantially with the requirements for State participation in the CDL program. As discussed in detail in the May 5 IFR [see 68 FR at 23847–23848], those provisions apply also to State compliance with portions of the TSA rule implementing sec. 1012 that apply to States. In addition, 49 U.S.C. 31312 authorizes DOT to prohibit States from issuing CDLs if the Secretary determines ''that a State is in substantial noncompliance'' with 49 U.S.C. chapter 313. These penalties are available for DOT to use when and if appropriate to encourage State compliance with TSA's sec. 1012 rule.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. This amended interim final rule does not contain any information collection requirements.

National Environmental Policy Act

The agency analyzed this amended interim final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued on March 1, 2004 and effective March 31, 2004, that this action is categorically excluded (CE) under Appendix 2, paragraph 6.d of the Order from further environmental documentation. That CE relates to establishing regulations and actions taken pursuant to these regulations that concern the training, qualifying, licensing, certifying, and managing of personnel. In addition, the agency believes that the action includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this rule under sec. 175(c) of the Clean Air Act, as amended (CAA) sec. 176(c), (42 U.S.C. 7506(c)) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General Conformity requirement since it involves policy development and civil enforcement activities, such as, investigations, inspections, examinations, and the training of law enforcement personnel. See 40 CFR 93.153(c)(2). It will not result in any emissions increase nor will it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule change will not increase total CMV mileage, change how CMVs operate, the routing of CMVs, or the CMV fleet-mix of motor carriers. This action merely extends a compliance date for State licensing agencies to meet TSA requirements to coincide with the new TSA deadline.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of sec. 4(b) of the Executive Order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards-related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety and security, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FMCSA has assessed the potential effect of this final rule and has determined that it will not

impose any costs on domestic or international entities and thus would have a neutral trade impact.

Unfunded Mandates Reform Act of 1995

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, sec. 205 of the UMRA generally requires FMCSA 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 objective of the rule. The provisions of sec. 205 do not apply when they are inconsistent with applicable law. Moreover, sec. 205 allows FMCSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the rule an explanation why that alternative was not adopted.

This amended interim final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Thus, FMCSA has not prepared a written assessment under the UMRA.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutional Protected Property Rights.

Civil Justice Reform

This action 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.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This amended interim final rule changes the compliance dates by which States must meet TSA requirements. This rule will not cause an increase in the number of hazardous materials incidents, nor increase the number of non-hazardous materials commercial motor vehicle crashes. Therefore, the FMCSA certifies that this action is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Energy Impact

FMCSA has assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). FMCSA has determined that this final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 383

Administrative practice and procedure, Commercial driver's license, Commercial motor vehicles, Highway safety, Motor carriers.

■ For the reasons set forth in the preamble, the FMCSA amends title 49, Code of Federal Regulations, Chapter III, as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; Sec. 214 of Pub. L. 106–159, 113 Stat. 1766; Sec. 1012(b) of Pub. L. 107–56, 115 Stat. 397; and 49 CFR 1.73.

■ 2. Revise § 383.141 paragraph (a) to read as follows:

§ 383.141 General.

(a) *Applicability date.* Beginning on January 31, 2005, this section applies to State agencies responsible for issuing hazardous materials endorsements for a CDL, and applicants for such endorsements.

* * * * *

Issued on: August 13, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–19004 Filed 8–18–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 586

[Docket No. NHTSA–2004–18900]

RIN 2127–AJ45

Federal Motor Vehicle Safety Standards; Fuel System Integrity and Electric Powered Vehicles: Electrolyte Spillage and Electrical Shock Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; Response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of the December 2003 final rule upgrading the rear and side impact tests in the agency's fuel system integrity standard. Under that final rule, compliance with the rear impact requirement will be phased-in following a three-year lead time beginning September 1, 2006, by the following annually increasing percentages of production: 40, 70, and 100%. That final rule provided further that compliance with the side impact upgrade will be required for all vehicles on and after September 1, 2004.

In response to the petitions, the agency is providing additional lead time for some vehicles. It is providing manufacturers of motor vehicles with a gross vehicle weight rating greater than 6,000 lb (2,722 kg) an additional year of lead time to comply with the upgraded side impact requirements. The agency is also providing multistage manufacturers and alterers an additional year of lead time to comply with both the upgraded side and rear impact requirements. To provide small volume manufacturers with flexibility in complying with the upgraded rear impact requirements, the agency is permitting them to comply with the following percentages of production: 0%, 0%, and 100%.

DATES: *Effective date:* The amendments made in this rule are effective August 31, 2004.

Petitions: Petitions for reconsideration must be received by October 4, 2004, and should refer to this docket and the notice number of this document.

ADDRESSES: Petitions for reconsideration must be sent to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMTION CONTACT: For non-legal issues, you may contact Tewabe Asebe, Office of

Crashworthiness Standards, at (202) 366–2264, and fax him at (202) 493–2739.

For legal issues, you may contact Christopher Calamita, Office of Chief Counsel, at (202) 366–2992, and fax them at (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

Preserving fuel system integrity in a crash is critical to preventing occupant exposure to fire. Federal Motor Vehicle Safety Standard (FMVSS) No. 301, *Fuel system integrity,* specifies performance requirements for the fuel systems of vehicles with a gross vehicle weight rating (GVWR) of 10,000 lb (4,536 kg) or less. The standard limits the amount of fuel spillage from fuel systems of vehicles during and after frontal, rear, and lateral impact tests.

To increase safety and provide for more realistic testing of fuel systems, NHTSA upgraded both the rear impact and lateral (side) impact test requirements in FMVSS No. 301 (68 **Federal Register** 67068; December 1, 2003). The December 2003 upgrade established an offset rear impact test procedure that specifies striking the rear of the test vehicle at 50 mph (80 ± 1 km/h) with a 3,015 lb (1,368 kg) deformable barrier at a 70 percent overlap with the test vehicle. The deformable barrier in the rear impact test is similar to that currently used in FMVSS No. 214, *Side impact protection,* except that the barrier is 50 millimeter (2 inches) lower to simulate pre-crash braking. This replaced the 30 mph (48 km/h), 4,000 lb (1,814 kg) rigid moving barrier crash test previously required under FMVSS No. 301.

The final rule also replaced the lateral crash test with the side impact crash test specified in FMVSS No. 214. The upgraded side impact test requires that the test vehicle be impacted at 33 ± 0.6 mph (53 ± 1 km/h) with a 3,015 pound (1,368 kg) deformable barrier. This replaced the 20 mph (32 km/h) crash test with a 4,000 lb (1,814 kg) rigid moving barrier previously required under FMVSS No. 301.

To provide manufacturers time to address the rear impact test upgrade and to accommodate new vehicle models that were designed and developed based on the old requirements, the December 2003 final rule provided for three years of lead time followed by a phase-in. The upgraded rear impact test will be phased-in over a three year period beginning September 1, 2006, according to the following percentages of production: 40%, 70%, and 100%. As a result of the low failure rate among existing vehicle designs with the new lateral impact test, the December 2003 final rule established a September 1, 2004 effective date for the side impact upgrade, without a phase-in.

II. Petitions for Reconsideration

NHTSA received petitions for reconsideration of the December 2003 final rule from the Braun Corporation (Braun), an alterer and final stage manufacturer; Lotus Cars Ltd. (Lotus); the National Truck Equipment Association (NTEA); Ferrari S.p.A. (Ferrari); the Alliance of Automobile Manufacturers [1] (Alliance); American Honda Motor Company, Inc. (Honda); General Motors of North America (General Motors); the Center for Auto Safety, a public interest group; and the Victim's Committee for Recall of Defective Vehicles, Inc., a public interest group. The petition from the Victim's Committee for Recall of Defective Vehicles, Inc. was in support of the petition submitted by the Center for Auto Safety.

Additional comments were received from the Automotive Safety Research Institute and Mr. Mark W. Athan, a police officer.

Petitioners' requests broke down into three major areas: compliance schedule for the side impact test, compliance schedule for the rear impact test, and the issue of more severe testing.

A. Side Impact Test

Compliance Date Based on Vehicle GVWR

The Alliance requested a one-year extension of the compliance date for the side impact upgrade for all vehicles and a phase-in for vehicles greater than 6,000 pound (lb) (2,722 kg) GVWR. The Alliance requested a phase-in to begin September 1, 2005 according to the following percentages of production, 90% in the first year, and 100% in the second year. The petitioner explained that vehicles with a GVWR greater than 6,000 lb (2,722 kg) were not previously subject to the FMVSS No. 214, *Side impact protection*, test procedures on which the FMVSS No. 301 side impact upgrade is based. Petitioner further explained that additional time would be required to perform the testing necessary to certify vehicles with a GVWR greater than 6,000 lb (2,722 kg) even if no modifications were required.

Agency response: The agency is amending FMVSS No. 301 to provide vehicles with a GVWR greater than 6,000 lb (2,722 kg) an additional year to comply with the upgraded side impact requirement. Vehicles with a GVWR of 6,000 lb (2,722 kg) or less must comply with the upgrade on and after September 1, 2004.

In the December 2003 final rule, the agency stated that less than one percent of the vehicles tested failed FMVSS No. 301's fuel leakage requirements using the FMVSS No. 214 side impact test. The agency expects less than one percent of vehicles to require modification in order to comply with the side impact upgrade, including vehicles with a GVWR greater than 6,000 lb (2,722 kg). However, vehicles with a GVWR greater than 6,000 lb (2,722 kg) have not previously been subject to the FMVSS No. 214 side impact test. Therefore, we are providing these vehicles with an additional year of lead time to comply with the new side impact requirement.

Conversely, vehicles with a GVWR of 6,000 lb (2,722 kg) or less have previously been subject to the FMVSS No. 214 side impact test. As stated in the final rule, the agency does not anticipate difficulty in certifying these vehicles to the upgraded requirements and the petitioner has not provided any data to demonstrate any such difficulty. Therefore, the Alliance's request to extend the effective date for vehicles with a GVWR of 6,000 lb (2,722 kg) or less is denied.

Alterers, Multistage Manufacturers, and Small Volume Manufacturers

Under the December 2003 final rule, manufacturers will have to comply with the upgraded side impact requirements on and after September 1, 2004. Several multistage manufacturers, second stage manufacturers, and small volume manufacturers requested additional lead time for complying with the upgraded side impact requirements.

Both NTEA and Braun stated that multistage manufacturers and alterers would be unable to begin compliance efforts until a chassis manufacturer has made a production-ready model. Petitioners explained that a multistage

[1] The Alliance is a trade association of motor vehicle manufacturers including BMW group, DaimlerChrysler, Ford Motor Company, General Motors, Mazda, Mitsubishi Motors, Porsche, Toyota, and Volkswagen.

manufacturer or alterer cannot ascertain vehicle compliance with the upgraded standard until they receive a chassis manufactured after the September 1, 2004 date. Therefore, they continued, multistage manufacturers and alterers are restricted to design and re-certification analysis on compliant vehicles obtainable only after the standard takes effect. Petitioners argued that they cannot reasonably produce a vehicle for several months after the upgraded side impact requirements take effect. As such, NTEA requested that multistage manufacturers and alterers be excluded from the application of the upgraded requirements. In the alternative, NTEA and Braun, requested an additional year of lead time for multistage manufacturers and alterers to follow the September 1, 2004 effective date. The Alliance requested a similar delay for second stage manufacturers.

Ferrari argued that current vehicle designs have not been subjected to the FMVSS No. 214 side impact procedure for purposes of fuel system integrity and that it would be burdensome to test vehicles that are nearing end of production. The petitioner requested that the agency provide small volume manufacturers with either a phase-in option, two years of additional lead time, or exclusion for carlines that will no longer be produced after September 1, 2005.

Agency response: The agency is granting the petitioners' request to provide multistage manufacturers and alterers with an additional year of lead time beyond that provided other manufacturers for the side impact upgrade.

The agency agrees with Braun and NTEA in that multistage manufacturers and alterers would not be able to ascertain vehicle compliance with the upgraded side impact standard until they receive a chassis manufactured after the respective compliance date. An additional year of lead time will permit multistage manufacturers and alterers to rely on the incomplete certification of a vehicle without delaying production capabilities. Therefore, multistage manufacturers and alterers must certify vehicles with a GVWR of 6,000 lb or less as complying with the upgraded side impact requirement beginning September 1, 2005. Multistage manufacturers and alterers must certify all vehicles as complying with the upgraded side impact requirement beginning September 1, 2006.

The agency is denying the petitioners' request to provide small volume manufacturers with an additional year of lead time. As with other manufacturers, the agency does not anticipate that vehicles previously subject to the side impact procedure under FMVSS No. 214 will have any difficulty in certifying compliance with the new requirement starting September 1, 2004. Further, the petitioners did not demonstrate that any vehicle would be unable to meet the requirements.

B. Rear Impact Test

Alterers, Multistage Manufacturers, and Small Volume Manufacturers

The December 2003 final rule established a phase-in for the upgraded rear impact test, beginning on September 1, 2006, according to the following percentages of production: 40%, 70% and 100%. Braun and NTEA requested that second stage manufacturers and alterers not be required to comply with the rear impact upgrade until one year following the 100 percent compliance date. Petitioners presented the same arguments for requiring one year of additional lead time for the rear impact upgrade as with the side impact upgrade.

Lotus and Ferrari both requested that the small volume manufacturers be permitted to comply with the following percentages of production: 0%, 0%, and 100%. Both Lotus and Ferrari argued that because small volume manufacturers have smaller numbers of carlines, they could be required to comply with the upgraded rear impact requirements at a higher percentage of production than required.

Agency response: The agency is granting the petitioners' request to provide multistage manufacturers and alterers an additional year of lead time following the 100 percent compliance date for the rear impact upgrade. The agency is also permitting small volume manufacturers to wait until the end of the phase-in to comply with the rear impact upgrade.

The compliance difficulties present for multistage manufacturers and alterers in the side impact upgrade are also present in the rear impact upgrade. Multistage manufacturers and alterers would not be able to ascertain vehicle compliance with the upgraded rear impact standard until they receive a chassis manufactured after the 100 percent compliance date. Again, an additional year of lead time will permit multistage manufacturers and alterers to rely on the incomplete certification of a vehicle without delaying production capabilities. Therefore, multistage manufacturers and alterers must comply with the upgraded rear impact requirement beginning September 1, 2009.

We have also decided to exclude small volume manufacturers (*i.e.,* manufacturers of less than 5,000 vehicles per year produced for the U.S. market) from the phase-in because of their small size. We note that, unlike the advanced air bag or tire pressure monitor system rulemakings, in which the technologies used to comply with the standard are relatively new, the technologies for complying with the upgraded rear impact requirement are well established. Accordingly, these manufacturers are unlikely to face the supply-and-demand problems anticipated in the afore-referenced rulemakings. However, based on the small size of these manufacturers, we are providing additional flexibility to comply with the rear impact upgrade.

Advanced Credits and Phase-in Schedule

Honda requested that the agency permit use of carry-forward credits during the phase-in period for vehicles that comply in advance. Honda argued that carry-forward credits would act as an incentive to introduce vehicles compliant with the upgraded rear impact requirement into the market sooner. In the alternative, Honda petitioned for the agency to reduce the required percentage in the first year of the phase-in from 40 percent to 30 percent. With regard to calculating vehicle production for the phase-in percentages, Honda requested that the alternatives of using the three year average annual production, or one year annual production, include the phase-in year. Honda stated that inclusion of the phase-in year would allow for possible drastic changes in vehicle sales within the phase-in year to be factored into the production numbers.

Agency response: The agency is denying Honda's requests for advanced credits under the rear impact phase-in schedule, but is amending the final rule to include the phase-in year in the production calculation.

NHTSA recognizes that, under some circumstances, allowing carry-forward credits during a phase-in can enhance safety by encouraging manufacturers to build and certify vehicles that comply with the new requirements earlier. In fact, we have authorized such credits in the past. *See, e.g.,* S14 of FMVSS No. 208, *Occupant Protection,* 63 FR 49958, 49961 (Advanced Air Bag Rule; May 12, 2000). However, in that case, it was clear that no existing vehicles complied with the new requirements and that manufacturers would have to make major design changes to bring their vehicles into compliance with the standard. Allowing manufacturers to

use carry-forward credits for vehicles certified to the standard prior to the first year of the phase-in to help satisfy the percentage requirements in the later years of the phase-in acted as an incentive to encourage manufacturers to make those design changes earlier than they would otherwise have done. However, that principle does not apply here, since our testing program demonstrates that many existing vehicles can already comply with the upgraded rear impact requirements. Thus, allowing credits for vehicles produced between now and September 1, 2006 could *reduce* the number of vehicles that would have to be redesigned for the first two years of the phase-in.

Further, the agency is denying Honda's request to reduce the production percentage required to comply with the first stage of the phase-in. The agency has provided a three-year lead time prior to the phase-in, which the agency believes to be sufficient for most vehicles in need of modification. While Honda requested a reduced percentage for the initial phase-in period, it did not provide data demonstrating that its vehicles would need modification or, if modifications were required, that additional time would be needed.

We are amending the annual production calculation for the phase-in to include the phase-in year. This will allow manufacturers to account for an unanticipated and drastic drop in sales of a particular line and is consistent with the calculation method used in the advanced air bag rule.

C. Test Severity

The Center for Auto Safety and the Automotive Safety Research Institute petitioned the agency to increase the severity of the upgraded test requirements. The Center for Auto Safety requested that the agency adopt a 60 mph (95 km/h) side impact test and the Automotive Safety Research Institute requested a 50 mph (80 km/h) side impact test requirement. The Center for Auto Safety also petitioned for the agency to adopt an 80 mph (128 km/h) rear impact test requirement, stating that in the absence of a fire, a crash at this impact speed would be survivable.

Agency response: The agency is not amending the impact speed of either the side or rear impact requirement established in the December 2003 final rule. The Center for Auto Safety and the Automotive Safety Research Institute did not provide the data or analysis regarding the potential benefits for increasing the speed of the side and rear impact requirements. As we stated in the December 2003 final rule, the impact test procedures established in the final rule effectively reproduce the damage profile seen in real world crashes that most often lead to fires. Further, an amendment to increase the impact side speed to 50 (80 km/h) or 60 (95 km/h) mph and increase the rear impact speed to 80 mph (128 km/h) is beyond the scope of the notice of proposed rulemaking that led to the December 2003 final rule.

III. Correction

General Motors stated that in upgrading the rear impact test, the agency inadvertently amended the requirements of FMVSS No. 305, *Electric-powered vehicles: electrolyte spillage and electrical shock protection.* FMVSS No. 305 requires vehicles that use electricity as propulsion power to meet requirements for limitation of electrolyte spillage, retention of propulsion batteries during a crash, and electrical isolation of the chassis from the high-voltage system. Section 7.4 of FMVSS No. 305 (Rear moving barrier impact test conditions) references the test conditions in S7.3 of FMVSS No. 301, including the impact speed and barrier. General Motors noted that by amending the rear impact test procedure in FMVSS No. 301, the agency also amended, most likely unintentionally, the rear impact test procedure applicable to electric-powered vehicles.

General Motors is correct in that NHTSA did not intend to amend the rear impact test requirements for electric vehicles. This notice amends S7.4 of FMVSS No. 305 to maintain the current rear impact test requirements for electric-powered vehicles.

Additionally, the agency is amending S6.2 *Rear moving barrier impact* of FMVSS No. 305 to permit manufacturers to comply with the rear moving barrier impact requirements under the applicable conditions of the upgraded FMVSS No. 301. Prior to the upgrade of the FMVSS No. 301 rear moving barrier impact test, compliance with the FMVSS Nos. 301 and 305 rear moving barrier requirements was based on similar test conditions and procedures. The similarity in test conditions gave manufacturers of gas-electric hybrid vehicles the opportunity to conduct one test instead of two to determine compliance with the two sets of rear impact requirements. Gas-electric hybrid vehicles with a GVWR of 4536 kg or less are subject to the rear moving impact requirements of both FMVSS Nos. 301 and 305, if they use both liquid fuel and more than 48 nominal volts of electricity as propulsion power. As a result of the FMVSS No. 301 upgrade, compliance with the FMVSS Nos. 301 and 305 rear moving barrier requirements is no longer based on similar test conditions and procedures. The differences in the conditions and procedures could eliminate the opportunity to conduct one test instead of two for gas-electric hybrid vehicles.

To reinstate the opportunity to conduct two tests instead of one, we are amending FMVSS No. 305 to permit compliance with the electrolyte spillage, battery retention and electrical isolation rear moving barrier impact requirements of FMVSS No. 305 under the upgraded FMVSS No. 301 rear moving barrier test conditions. As stated in the December 2003 final rule, the upgraded FMVSS No. 301 rear moving barrier test conditions are more stringent than the current conditions. Therefore, this revision will permit manufacturers of gas-electric hybrid vehicles to conduct fewer tests, while maintaining, if not improving, current levels of vehicle safety. A manufacturer's decision to certify under this option must irrevocably be made not later than the time of certification.

IV. Effective Date

The agency is making the amendments in this final rule effective on August 31, 2004. The agency is making them effective in less than 30 days because of the imminence of September 1, 2004, the compliance date for the upgraded side impact test, as established by the December 2003 final rule. Specifying an effective date for today's final rule prior to that compliance date is necessary to establish a new compliance date. This will prevent manufacturers from having to certify vehicles at potentially great expense on September 1, 2004, when those vehicles are provided additional compliance lead time in this document.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has 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 by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has been determined to not be significant under the Department's regulatory policies and procedures. The amendments made in this final rule do not significantly impact the costs and benefits of the December 2003 final rule.

The agency has concluded that the impacts of today's amendments are so minimal that a regulatory evaluation is not required.

In response to petitions for rulemaking to the December 2003 FMVSS No. 301 upgrade, we are providing additional lead time for specified vehicles and manufacturers. Manufacturers of motor vehicles with a gross vehicle weight rating greater than 6,000 lb (2,722 kg) are provided an additional year of lead time to comply with the upgraded side impact requirements to determine what changes if any need to be made. The agency is also providing multistage manufacturers and alterers an additional year of lead time to comply with both the upgraded side and rear impact requirements. This will permit alterers and multistage manufacturers to rely on an incomplete vehicle certification without delaying production. Additionally, small volume manufacturers are permitted to comply with the rear impact upgrade phase-in with the following percentages of production: 0%, 0%, and 100%. This allows small manufacturers to avoid the expense of testing and possibly modifying a model going out of production during the first two years of the phase-in, and delays their costs to the final year. The agency is also providing flexibility for manufacturers of vehicles that are required to comply with both FMVSS Nos. 301 and 305, which may reduce the amount of vehicle testing performed.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The December 2003 final rule, which this notice amends, was certified as not having a significant economic impact on a substantial number of small entities. The amendments made by this final rule do not substantially impact the economic effects of the December 2003 final rule, except that this final rule provides multistage manufacturers and alterers, many of which are small entities, additional time to comply with the December 2003 final rule.

Consequently, the agency has concluded that this rulemaking will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed these amendments for the purposes of the National Environmental Policy Act and determined that they will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking 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 final rule has 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.

E. 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.

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Consequently, no Unfunded Mandates assessment has been prepared.

F. Executive Order 12778 (Civil Justice Reform)

This final rule does 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. 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. 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. This rule does not establish any new information collection requirements.

H. 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.

I. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) is determined to be ''economically significant'' as defined

under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking does not involve decisions about health risks that disproportionately affect children.

J. 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 NHTSA to use voluntary consensus standards in its 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 NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This final rule does not address matters such as performance requirements or test conditions, procedures or devices. It addresses compliance schedules only. Therefore, the voluntary consensus standards are not relevant to this final rule. In the December 2003 final rule, the agency noted that there were not any voluntary consensus standards available at that time. It stated further that NHTSA would consider any such standards when they become available.

K. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, 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

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 586

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR Part 571 and Part 586 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY 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 571.301 is amended by adding paragraphs S6.2(c), S6.3(c), S6.3(d) and S6.3(e), and by revising S6, S8.1(a), S8.1(b), S8.2.1 and S8.2.2 to read as follows:

§ 571.301 Standard No. 301; Fuel system integrity.

* * * * *

S6. *Test requirements.* Each vehicle with a GVWR of 4,536 kg or less shall be capable of meeting the requirements of any applicable barrier crash test followed by a static rollover, without alteration of the vehicle during the test sequence. A particular vehicle need not meet further requirements after having been subjected to a single barrier crash test and a static rollover test. Where manufacturer options are specified in this standard, the manufacturer must select an option not later than the time it certifies the vehicle and may not thereafter select a different option for that vehicle. Each manufacturer must, upon request from the National Highway Traffic Safety Administration, provide information regarding which of the compliance options it has selected for a particular vehicle or make/model.

* * * * *

S6.2 *Rear moving barrier crash.** * *

* * * * *

(c) *Small volume manufacturers.* Notwithstanding S6.2(b) of this standard, vehicles manufactured on or after September 1, 2004 and before September 1, 2008 by a manufacturer that produces fewer than 5,000 vehicles worldwide annually may meet the requirements of S6.2(a). Vehicles manufactured on or after September 1, 2008 by small volume manufacturers must meet the requirements of S6.2(b).

* * * * *

S6.3 *Side moving barrier crash.*

* * *

* * * * *

(c) Notwithstanding S6.3(b) of this standard, vehicles having a GVWR greater than 6,000 lb (2,722 kg) may meet S6.3(a) of this standard until September 1, 2005. Vehicles that have a GVWR greater than 6,000 lb (2,722 kg) and that are manufactured on or after September 1, 2005 must meet the requirements of S6.3(b).

(d) Notwithstanding S6.3(b) of this standard, vehicles with a GVWR of 6,000 lb (2,722 kg) or less that are manufactured in two or more stages or altered (within the meaning of 49 CFR 567.7) after having been previously certified in accordance with Part 567 of this chapter may meet S6.3(a) of this standard until September 1, 2005. Vehicles with a GVWR of 6,000 lb (2,722 kg) or less that are manufactured in two or more stages or altered (within the meaning of 49 CFR 567.7) after having been previously certified in accordance with Part 567 of this chapter and that are manufactured on or after September 1, 2005 must meet the requirements of S6.3(b)

(e) Notwithstanding S6.3(b) and (c) of this standard, vehicles with a GVWR greater than 6,000 lb (2,722 kg) that are manufactured in two or more stages or altered (within the meaning of 49 CFR 567.7) after having been previously certified in accordance with Part 567 of this chapter may meet S6.3(a) of this standard until September 1, 2006. Vehicles with a GVWR greater than 6,000 lb (2,722 kg) that are manufactured in two or more stages or altered (within the meaning of 49 CFR 567.7) after having been previously certified in accordance with Part 567 of this chapter and that are manufactured on or after September 1, 2006 must meet the requirements of S6.3(b).

* * * * *

S8.1 *Rear impact test upgrade.* (a) *Vehicles manufactured on or after September 1, 2006 and before September 1, 2007.* For vehicles manufactured on or after September 1, 2006, and before September 1, 2007, the number of vehicles complying with S6.2(b) of this standard must not be less than 40 percent of:

(1) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2004, and before September 1, 2007; or

(2) The manufacturer's production on or after September 1, 2006, and before September 1, 2007.

(b) *Vehicles manufactured on or after September 1, 2007 and before September 1, 2008.* For vehicles

manufactured on or after September 1, 2007 and before September 1, 2008, the number of vehicles complying with S6.2(b) of this standard must not be less than 70 percent of:

(1) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2005, and before September 1, 2008; or

(2) The manufacturer's production on or after September 1, 2007, and before September 1, 2008.

* * * * *

S8.2.1 Vehicles manufactured on or after September 1, 2006 and before September 1, 2009 are not required to comply with the requirements specified in S6.2(b) of this standard.

S8.2.2 Vehicles manufactured on or after September 1, 2009 must comply with the requirements specified in S6.2(b) of this standard.

* * * * *

■ 3. Section 571.305 is amended by revising S6.2 and S7.4 to read as follows:

§ 571.305 Standard No. 305; Electric powered vehicles: electrolyte spillage and electrical shock protection.

* * * * *

S6.2 *Rear moving barrier impact.* The vehicle must meet the requirements of S5.1, S5.2, and S5.3, when:

(a) it is impacted from the rear by a barrier moving at any speed up to and including 48 km/h, with a dummy at each front outboard designated seating position, or

(b) at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), it is impacted at 80 ± 1.0 km/h with 50th percentile test dummies as specified in part 572 of this chapter at each front outboard designated seating position under the conditions specified in S7.3(b) of FMVSS No. 301 and S7 of this section as applicable.

* * * * *

S7.4 *Rear moving barrier impact test conditions.* In addition to the conditions of S7.1 and S7.2, the rear moving barrier test conditions for S6.2(a) are those specified in S8.2 of Standard No. 208 (49 CFR 571.208), except for the positioning of the barrier and the vehicle. The rear moving barrier is described in S8.2 of Standard No. 208 of this chapter. The barrier and test vehicle are positioned so that at impact—

(a) The vehicle is at rest in its normal attitude;

(b) The barrier is traveling at 48 km/h with its face perpendicular to the longitudinal centerline of the vehicle; and

(c) A vertical plane through the geometric center of the barrier impact surface and perpendicular to that surface coincides with the longitudinal centerline of the vehicle.

* * * * *

PART 586—FUEL SYSTEM INTEGRITY UPGRADE PHASE-IN REPORTING REQUIREMENTS

■ 4. The authority citation for Part 586 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 5. Section 586.6 is amended by revising paragraph (a)(4) as follows:

§ 586.6 Reporting requirements.

(a) Phase-in reporting requirements.

* * *

* * * * *

(4) Contain a statement regarding whether or not the manufacturer complied with the requirements of S6.2(b), or S6.2(c) if applicable, of Standard No. 301 (49 CFR 571.301) for the period covered by the report and the basis for that statement;

* * * * *

Issued: August 12, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–18968 Filed 8–18–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 574

[Docket No. NHTSA–04–17917]

RIN 2127–AJ36

Tire Safety Information; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Correcting amendments.

SUMMARY: On June 3, 2004, the National Highway Traffic Safety Administration (NHTSA) published a final rule; response to the petitions for reconsideration of a final rule on tire safety information published on November 18, 2002. We inadvertently omitted regulatory text related to several issues raised by petitioners. This document corrects these omissions.

DATES: Effective September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. George Feygin, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820), 400 7th, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In response to a final rule on tire safety information published on November 18, 2002 (67 FR 69600), we received a request for an interpretation asking whether laser etching of the date code portion of the Tire Identification Number (TIN) is permitted.[1] Specifically, S5.5 of FMVSS No. 139 requires that each new pneumatic tire for light vehicles must be ''marked'' with the TIN in accordance with 49 CFR 574.5. In responding to this request, the agency issued a letter of interpretation indicating that 49 CFR 574.5 permitted laser etching of the date code portion of the TIN, as ''long as it occurred in-line, *i.e.*, as part of the manufacturing process of the tire.'' We also indicated in that letter that in responding to petitions for reconsideration of the November 2002 tire safety information final rule, we would amend 49 CFR 574.5 to codify the interpretation.[2]

We inadvertently omitted the codifying amendment from the response to the petitions for reconsideration published on June 3, 2004. In order to avoid ambiguities associated with defining ''in-line'' or ''part of the manufacturing process,'' this correcting amendment includes a time limit within which the date code can be laser etched into the tire.

In addition to omitting the codifying amendment, we inadvertently omitted making certain changes to the regulatory text discussed in the preamble on page 31315.

Correcting the omission of the codifying amendment will not impose or relax any additional substantive requirements or burdens on manufacturers. Therefore, NHTSA finds for good cause that any notice and opportunity for comment on these correcting amendments are not necessary.

■ In FR Doc. 04–11963 published on June 3, 2004 (69 FR 31306), make the following corrections:

PART 571—[CORRECTED]

■ 1. On page 31317, second column, amendatory instruction 2 is corrected as follows:

''2. Section 571.110 is amended by revising paragraph S4.2.2, S4.3, S4.3.4(c), adding paragraph S4.3.5, and revising Figures 1 and 2 at the end of § 571.110, to read as follows:''

[1] *See http://dmses.dot.gov/docimages/pdf86/245047_web.pdf.*

[2] *See http://www.nhtsa.dot.gov/cars/rules/interps/files/firestonelaser-2.html.*

§ 571.110 [CORRECTED]

■ 2. On page 31317, in the second column, add paragraph S4.2.2 to read as follows:

''S4.2.2 The vehicle normal load on the tire shall not be greater than the test load used in the high speed performance test specified in S5.5 of § 571.109, or S7.4 of § 571.119, as appropriate, for that tire.''

* * * * *

■ 3. On page 31317, in the third column, paragraph (d) is corrected as follows:

''(d) Tire size designation, indicated by the headings ''size'' or ''original tire size'' or ''original size,'' and ''spare tire'' or ''spare,'' for the tires installed at the time of the first purchase for purposes other than resale;''

■ 4. On page 31318, in the first column, following the first paragraph, add paragraph S4.3.4(c) to read as follows:

''S4.3.4 (c) The tire load rating specified in a submission by an individual manufacturer, pursuant to S4.1.1(a) of § 571.139 or contained in one of the publications described in S4.1.1(b) of § 571.139, for the tire size at that inflation pressure is not less than the vehicle maximum load and the vehicle normal load on the tire for those vehicle loading conditions.''

* * * * *

PART 574—[CORRECTED]

■ 5. On page 31320, third column, amendatory instruction 6 and the authority citation for part 574 are corrected as follows:

''6. The authority citation for Part 574 continues to read as follows: Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at CFR 1.50.''

§ 574.5 [Corrected]

■ 6. On page 31320, third column, amendatory instruction 7 and the amendments to § 574.5 are revised to read as follows:

''7. Section 574.5 is amended by removing the first two sentences of the introductory text and adding four sentences in their place, and by revising paragraph (d) to read as follows:

§ 574.5 Tire identification requirements.

Each tire manufacturer shall conspicuously label on one sidewall of each tire it manufactures, except tires manufactured exclusively for mileage-contract purchasers, or non-pneumatic tires or non-pneumatic tire assemblies, by permanently molding into or onto the sidewall, in the manner and location specified in Figure 1, a tire identification number containing the information set forth in paragraphs (a) through (d) of this section. However, at the option of the manufacturer, the information contained in paragraph (d) of this section may, instead of being permanently molded, be laser etched into or onto the sidewall in the location specified in Figure 1, during the manufacturing process of the tire and not later than 24 hours after the tire is removed from the mold. Each tire retreader, except tire retreaders who retread tires solely for their own use, shall conspicuously label one sidewall of each tire it retreads by permanently molding or branding into or onto the sidewall, in the manner and location specified in Figure 2, a tire identification number containing the information set forth in paragraphs (a) through (d) of this section. However, at the option of the retreader, the information set forth in paragraph (d) of this section may, instead of being permanently molded or branded, be laser etched into or onto the sidewall in the location specified in Figure 2, during the retreading of the tire and not later than 24 hours after the application of the new tread. * * *

* * * * *

(d) *Fourth grouping.* The fourth grouping, consisting of four numerical symbols, must identify the week and year of manufacture. The first two symbols must identify the week of the year by using ''01'' for the first full calendar week in each year, ''02'' for the second full calendar week, and so on. The calendar week runs from Sunday through the following Saturday. The final week of each year may include not more than 6 days of the following year. The third and fourth symbols must identify the year. Example: 0101 means the 1st week of 2001, or the week beginning Sunday, January 7, 2001, and ending Saturday, January 13, 2001. The symbols signifying the date of manufacture shall immediately follow the optional descriptive code (paragraph (c) of this section). If no optional descriptive code is used, the symbols signifying the date of manufacture must be placed in the area shown in Figures 1 and 2 of this section for the optional descriptive code.''

* * * * *

Issued: August 13, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–18950 Filed 8–18–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 04061787–4234–02; I.D. 060704H]

RIN 0648–AR85

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Bottomfish and Seamount Groundfish Fishery; Fishing Moratorium

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

ACTION: Final rule.

SUMMARY: NOAA Fisheries issues this final rule to extend the current moratorium on harvesting seamount groundfish from the Hancock Seamount in the Northwestern Hawaiian Islands for 6 years, until August 31, 2010. The fishery has been closed since 1986. NMFS is promulgating this final rule in response to recommendation by the Western Pacific Fishery Management Council (Council). The closure is intended to conserve pelagic armorhead (*Pseudopentaceros wheeleri*, formerly, *Pentaceros richardsoni*), which is an overfished stock.

DATES: Effective September 20, 2004.

ADDRESSES: A regulatory impact review (RIR) was prepared for this final rule. A copy of the RIR is available from William L. Robinson, Regional Administrator, NOAA Fisheries Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Van Fossen, Resource Management Specialist, Sustainable Fisheries Division (808) 973–2937.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of **Federal Register**: *http://www.access.gpo.gov/su-docs/aces/aces140.html*

Background

When the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP) was implemented (51 FR 27413, July 31, 1986), it was determined that a 6–year moratorium on fishing at Hancock Seamount was needed to aid the recovery of the pelagic armorhead (*Pseudopentaceros wheeleri*, formerly, *Pentaceros richardsoni*).

Foreign vessels over exploited the seamount groundfish resource before the Fishery Conservation and Management Act, now called the Magnuson-Stevens Fishery Conservation and Management Act, was enacted in 1976. There has never been a domestic fishery targeting these stocks. Periodic reviews since the original moratorium was implemented consistently determined that the stock has not recovered. Therefore, the moratorium was extended twice already for 6–year increments in 1992 and 1998 (57 FR 36907, August 17, 1992; and 63 FR 35162, June 29, 1998; respectively). On June 25, 2004, a proposed rule (69 FR 35570) was published announcing another extension until August 31, 2010.

The last U.S. research cruise to the Hancock Seamount was conducted in 1993. However, the Japanese trawl fleet continues to harvest pelagic armorhead on neighboring seamounts outside of the U.S. exclusive economic zone (EEZ) surrounding the Northwestern Hawaiian Islands. According to information provided by the Japan National Research Institute of Far Seas Fisheries, the most current (2002) spawning potential ratio (SPR) for the armorhead stock is 0.1 percent at all seamounts outside of the EEZ. These seamounts comprise 95 percent of the trawl grounds for the Japanese trawl fishery. Based on the low SPR value, it is inferred that the status of the Hancock Seamount is similarly depressed and well under 20 percent SPR which is the standard for determining when pelagic armorhead overfished. At its October 2003 meeting the Council heard reports from its Bottomfish Plan Team and Scientific and Statistical Committee on the status of the seamount groundfish resources. On the basis of these reports, and in accordance with the framework at 50 CFR 660.67, the Council recommended a permanent closure of the Hancock Seamount to the harvest of groundfish resources. However, it is unlikely that an amendment to the FMP closing Hancock Seamount to the harvesting of groundfish resources could be completed before the current moratorium expires. Therefore, at its March 2004 meeting the Council recommended extending the current moratorium another 6 years (i.e., August 31, 2010). During the proposed moratorium, an amendment to the FMP that would permanently close Hancock Seamount to groundfish harvest could be developed.

Comments and Responses

NMFS received 2 comments on the proposed rule from 2 commenters.

Comment 1: The moratorium extension should be expanded to 20 years and include all fish - not just groundfish - and increase enforcement at Hancock Seamount.

Response: NMFS is limited to imposing a 6–year extension specifically to seamount groundfish resources. The moratorium extension implemented by this final rule is intended to be an interim measure until a more permanent management regime is developed by the Council for the Hancock Seamount groundfish fishery. In regard to closing fishing to other species besides groundfish at Hancock Seamount, NMFS' current data indicate that stocks of other potential commercially harvested fish (i.e., pelagics) can continue to be harvested in a sustainable manner. Closure of the area to the harvest of these resources is unwarranted. Finally, NMFS Enforcement is monitoring the area as funds permit. However, due to its remote location and poor potential returns on investments, U.S. fishermen are unlikely to target pelagic armorhead resources in the remote NWHI. Additionally, the U.S. Coast Guard already has plans to increase patrols in the U.S. EEZ surrounding Hawaii, because of heightened national security concerns.

Comment 2: If the Hancock Seamount is only one of the seamounts potentially harvested [for] armorhead then why not make it a sanctuary permanently off limits to bottomfishing? Keep it open to tuna/swordfish longliners and albacore trollers.

Response: As stated above, this final rule is intended to be an interim measure until a long-term management program is developed by the Council. In regard to the harvest of pelagic management unit species targeted by longliners and trollers, see the response to Comment 1.

Classification

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding the economic impacts of this action. As a result a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: August 13, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. Section 660.68 is revised to read as follows:

§ 660.68 Fishing moratorium on Hancock Seamount.

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited through August 31, 2010.

[FR Doc. 04–18956 Filed 8–18–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 160
Thursday, August 19, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–47–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters. This proposal would require inspecting the chamfer of the stop on the cabin sliding doors (doors) and installing an airworthy stop if the chamfer exceeds a certain length; and prior to each flight, visually checking the door to determine if it is correctly locked in the open position before flying with the doors open, and checking the locking indicator light and the position of the door handles before flying with the doors closed. This document also proposes to revise the Limitations Section of the Rotorcraft Flight Manual (RFM) prohibiting the opening or closing of a cabin sliding door at airspeeds of 40 or greater knots indicated airspeed (KIAS). This proposal is prompted by a report of a door separating from a helicopter during flight. The actions specified by this proposed AD are intended to prevent separation of a door during flight and damage to the helicopter, resulting in a forced landing or loss of control of the helicopter.

DATES: Comments must be received on or before October 18, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–47–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.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

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 should 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 will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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 mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–47–AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Model EC 155B and EC 155B1 helicopters. The DGAC advises that they have issued an AD following the loss in flight of a cabin sliding door.

Eurocopter issued Alert Service Bulletin No. 52A015, dated September 8, 2003, which specified a modification (MOD 0753C48) to the micro switch support, and an adjustment to the micro switch to ensure lighting of the instrument panel ''DOORS'' light in the event of insufficient engagement of the cabin sliding door locking pin in its catch. The FAA did not mandate compliance with this alert service bulletin.

Eurocopter has also issued Alert Telex No. 52A013, Revision 1, dated September 24, 2003, which specifies:

- Within the next 50 hours time-in-service (TIS), inspecting the length of the chamfer on the stop of the lower rail aft fitting of the cabin sliding doors;
- Prior to flight with a cabin sliding door open, visually checking that the door is correctly locked in the open position;
- Prior to flight with a cabin sliding door closed, checking that the locking indicator light on the instrument panel is off when the door is closed, and when locking the door, checking that the door handle is in the closed position; and
- While in flight, prohibiting the opening or closing of a cabin sliding door at airspeeds of 40 or greater KIAS.

The DGAC classified this alert telex as mandatory and issued AD No. F–2003–345 R1, dated November 12, 2003, 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.

The previously described unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require:

- Before further flight, revising the Limitations Section of the RFM to

prohibit opening or closing the cabin doors except at speeds of less than 40 KIAS.

• Within the next 50 hours TIS, inspecting the chamfer of the stop of the lower rail aft fitting of the doors, and if the chamfer is greater than 2mm in length, installing an airworthy stop;

• Prior to each flight with a door open, visually checking that the door is correctly locked in the open position; and

• Prior to flight with a door closed, checking that the locking indicator light on the instrument panel is ''off'' when the door is closed, that the door handles are in the correct closed position when the door is locked, and that the lower locking pin is correctly positioned in its catch. These closed-door checks are required until a chamfer that is 2mm or less in length is installed and, in accordance with MOD 0753C48, the mounting support plates are modified and the door micro-switches are adjusted.

The actions would be required to be accomplished in accordance with the alert telex described previously. The proposed AD would be an interim action until modified parts are developed. Additionally, if a door is opened or closed during flight, in accordance with the limitations of the RFM, the FAA anticipates that the appropriate crewmembers will assure that the door is properly secured.

The owner/operator (pilot) holding at least a private pilot certificate may perform the visual checks required by paragraphs (c) and (d) of this proposed AD and must enter compliance with those paragraphs into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). This proposed AD allows a pilot to perform these checks because they involve only visual checks to ensure that the cabin sliding doors are correctly locked in the open or closed position, and can be performed equally well by a pilot or a mechanic.

The FAA estimates that this proposed AD would affect 3 helicopters of U.S. registry and the proposed actions would take approximately 1 minute for each check on each helicopter, 2 work hours per helicopter to install 2 new stops, and 2 work hours to modify each helicopter in accordance with MOD 0753C48, at an average labor rate of $65 per work hour. Required parts would cost approximately $1,125 ($375 per helicopter). Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $3,855 for the entire fleet, assuming 600 checks per helicopter, two stops are replaced on each helicopter, each helicopter is modified in accordance with MOD 0753C48, and the time to make the one-time revision to the RFM would be negligible.

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 economic 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 a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2003–SW–47–AD.

Applicability: Model EC 155B and EC 155B1 helicopters with cabin sliding doors, part number (P/N) 365A82–1064–02 (left-hand door) and P/N 365A82–1064–03 (right-hand door) and stop, P/N 365A25–8085–21, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of a door during flight and damage to the helicopter, resulting in a forced landing or loss of control of the helicopter, accomplish the following:

(a) Before further flight, revise the Limitations Section of the Rotorcraft Flight Manual (RFM) permitting the opening or closing of the cabin sliding doors only at speeds of less than 40 knots indicated airspeed.

(b) Within 50 hours time-in-service, inspect the length of the chamfer on the stop of the lower rail aft fitting on each cabin sliding door (door), and if the chamfer is more than 2mm in length, install an airworthy stop in accordance with paragraph 2.B., Operational Procedure, of Eurocopter Alert Telex No. 52A013, Revision 1, dated September 24, 2003.

Note 1: The inspection required by paragraph (b) of this AD has already been accomplished for all Model EC 155B1 helicopters prior to delivery.

(c) Before each flight with a door open, check that each open door is locked in the ''open'' position with the upper roller in its rail and the door open locking latch engaged.

(d) Before each flight with a door closed, check that:

(1) The locking indicator light on the instrument panel is ''off,''

(2) The door handle is in the correct ''closed'' position, and

(3) The lower locking pin is positioned in its catch.

Note 2: If the door is correctly closed and latched, when viewed from the outside, the door handle will be flush with the profile of the housing and the aft lower corner of the door will be flush with the profile of the fuselage; when viewed from the inside, the door handle will be positioned opposite the locking indicator with no gap between the structure seal and the aft lower sealing surface of the door.

Note 3: If the door is closed and the lower locking pin is outside its catch, when viewed from the outside, the aft lower corner of the door is approximately 15 to 20mm from the fuselage; when viewed from the inside, the aft lower corner of the door is approximately 10 to 15mm from the fuselage.

(e) An owner/operator (pilot) holding at least a private pilot certificate may perform the visual checks required by paragraphs (c) and (d) of this AD and must enter compliance with those paragraphs into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

(f) After the stops of the lower rail aft fitting with a chamfer 2mm or less in length are installed and in accordance with MOD 0753C48, the mounting plate supports are modified and the door micro-switches are adjusted, the checks required by paragraph (d) of this AD are no longer required.

(g) 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.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. F–2003–345–R1, dated November 12, 2003.

Issued in Fort Worth, Texas, on August 6, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–18999 Filed 8–18–04; 8:45 am]

BILLING CODE 4910–13–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 211

[A.I.D. Reg 11]

RIN 0412–AA54

Transfer of Food Commodities for Use in Disaster Relief, Economic Development and Other Assistance

AGENCY: Agency for International Development.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The USAID Office of Food for Peace proposes to amend and update 22 CFR part 211, the primary regulatory document governing the transfer of commodities to non-governmental organizations under Title II of the Agricultural Trade Development and Assistance Act of 1954. The purpose of rewriting this regulation is to bring the rule in line with legislative changes made in both the 1996 and 2002 Farm Bills, (Farm Security and Rural Investment Act of 2002, and Federal Agriculture Improvement and Reform Act of 1996), as well as to update the overall financial and programmatic procedural and reporting requirements. Changes are expected to update and clarify standard operating procedures, resulting in more efficient and streamlined management of Title II programs.

DATES: Submit comments on or before September 18, 2004.

ADDRESSES: Mail or hand deliver comments to Lisa Witte, USAID/DCHA/FFP, 1300 Pennsylvania Avenue, NW., Rm. 7.06–102; Washington, DC 20523. Telephone: (202) 712–5162. Submit electronic comments and other relevant data to *reg11@usaid.gov*.

FOR FURTHER INFORMATION CONTACT: Lisa Witte, (202) 712–5162.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit comments and data by sending electronic mail (e-mail) to: *reg11@usaid.gov*. Submit comments as a Word file avoiding the use of special characters and any form of encryption.

Background

Title II of Pub. L. 480, as amended authorizes appropriation of resources intended to combat hunger and malnutrition through support to activities that raise the level of availability, access and utilization of food in recipient countries. Title II programs are the responsibility of the United States Agency for International Development Bureau for Democracy, Conflict and Humanitarian Assistance, Office of Food for Peace.

22 CFR part 211 is the primary regulatory document governing the transfer of commodities to non-governmental organization (NGO) programs. The document is out of date as it was last revised in 1992 following the 1990 Farm Bill. Thus, a re-written regulation with up to date guidance reflecting the significant legislative changes that have occurred (1996 and 2002 Farm Bills) and revised financial and programmatic reporting requirements is necessary. This effort will be a tremendous benefit to the overall management of Title II programs.

For the reasons discussed in the preamble, examples of what USAID proposes to amend in 22 CFR part 211 are as follows:

1. Revise the overall organization of 22 CFR part 211 in accordance with all **Federal Register** publication requirements and Office of the Federal Register document drafting resources.

2. Update legislative regulatory references and references to agency policy and program guidelines.

3. Update and clarify definitions of and references to FFP/W, Missions, USAID, diplomatic posts, M/OP/TRANS, M/FM, USDA/Washington and Kansas City. Ensure references to these entities are used consistently throughout the regulation in terms of roles, decision-making and re-delegations of authority. Update existing definitions as well as new conceptual terms in accordance with Food for Peace's new strategic plan, policy and legislation.

4. Update program application process, program procedures, closeout and disposition guidance, and terminology used throughout the regulation. Ensure consistency with 22 CFR part 226 and OMB Circular A–110.

5. Update deposit and account information.

6. Update commodity and shipping procedures as well as the ocean carrier loss and damage section.

7. Revise language on displacement of sales to be written in the context of usual marketing requirements (UMR) as promulgated by USDA.

8. Revise commodity transfer language in § 211.5(o) in accordance with Development Assistance Program (DAP) guidance.

9. Revise to increase dollar thresholds throughout regulation to reflect more appropriate levels of USAID mission and PVO responsibility, considering use of blanket waivers in lieu of thresholds where suitable.

10. Clarify the use of collected claims proceed types in § 211.9: monetized commodity, program income and commodity loss; clarify where to deposit claims proceeds; revise thresholds. Clarify the differences in (a) marine claims/losses, and (b) inland and/or third party losses.

This request for comments provides a summary description of possible changes and is not limited to the foregoing. USAID/DCHA/FFP also seeks comments and/or suggestions concerning other issues that may affect the implementation of the Transfer of Food Commodities under Title II of Pub. L. 480 and whether FFP's regulations should be amended or modified in light of such issues.

List of Subjects in 22 CFR Part 211

Agricultural commodities, Disaster assistance, Food assistance programs, Foreign aid, Non-profit organizations, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 1726a(c).

Dated: August 13, 2004.

Lauren Landis,

Office Director for the Office of Food for Peace, Bureau of Democracy, Conflict and Humanitarian Assistance, United States Agency for International Development.

[FR Doc. 04–19007 Filed 8–18–04; 8:45 am]

BILLING CODE 6116–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08–OAR–2004–UT–0002; FRL–7791–8]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Revisions to New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Utah on November 9, 2001, and September 16, 2003. The revisions incorporate new

and revise existing definitions in the State's New Source Review (NSR) rules. The revisions update the State's NSR rules so that they are consistent with the revisions EPA made to its NSR rules on July 21, 1992. These revisions were referred to as the WEPCO rule (for the Wisconsin Electric Power Company court ruling). In the July 1992 action, EPA adopted a broad NSR exclusion for utility pollution control projects and an ''actual to future actual'' methodology for determining whether all other non-routine physical or operational changes at utilities (other than the replacement of a unit or addition of a new unit) are subject to NSR, and modified its regulations to reflect changes made by Congress in the 1990 Amendments to the Clean Air Act to the applicability of new source requirements to clean coal technology (CCT) and repowering projects, and to ''very clean'' units. The purpose of this action is to make the changes to the State's rule federally enforceable. This action is being taken under section 110 of the Clean Air Act. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before September 20, 2004.

ADDRESSES: Submit your comments, identified by RME Docket Number R08–OAR–2004–UT–0002, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/index.jsp.* Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov and daly.carl@epa.gov.*
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency, Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Carl Daly, Air & Radiation Program, Mailcode 8P–AR, EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6446, *daly.carl@epa.gov.*

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the rules and regulations section of this **Federal Register**.

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

Dated: July 14, 2004.

Max H. Dodson,

Acting Regional Administrator, Region 8.

[FR Doc. 04–18935 Filed 8–18–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7596]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Alabama	Roanoke (City), Randolph County.	Graves Creek	Approximately 1,000 feet upstream of the confluence with High Pine Creek.	None	*733
			Approximately 1.2 miles upstream of U.S. Highway 431.	None	*770
Maps available for inspection at Roanoke City Hall, 809 East Main Street, Roanoke, Alabama.					
Send comments to The Honorable Betty Ziglar, Mayor of the City of Roanoke, P.O. Box 1270, Roanoke, Alabama 36274.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 10, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–19013 Filed 8–18–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7594]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of

September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
ALABAMA Cullman County				
Mud Creek	At Interstate 31	None	*533	Cullman County (Unincorporated Areas), City of Hanceville.
	Approximately 800 feet upstream of State Route 91.	None	*537	
Bavar Creek	Approximately 2,400 feet downstream of County Route 37.	None	*567	Town of Good Hope.
	At Section Line Road	None	*692	
Ryan Creek	Approximately 1,000 feet downstream of County Road 38.	None	*643	Cullman County (Unincorporated Areas), City of Cullman.
	Approximately 0.4 mile upstream of 16th Street Southeast.	None	*713	
Wolf Creek	At the confluence with Ryan Creek	None	*676	City of Cullman.
	Approximately 0.3 mile upstream of Briarwood Drive Southeast.	None	*691	

Cullman County (Unincorporated Areas)

Maps available for inspection at the Cullman County Commission, 500 Second Avenue SW., Room 202, Cullman, Alabama.

Send comments to Mr. Norman Tucker, Chairman of the Cullman County Board of Commissioners, 500 Second Avenue SW., Room 202, Cullman, Alabama 35055.

City of Cullman

Maps available for inspection at the City of Cullman Building Department, 201 2nd Avenue, Cullman, Alabama.

Send comments to The Honorable Donald E. Green, Mayor of the City of Cullman, P.O. Box 278, Cullman, Alabama 35056–0278.

City of Good Hope

Maps available for inspection at the Good Hope City Hall, 134 Town Hall Drive, Cullman, Alabama.

Send comments to The Honorable Gordon Dunagan, Mayor of the City of Good Hope, 134 Town Hall Drive, Cullman, Alabama 35057.

City of Hanceville

Maps available for inspection at the Hanceville City Hall, 112 Main Street SE., Hanceville, Alabama.

Send comments to The Honorable Bobby Brown, Mayor of the City of Hanceville, 112 Main Street SE., Hanceville, Alabama 35077.

FLORIDA Flagler County				
Big Mulberry Branch	Approximately 1,620 feet downstream of Palm Harbor Parkway.	None	*7	City of Palm Coast.
	Approximately 3,500 feet upstream of Belle Terre Parkway.	None	*24	
Black Branch	At the confluence with Haw Creek	None	*12	Flagler County (Unincorporated Areas), City of Bunnell.
	Approximately 0.75 mile upstream of Old Haw Creek Road.	*12	*16	
Black Point Swamp	At the confluence with Black Branch	None	*12	Flagler County (Unincorporated Areas).
	At the upstream side of State Routes 20/100	None	*14	
Wadsworth/Korona Canal	Approximately 75 feet downstream of Old Kings Road.	None	*12	Flagler County (Unincorporated Areas).
	At the upstream side of County Road 325	None	*27	
Bull Creek	At the confluence with Crescent Lake	None	*7	Flagler County (Unincorporated Areas).
	At the upstream side of State Route 100	None	*19	
Bull Creek Tributary	At the confluence with Bull Creek	None	*11	Flagler County (Unincorporated Areas).
	Approximately 20 feet upstream of County Route 305.	None	*24	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Bulow Creek	Approximately 1.3 miles upstream of Old Kings Road.	*9	*8	Flagler County (Unincorporated Areas).
	At the upstream side of Old Kings Road	*18	*21	
Bulow Creek Tributary	Approximately 500 feet downstream of the confluence with Bulow Creek.	*12	*13	Flagler County (Unincorporated Areas).
	Approximately 2,000 feet downstream of the confluence with Bulow Creek.	*17	*18	
Haw Creek	At the confluence with Crescent Lake	None	*7	Flagler County (Unincorporated Areas).
	Approximately 3.48 miles upstream of County Route 305.	None	*12	
Graham Swamp	At the confluence with the Intracoastal Waterway	None	*6	Flagler County (Unincorporated Areas), City of Palm Coast.
	Approximately 3.3 miles downstream of East Highway.	None	*12	
Parker Canal	At the confluence with Black Branch	None	*12	Flagler County (Unincorporated Areas).
	At the confluence with Sweetwater Branch	None	*23	
Atlantic Ocean	Approximately 475 feet east of the intersection of Deerwood Street and North Ocean Shore Boulevard.	*13	*16	Flagler County (Unincorporated Areas), Town of Beverly Beach, City of Flagler Beach, Town of Marineland, City of Palm Coast.
	Approximately 100 feet south of the intersection of North Shore Boulevard and Camino Del Ray Parkway.	*6	*7	

Town of Beverly Beach
Maps available for inspection at the Beverly Beach Town Hall, 2770 North Oceanshore Boulevard, Beverly Beach, Florida.
Send comments to The Honorable Stephen M. Emmett, Mayor of the Town of Beverly Beach, 2770 North Ocean Shore Boulevard, Beverly Beach, Florida 32136.

City of Bunnell
Maps available for inspection at the Bunnell City Hall, 200 South Church Street, Bunnell, Florida.
Send comments to Mr. Lyndon Bonner, Bunnell City Manager, City Hall, 200 South Church Street, Bunnell, Florida 32110.

City of Flagler Beach
Maps available for inspection at the Flagler Beach City Hall, 105 South 2nd Street, Flagler Beach, Florida.
Send comments to The Honorable Bruce Jones, Mayor of the City of Flagler Beach, 105 South 2nd Street, Flagler Beach, Florida 32137.

Flagler County (Unincorporated Areas)
Maps available for inspection at the Flagler County Planning and Zoning Department, 1200 East Moody Boulevard, Suite 2, Bunnell, Florida.
Send comments to Mr. David Haas, Flagler County Administrator, 1200 East Moody Boulevard, Suite 1, Bunnell, Florida 32110.

Town of Marineland
Maps available for inspection at the Marineland Town Office, 9507 Oceanshore Boulevard, St. Augustine, Florida.
Send comments to The Honorable James Netherton, Mayor of the Town of Marineland, 9507 Oceanshore Boulevard, St. Augustine, Florida 32080.

City of Palm Coast
Maps available for inspection at the Palm Coast City Hall, 2 Commerce Boulevard, Palm Coast, Florida.
Send comments to The Honorable James V. Canfield, Mayor of the City of Palm Coast, City Hall, 2 Commerce Boulevard, Palm Coast, Florida 32164.

NEW JERSEY				
Union County				
Rahway River	At a point immediately upstream of Lawrence Street.	*10	*9	City of Rahway, Townships of Clark, Cranford, Springfield, Union, Winfield, Borough of Kenilworth.
	Approximately 400 feet downstream of Springfield Avenue.	*90	*91	
Black Brook	At the confluence with Rahway River	*74	*75	Borough of Kenilworth, Township of Union.
	Approximately 180 feet downstream of Springfield Road.	*74	*75	
Branch 10–30–1	At the confluence with Drainage Ditch	*71	*75	Borough of Kenilworth.
	Approximately 350 feet upstream of Lafayette Place.	*74	*75	
College Branch	At the confluence with Rahway River	*70	*72	Township of Cranford.
	At a point immediately upstream of Springfield Avenue.	*70	*72	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Drainage Ditch	At the confluence with Rahway River	*71	*73	Borough of Kenilworth, Township of Springfield.
	At the confluence of Branch 10–30–1	*71	*75	
Gallows Hill Road Branch.	At the confluence with Rahway River	*69	*71	Township of Cranford.
	Approximately 350 feet upstream of Pittsfield Street.	*70	*71	
Garwood Brook	At the confluence with Rahway River	*68	*70	Township of Cranford.
	Approximately 250 feet upstream of West Holly Street.	*69	*70	
Nomahegan Brook	At the confluence with Rahway River	*73	*74	Townships of Cranford and Springfield, Town of Westfield.
	Approximately 580 feet downstream of Springfield Avenue.	*73	*74	
Robinsons Branch	At the confluence with Rahway River	*15	*14	City of Rahway, Town of Westfield, Township of Clark.
	At the confluence of Robinsons Branch	*51	*50	
South Branch	At the confluence with Rahway River	*11	*9	City of Rahway.
	Approximately 100 feet upstream of East Inman Avenue.	*11	*10	
Stream 10–30	At the confluence with Drainage Ditch	*71	*74	Borough of Kenilworth.
	Approximately 100 feet downstream of Willshire Drive.	*73	*74	
Vauxhall Branch	At the confluence with Rahway River	*90	*91	Township of Union.
	At Liberty Avenue	*90	*91	
Cedar Brook	At Terrill Road	None	*131	Borough of Fanwood.
	A point immediately upstream of Willow Avenue	None	*141	
Vauxhall Sub Branch	At the confluence with Vauxhall Branch	*90	*91	Township of Union.
	At Interstate 78	*90	*91	
West Branch	At the confluence with Elizabeth River	*43	*42	Township of Union.
	Approximately 1,400 feet upstream of Garden State Parkway entrance ramp.	None	*60	
Lightning Brook	At the confluence with Elizabeth River	*56	*55	Township of Union.
	Approximately 950 feet downstream of Union Avenue.	*56	*55	
Elizabeth River	At Trotters Lane	*27	*18	Townships of Union and Hillside.
	Approximately 1,050 feet upstream of Union Avenue.	*67	*68	
Trotters Lane Branch	At Morris Avenue	None	*27	City of Elizabeth.
	Approximately 300 feet downstream of North Avenue.	None	*28	
Kings Creek	A point immediately upstream of Barnett Street	None	*10	City of Rahway.
	Approximately 1,000 feet upstream of Lower Road to Rahway.	None	*13	
East Branch Rahway River.	Approximately 450 feet upstream of the confluence with Rahway River.	*90	*91	Townships of Union and Springfield.
	Approximately 2,800 feet downstream of Vauxhall Road.	*90	*91	
Kings Creek	Approximately 715 feet downstream of U.S. Route 9.	*14	#1	City of Linden.
	Just downstream of U.S. Route 9	*16	#1	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Township of Clark
Maps available for inspection at the Clark Township Engineer's Office, Municipal Building, 430 Westfield Avenue, Clark, New Jersey.
Send comments to The Honorable Salvatore Bonaccorso, Mayor of the Township of Clark, Municipal Building, 430 Westfield Avenue, Clark, New Jersey 07066–1590.

Township of Cranford
Maps available for inspection at the Cranford Township Engineer's Office, Municipal Building, 8 Springfield Avenue, Cranford, New Jersey.
Send comments to The Honorable Barbara A. Bilger, Mayor of the Township of Cranford, Municipal Building, 8 Springfield Avenue, Cranford, New Jersey 07016–2199.

City of Elizabeth
Maps available for inspection at the Elizabeth City Engineer's Office, 50 Winfield Scott Plaza, Elizabeth, New Jersey.
Send comments to The Honorable J. Christian Bollwage, Mayor of the City of Elizabeth, City Hall, 50 Winfield Scott Plaza, Elizabeth, New Jersey 07201.

Borough of Fanwood
Maps available for inspection at the Fanwood Borough Engineer's Office, 75 North Martine Avenue, Fanwood, New Jersey.
Send comments to The Honorable Colleen Mahr, Mayor of the Borough of Fanwood, 75 North Martine Avenue, Fanwood, New Jersey 07023–1397.

Township of Hillside
Maps available for inspection at the Hillside Township Engineer's Office, JFK Plaza, Hillside and Liberty Avenue, Hillside, New Jersey.
Send comments to The Honorable Karen McCoy Oliver, Mayor of the Township of Hillside, JFK Plaza, Hillside and Liberty Avenue, Hillside, New Jersey 07205.

Borough of Kenilworth
Maps available for inspection at the Kenilworth Borough Engineer's Office, Municipal Building, 567 Boulevard, Kenilworth, New Jersey.
Send comments to The Honorable Gregg David, Mayor of the Borough of Kenilworth, Municipal Building, 567 Boulevard, Kenilworth, New Jersey 07033–1699.

City of Linden
Maps available for inspection at the Linden City Engineer's Office, Municipal Building, 301 North Wood Avenue, Linden, New Jersey.
Send comments to The Honorable John T. Gregorio, Mayor of the City of Linden, Municipal Building, 301 North Wood Avenue, Linden, New Jersey 07036.

City of Rahway
Maps available for inspection at the Rahway City Engineer's Office, 1 City Hall Plaza, Rahway, New Jersey 07065.
Send comments to The Honorable James J. Kennedy, Mayor of the City of Rahway, 1 City Hall Plaza, Rahway, New Jersey 07065.

Town of Springfield
Maps available for inspection at the Springfield Township Engineer's Office, Municipal Building, 100 Mountain Avenue, Springfield, New Jersey.
Send comments to The Honorable Clara T. Harelik, Mayor of the Township of Springfield, Municipal Building, 100 Mountain Avenue, New Jersey 07081.

Township of Union
Maps available for inspection at the Union Township Engineer's Office, Municipal Building, 1976 Morris Avenue, Union, New Jersey.
Send comments to The Honorable Anthony Terrezza, Mayor of the Township of Union, Municipal Building, 1976 Morris Avenue, Union, New Jersey 07083–3579.

Town of Westfield
Maps available for inspection at the Westfield Town Engineer's Office, Municipal Building, 425 East Broad Street, Westfield, New Jersey.
Send comments to The Honorable Gregory McDermott, Mayor of the Town of Westfield, Municipal Building, 425 East Broad Street, Westfield, New Jersey 07090.

Township of Winfield
Maps available for inspection at the Winfield Township Municipal Building, 12 Gulfstream Avenue, New Jersey.
Send comments to The Honorable Norman Whitehouse, Jr., Mayor of the Township of Winfield, 12 Gulfstream Avenue, Winfield, New Jersey 07036.

PENNSYLVANIA
Lancaster County

Bachman Run	At the confluence with Little Conestoga Creek	•325	•324	Township of Manheim.
	Approximately 1,800 feet upstream of Koser Road	None	•364	
Tributary No. 1 to Bachman Run.	From the confluence with Bachman Run	None	•335	Township of Manheim.
	Approximately 450 feet upstream of Snyder Road	None	•363	
Conoy Creek	Approximately 1,850 feet upstream of State Route 241.	None	•398	Township of West Donegal.
	Approximately 4,350 feet upstream of State Route 241.	None	•406	
Chiques Creek	Approximately 1,350 feet upstream of Kinderhook Road.	None	•295	Townships of Rapho, East Hempfield, West Hempfield, Penn.
	Approximately 600 feet downstream of State Route 72.	None	•438	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Cocalico Creek	Approximately 400 feet downstream of Disston View Road.	None	•300	Townships of Warwick, East Cocalico, West Cocalico.
	Approximately 150 feet downstream of Pennsylvania Turnpike.	None	•394	
Little Cocalico Creek	Approximately 800 feet downstream of Pennsylvania Turnpike.	None	•390	Township of East Cocalico.
	Approximately 200 feet upstream of Pennsylvania Turnpike.	None	•390	
Little Chiques Creek	Approximately 300 feet downstream of Mount Joy Road.	None	•326	Township of Mount Joy.
	Just downstream of Milton Grove Road	None	•351	
Conestoga River	Approximately 10,100 feet upstream of Stehman Road.	None	•227	Borough of Millersville, Townships of Ephrata, Upper Leacock.
	Approximately 3,200 feet upstream of U.S. Route 322.	None	•333	
Mill Creek	Approximately 4,500 feet downstream of Park Drive.	None	•261	City of Lancaster, Township of Earl.
	Approximately 450 feet downstream of T–763	None	•458	
Pequea Creek	Approximately 3,700 feet downstream of Rawlinsville Road.	None	•279	Townships of Providence, Leacock, Pequea, East Lampeter, West Lampeter, Paradise.
	Approximately 450 feet downstream of U.S. Route 30.	None	•346	
Beaver Creek	Approximately 25 feet downstream of North Church Street.	None	•455	Township of Eden.
	Approximately 250 feet downstream of North Church Street.	None	•456	
West Branch Octorano Creek.	Approximately 3,900 feet downstream of Mount Pleasant Road.	None	•497	Township of Colerain.
	Approximately 3,800 feet downstream of Mount Pleasant Road.	None	•497	
Lees Creek	Approximately 480 feet downstream of Willow Street.	None	•456	Township of Brecknock.
	Approximately 420 feet downstream of Willow Street.	None	•457	
Tributary No. 1 to Conestoga River.	Just upstream of Barbara Street	None	•281	Borough of Millersville.
	Approximately 610 feet upstream of Barbara Street.	None	•289	
Little Conestoga Creek ..	Approximately 3,050 feet upstream of Millersville Road.	None	•278	Borough of Millersville.
	Approximately 3,350 feet upstream of Millersville Road.	None	•278	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Township of Brecknock

Maps available for inspection at the Brecknock Township Office, 1026 Dry Tavern Road, Denver, Pennsylvania.

Send comments to Mr. Levi Hoover, Chairman of the Township of Brecknock Board of Supervisors, 1026 Dry Tavern Road, Denver, Pennsylvania 17517.

Township of Colerain

Maps available for inspection at the Colerain Township Office, 1803 Kirkwood Pike, Kirkwood, Pennsylvania.

Send comments to Mr. Walter L. Todd, Jr., Chairman of the Township of Colerain Board of Supervisors, 1803 Kirkwood Pike, Kirkwood, Pennsylvania 17536.

Township of Earl

Maps available for inspection at the Earl Township Office, 517 North Railroad Avenue, New Holland, Pennsylvania.

Send comments to Mr. Rick L. Kochel, Chairman of the Township of Earl Board of Supervisors, 517 North Railroad Avenue, New Holland, Pennsylvania 17557.

Township of East Cocalico

Maps available for inspection at the East Cocalico Township Office, 100 Hill Road, Denver, Pennsylvania.

Send comments to Mr. Douglas B. Mackley, Chairman of the Township of East Cocalico Board of Supervisors, 100 Hill Road, Denver, Pennsylvania 17517.

Township of East Hempfield

Maps available for inspection at the East Hempfield Township Office, 1700 Nissley Road, Landisville, Pennsylvania.

Send comments to Mr. George Marcinko, East Hempfield Township Manager, 1700 Nissley Road, P.O. Box 128, Landisville, Pennsylvania 17538.

Township of East Lampeter

Maps available for inspection at the East Lampeter Township Office, 2205 Old Philadelphia Pike, Lancaster, Pennsylvania.

Send comments to Mr. Glen Eberly, Chairman of the Township of East Lampeter Board of Supervisors, 2205 Old Philadelphia Pike, Lancaster, Pennsylvania 17602.

Township of Eden

Maps available for inspection at the Eden Township Office, 489 Stony Hill Road, Quarryville, Pennsylvania.

Send comments to Mr. Ellis Ferguson, Chairman of the Township of Eden Board of Supervisors, 489 Stony Hill Road, Quarryville, Pennsylvania 17566.

Township of Ephrata

Maps available for inspection at the Ephrata Township Office, 265 Akron Road, Ephrata, Pennsylvania.

Send comments to Mr. Clark R. Stauffer, Chairman of the Township of Ephrata Board of Supervisors, 265 Akron Road, Ephrata, Pennsylvania 17522–2792.

City of Lancaster

Maps available for inspection at the Lancaster City Office, 120 North Duke Street, Lancaster, Pennsylvania.

Send comments to The Honorable Charles W. Smithgall, Mayor of the City of Lancaster, 120 North Duke Street, P.O. Box 1599, Lancaster, Pennsylvania 17608–1599.

Township of Leacock

Maps available for inspection at the Leacock Township Office, 3545 West Newport Road, Intercourse, Pennsylvania.

Send comments to Mr. Frank Howe, Chairman of the Township of Leacock Board of Supervisors, 3545 West Newport Road, Intercourse, Pennsylvania 17534.

Township of Manheim

Maps available for inspection at the Manheim Township Office, 1840 Municipal Drive, Lancaster, Pennsylvania.

Send comments to Mr. James Martin, Chairman of the Township of Manheim Board of Supervisors, 1840 Municipal Drive, Lancaster, Pennsylvania 17601–4162.

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Borough of Millersville

Maps available for inspection at the Millersville Borough Office, 10 Colonial Avenue, Millersville, Pennsylvania.

Send comments to Mr. Edward J. Arnold, Millersville Borough Manager, 10 Colonial Avenue, Millersville, Pennsylvania 17551.

Township of Mount Joy

Maps available for inspection at the Mount Joy Township Office, 159 Merts Drive, Elizabethtown, Pennsylvania.

Send comments to Mr. Charles W. Ricedorf, Chairman of the Township of Mount Joy Board of Supervisors, 159 Merts Drive, Elizabethtown, Pennsylvania 17022.

Township of Paradise

Maps available for inspection at the Paradise Township Office, 196 Blackhorse Road, Paradise, Pennsylvania.

Send comments to Mr. Kevin J. McClarigan, Chairman of the Township of Paradise Board of Supervisors, 196 Blackhorse Road, P.O. Box 40, Paradise, Pennsylvania 17562.

Township of Penn

Maps available for inspection at the Penn Township Office, 97 North Penryn Road, Manheim, Pennsylvania.

Send comments to Mr. Daryl J. LeFever, Chairman of the Township of Penn Board of Supervisors, 97 North Penryn Road, Manheim, Pennsylvania 17545.

Township of Pequea

Maps available for inspection at the Pequea Township Office, 1028 Millwood Road, Willow Street, Pennsylvania.

Send comments to Ms. Virginia Brady, Chairman of the Township of Pequea Board of Supervisors, 1028 Millwood Road, Willow Street, Pennsylvania 17584.

Township of Providence

Maps available for inspection at the Providence Township Office, 200 Mt. Airy Road, New Providence, Pennsylvania.

Send comments to Mr. Wayne S. Herr, Chairman of the Township of Providence Board of Supervisors, 200 Mt. Airy Road, New Providence, Pennsylvania 17560.

Township of Rapho

Maps available for inspection at the Rapho Township Office, 971 North Colebrook Road, Manheim, Pennsylvania.

Send comments to Mr. Lowell Fry, Chairman of the Township of Rapho Board of Supervisors, 971 North Colebrook Road, Manheim, Pennsylvania 17545.

Township of Upper Leacock

Maps available for inspection at the Upper Leacock Township Office, 36 Hillcrest Avenue, Leola, Pennsylvania.

Send comments to Mr. Richard P. Heilig, Chairman of the Township of Upper Leacock Board of Supervisors, 36 Hillcrest Avenue, P.O. Box 325, Leola, Pennsylvania 17540.

Township of Warwick

Maps available for inspection at the Warwick Township Office, 315 Clay Road, Lititz, Pennsylvania.

Send comments to Mr. W. Logan Myers, III, Chairman of the Township of Warwick Board of Supervisors, 315 Clay Road, P.O. Box 308, Lititz, Pennsylvania 17543.

Township of West Cocalico

Maps available for inspection at the West Cocalico Township Office, 156 B West Main Street, Reinholds, Pennsylvania.

Send comments to Mr. Jacque A. Smith, Chairman of the Township of West Cocalico Board of Supervisors, 156 B West Main Street, P.O. Box 244, Reinholds, Pennsylvania 17569.

Township of West Donegal

Maps available for inspection at the West Donegal Township Office, 1 Municipal Drive, Elizabethtown, Pennsylvania.

Send comments to Mr. Roger Snyder, Chairman of the Township of West Donegal Board of Supervisors, 1 Municipal Drive, Elizabethtown, Pennsylvania 17022.

Township of West Hempfield

Maps available for inspection at the West Hempfield Township Office, 3401 Marietta Avenue, Lancaster, Pennsylvania.

Send comments to Mr. David Dumeyer, Chairman of the Township of West Hempfield Board of Supervisors, 3401 Marietta Avenue, Lancaster, Pennsylvania 17601.

Township of West Lampeter

Maps available for inspection at the West Lampeter Township Office, 852 Village Road, Lampeter, Pennsylvania.

Send comments to Mr. James Kalenich, Chairman of the Township of West Lampeter Board of Supervisors, 852 Village Road, Box 237, Lampeter, Pennsylvania 17537–0237.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 10, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–19014 Filed 8–18–04; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2460; MB Docket No. 04–299; RM–10958]

Radio Broadcasting Services; Refugio, Sinton, and Taft, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed jointly by Amigo Radio, Ltd. licensee of Station KOUL(FM), Sinton, Texas, and Pacific Broadcasting of Missouri LLC, licensee of Station KTKY(FM), Taft, proposing the reallotment of Channel 279C1 from Sinton to Refugio, Texas and modify the license of Station KOUL(FM) to reflect the change of community. They also request that we modify the operating condition for Station KTKY(FM), Taft, Texas, to permit the station to commence program test authority on Channel 293C2 when Station KOUL(FM) commences program test authority at Refugio. Channel 279C1 can be reallotted at Refugio at Petitioners' proposed site, 33.8 kilometers (21 miles) southwest of the community. Since this proposal is within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the proposed allotments has been requested. The coordinates for Channel 279C2 at Refugio are 28–02–07 NL and 97–26–11 WL.

DATES: Comments must be filed on or before October 4, 2004, and reply comments on or before October 19, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Robert B. Jacobi, Esq., Cohn & Marks, 1920 N Street, NW., Suite 300, Washington, DC 20036, (Counsel to Amigo Radio, Ltd.) and Pamela C. Cooper, Esq., Davis, Wright & Tremaine, LLP, 1500 K Street, NW., Suite 450, Washington, DC 20005, (Counsel to Pacific Broadcasting of Missouri, LLC).

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 04–299, adopted August 10, 2004, and released August 12, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 279C1 at Refugio, and by removing Channel 279C1 at Sinton.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–19022 Filed 8–18–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2501; MB Docket No. 04–319, RM–10984]

Radio Broadcasting Services; Clinchco, VA and Coal Run, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comments on a petition filed by East Kentucky Broadcasting Corp. proposing the substitution of Channel 221C3 for Channel 276A at Coal Run, Kentucky, and the modification of Station WPKE–FM's license accordingly. To accommodate the upgrade, petitioner also proposes the substitution Channel 276A for Channel 221A at Clinchco, Virginia, and the modification of Station WDIC–FM's license accordingly. Channel 221C3 can be substituted at Coal Run in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.2 kilometers (11.9 miles) southeast to avoid a short-spacing to the licensed site for Station WZAQ(FM), Channel 222A, Louisa, Kentucky. The coordinates for Channel 221C3 at Coal Run are 37–23–57 NL and 82–23–42 WL. Additionally, Channel 276A can be substituted at Clinchco at Station WDIC–FM's presently licensed site. The coordinates for Channel 276A at Clinchco are 37–08–42 NL and 82–23–22 WL As an ''incompatible channel swap,'' in accordance with the provisions of Section 1.420(g)(3) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 221C3 at Coal Run, Kentucky, or require petitioner to demonstrate the existence of an equivalent class channel for the use of other interested parties.

DATES: Comments must be filed on or before October 4, 2004, reply comments on or before October 19, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard J. Barr, Esq., Womble, Carlyle, Sandridge Rice, PLLC, 1401 Eye Street, NW., Suite 700, Washington, DC 20005 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 04–319, adopted August 10, 2004, and released August 12, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Channel 221C3 and by removing Channel 276A at Coal Run.

3. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Channel 276A and by removing Channel 221A at Clinchco.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–19025 Filed 8–18–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2498; MB Docket No. 04–316; RM–11047]

Radio Broadcasting Services; Morrison and Sparta, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Audio Division requests comment on a petition and amendment to petition filed by Clear Channel Broadcasting Licenses, Inc., licensee of Station WRKK-FM, Channel 288A, Sparta, Tennessee. Petitioner proposes to delete Channel 288A at Sparta, Tennessee, to allot Channel 287A at Morrison, Tennessee, and to modify the license of Station WRKK-FM accordingly. The coordinates for Channel 287A at Morrison are 35–37–27 North Latitude and 85–53–37 West Longitude. *See* **SUPPLEMENTARY INFORMATION** infra.

DATES: Comments must be filed on or before October 4, 2004, and reply comments on or before October 19, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner and counsel for Clear Channel Broadcasting Licenses, Inc., as follows: Gregory L. Masters, Evan S. Henschel, Wilen Rein & Fielding LLP, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rule Making, MB Docket No. 04–316, adopted August 10, 2004 and released August 12, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.*

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Morrison, Channel 287A and by removing Sparta, Channel 288A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–19026 Filed 8–18–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2499; MB Docket No. 04–317, RM–11004]

Radio Broadcasting Services; Center, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comments on two petitions filed by Team Broadcasting Company, Inc., and Charles Crawford, proposing the allotment of Channel 248A at Center, Texas, as the community's second local FM transmission service. Channel 248A can be allotted to Center in compliance with the Commission's minimum distance separation requirements with a

site restriction of 12.5 kilometers (7.8 miles) southeast to avoid a short-spacing to the proposed allotment site for Channel 247C2 at Longview, Texas. The coordinates for Channel 248A at Center are 31–42–51 North Latitude and 94–05–13 West Longitude.

DATES: Comments must be filed on or before October 4, 2004, reply comments on or before October 19, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark N. Lipp, Esq., Law Offices of Vinson & Elkins, L.L.P., The Willard Office Building, 1455 Pennsylvania Ave., NW., Washington, DC. 20004–1008, (Counsel for Team Broadcasting Co., Inc.); and Charles Crawford, 4553 Bordeaux Ave., Dallas, Texas 75205 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 04–317, adopted August 10, 2004, and released August 12, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 248A at Center.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–19028 Filed 8–18–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT57

Endangered and Threatened Wildlife and Plants; Reopening of the Public Comment Period and Notice of Public Hearings for the Proposed Designation of Critical Habitat for the Santa Ana Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that we are reopening a 30-day public comment period and holding public hearings on the proposed designation of critical habitat for the Santa Ana sucker (*Catostomus santaanae*). Comments previously submitted on the February 26, 2004, proposed rule (69 FR 8911) need not be resubmitted as they have been incorporated into the public record and will be fully considered in the final decision.

DATES: The public comment period for this proposed designation of critical habitat is now reopened, and we will accept comments and information until 5 p.m. PST on September 20, 2004.

The public hearings on the proposed designation will be held on September 9, 2004, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. in Pasadena, California.

ADDRESSES: The public hearings will be held at the Pasadena Hilton, 168 S. Los Robles Ave., Pasadena, California.

Written comments and materials may be submitted to us by one of the following methods:

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009.

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address, or fax your comments to (760) 431–9618.

3. You may send comments by electronic mail (e-mail) to *fw1sasu@r1.fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule for the Santa Ana sucker will be available for public inspection, by appointment, during normal business hours at the above address. Any comments received after the closing date may not be considered in the final decisions on this action. You may obtain copies of the proposed critical habitat designation by contacting the Carlsbad Fish and Wildlife Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone (760) 431–9440; facsimile (760) 431–9618).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We solicit comments or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning our proposed designation of critical habitat for the Santa Ana sucker. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of Santa Ana sucker habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(5) 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 rule by any one of several methods (*see* **ADDRESSES** section). Please submit Internet comments to *fw1sasu@r1.fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: Santa Ana Sucker Critical Habitat'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold 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 comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, 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.

Public Hearings

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearings. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearings, please contact the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** above). This notice is being published in the **Federal Register** to provide the public and interested parties with a minimum of 15 days' notification about the public hearings.

Persons needing reasonable accommodations in order to attend and participate in the public hearings should contact Patti Carroll at (503) 231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this proposal is available in alternative formats upon requests.

Background

On February 26, 2004, we concurrently published in the **Federal Register** a final rule and a proposed rule to designate critical habitat for the Santa Ana sucker (69 FR 8839; 69 FR 8911). In order to comply with the designation deadline established by the district court, we were unable to open a public comment period, hold a public hearing, or complete an economic analysis of the final rule. Please refer to the final rule (69 FR 8839) for a complete explanation of our reasons for dispensing with the notice and comment procedures generally required under the Administrative Procedure Act.

However, we fully recognize the value and importance of public input in developing a critical habitat designation for the Santa Ana sucker. Therefore, in order to allow members of the public an opportunity to comment on the critical habitat designation for the Santa Ana sucker, and to enable the Service to seek peer review of such designation, and to complete and circulate for public review an economic analysis of critical habitat designation, we published and solicited comment on a proposed rule (69 FR 8911) to designate critical habitat for the Santa Ana sucker on approximately 21,129 acres (ac) (8,550 hectares (ha)) of land in Los Angeles and San Bernardino counties. The original comment period on the proposed rule closed on April 26, 2004.

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to several requests for a public hearing from citizens concerned with the designation of critical habitat in the Angeles National Forest, we will conduct public hearings on the date and at the address described in the **DATES** and **ADDRESSES** sections above.

Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife office (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 12, 2004.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–18987 Filed 8–18–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT66

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Buena Vista Lake Shrew

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Buena Vista Lake shrew (*Sorex ornatus relictus*) (referred to here as the shrew) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 4,649 acres (ac) (1,881 hectares (ha)) occur within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in the Central Valley floor of Kern County, California.

DATES: We will accept comments from all interested parties until October 18, 2004. We will hold public hearings on Thursday, September 30, 2004 at the DoubleTree Hotel, 3100 Camino del Rio Court, Bakersfield, California. The public hearing will include two sessions: 1 p.m. until 3 p.m. and 6 p.m. until 8 p.m. Registration for the hearings will begin at 12:30 p.m. for the afternoon session and at 5:30 p.m. for the evening session.

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 by mail or hand delivery to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825.

2. You may send comments by electronic mail (e-mail) to *BVLS_pCH@fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing. In the event that our internet connection is not functional, please submit your

comments by the alternate methods mentioned above.

The comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California (telephone 916–414–6600).

FOR FURTHER INFORMATION CONTACT: Shannon Holbrook or Arnold Roessler, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605 Sacramento, California, (telephone 916–414–6600; facsimile 916–414–6712).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed rule are hereby solicited. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation.

(2) Specific information on the amount and distribution of shrew habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(5) 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 Internet comments to *BVLS_pCH@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: Buena Vista Lake shrew'' 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 Internet address *BVLS_pCH@fws.gov* will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Public Hearings

The Act provides for a public hearing on this proposal, if requested. Given the high likelihood of requests, we have scheduled a public hearing on Thursday, September 30, 2004 at the DoubleTree Hotel, 3100 Camino del Rio Court, Bakersfield. Anyone wishing to make oral comments for the record at the public hearing is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the hearing date.

Designation of Critical Habitat Provides Little Additional Protection to the Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 445 species or 36 percent of the 1,244 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United State Fish and Wildlife Service,* has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to Section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate

critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result of this consequence, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially imposed deadlines. This situation in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs associated with the critical habitat designation process include legal costs, the costs of preparation and publication of the designation, the analysis of the economic effects and the costs of requesting and responding to public comments, and, in some cases, the costs of compliance with National Environmental Policy Act. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and these associated costs directly reduce the scarce funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the Buena Vista Lake shrew (*Sorex ornatus relictus*), refer to the final listing rule published in the **Federal Register** on March 6, 2002 (67 FR 10101).

The shrew formerly occurred in wetlands around Buena Vista Lake, and presumably throughout the Tulare Basin (Grinnell 1932, 1933; Hall 1981; Williams and Kilburn 1984; Williams 1986; Service 1998). The animals were likely distributed throughout the swampy margins of Kern, Buena Vista, Goose, and Tulare Lakes. By the time the first shrews were collected and described, these lakes had already been drained and mostly cultivated with only sparse remnants of the original flora and fauna remaining (Grinnell 1932; Mercer and Morgan 1991; Griggs 1992; Service 1998).

Nearly the entire valley floor in the Tulare Basin is cultivated, and most of the lakes and marshes have been drained and cultivated (Williams 1986; Werschkull *et al.* 1992; Williams and Kilburn 1992; Williams and Harpster 2001). The shrew is now known from five isolated locations along an approximately 70-mile (mi) (113-kilometer (km)) stretch on the west side of the Tulare Basin. The five locations are the former Kern Lake Preserve (Kern Preserve) on the old Kern Lake bed, the Kern Fan recharge area, Cole Levee Ecological Preserve (Cole Levee), the Kern National Wildlife Refuge (Kern NWR) and the Goose Lake slough bottoms.

Over the last 20 years, a number of surveys have taken place in other freshwater marshes and moist riparian areas on private and public lands throughout the range of the subspecies and were all unsuccessful in capturing any shrews. For other previous surveys for the shrew, please refer to the final listing rule published in the **Federal Register** on March 6, 2002 (67 FR 10101).

In 2003, a survey was conducted by the California State University, Stanislaus Endangered Species Recovery Program (ESRP) for the Goose Lake Bottoms Wetland project. The five shrews captured on the sloughs and canals and in the inundation zone of Goose Lake during the 2003 survey were located within approximately 6.5 ac (2.6 ha) along the sloughs that consisted of emergent vegetation that includes an abundance of saltgrass, *Allenrolfea* and *Suaeda* (ESRP 2004). The study concluded that the preferred habitat of the shrew is along the margins of wet areas where emergent vegetation provides cover and foraging opportunities.

Previous Federal Actions

A final rule listing the shrew as endangered was published in the **Federal Register** on March 6, 2002 (67 FR 10101). Please refer to the final rule listing the shrew for information on previous Federal actions prior to March 6, 2002. On January 12, 2004, the United States District Court for the Eastern District of California issued a Memorandum Opinion and Order (*Kern County Farm Bureau* et al. v. *Anne Badgley, Regional Director of the United States Fish and Wildlife Service, Region 1* et al., CV F 02–5376 AWIDLB). The order required the Service to publish a proposed critical habitat determination for the shrew no later than July 12, 2004, and a final determination no later than January 12, 2005. On July 8, 2004, the court extended the deadline for submitting the proposed rule to the **Federal Register** to August 13, 2004.

Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. Under section 7 of the Act, Federal agencies must consult with us on activities they undertake, fund, or permit that may affect critical habitat and lead to its destruction or adverse modification. However, the Act prohibits unauthorized take of listed species and requires consultation for activities that may affect them, including habitat alterations, regardless of whether critical habitat has been designated. We have found that the designation of critical habitat provides little additional protection to most listed species.

To be included in a critical habitat designation, habitat must be either a specific area within the geographic area occupied by the species on which are found those physical or biological features essential to the conservation of the species (primary constituent

elements, as defined at 50 CFR 424.12(b)) and which may require special management considerations or protections, or be specific areas outside of the geographic area occupied by the species which are determined to be essential to the conservation of the species. Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. When we designate critical habitat, we may not have the information necessary to identify all areas that are essential for the conservation of the species. Nevertheless, we are required to designate those areas we consider to be essential, using the best information available to us. Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best available scientific and commercial data demonstrate that those areas are essential for the conservation needs of the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties or other entities that develop HCPs, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by section 7(a)(2) and section 9 of the Act, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we used the best scientific and commercial data available to determine areas that contain the physical and biological features that are essential for the conservation of the shrew. This included data and information contained in, but not limited to, the proposed and final rules listing the shrew (Service 2000, 2002), the Recovery Plan for Upland Species of the San Joaquin Valley, California (Service 1998), research and survey observations published in peer reviewed articles (Grinnell 1932, 1933; Hall 1981; Williams and Kilburn 1984; Williams 1986), habitat and wetland mapping and other data collected and reports submitted by biologists holding section 10(a)(1)(A) recovery permits, biological assessments provided to the Service through section 7 consultations, reports and documents that are on file in the Service's field office (Center for Conservation Biology 1990; Maldonado *et al.* 1998; ESRP 1999a; ESRP 2004), and personal discussions with experts inside and outside of the Service with extensive knowledge of the shrew and habitat in area. We then conducted site visits and visual habitat evaluation in areas known to have shrew, and in areas within the historical ranges that had potential to contain shrew habitat.

The proposed critical habitat units were delineated by creating rough areas for each unit by screen digitizing polygons (map units) using ArcView (Environmental Systems Research Institute, Inc.), a computer Geographic Information System (GIS) program. The polygons were created by overlaying current and historic species location points (CNDDB 2004), and mapped wetland habitats (California Department of Water Resources 1999) or other wetland location information, onto SPOT imagery (satellite aerial photography) (CNES/SPOT Image Corporation 1993–2000) and Digital Ortho-rectified Quarter Quadrangles (DOQQs) (USGS 1993–1998) for areas containing the shrew. We utilized GIS data derived from a variety of Federal, State, and local agencies, and from private organizations and individuals. To identify where essential habitat for the shrew occurs we evaluated the GIS habitat mapping and species occurrence information from the CNDDB (2004). We presumed occurrences identified in CNDDB to be extant unless there was affirmative documentation that an occurrence had been extirpated. We also relied on unpublished species occurrence data contained within our files including section 10(a)(1)(A) reports and biological assessments.

These polygons of identified habitat were further evaluated. Several factors were used to delineate the proposed critical habitat units from these land areas. We reviewed any information in the Recovery Plan for Upland Species of the San Joaquin Valley, California (Service 1998), or other peer reviewed literature or expert opinion for the shrew to determine if the designated areas would meet the species needs for conservation and that these areas contained the appropriate primary constituent elements for the species. Further refinement was done by using satellite imagery, watershed boundaries,

soil type coverages, vegetation/land cover data, and agricultural/urban land use data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, development, and other areas that are unlikely to contribute to the conservation of the shrew.

As stated earlier, the shrew occurs in habitats in and adjacent to riparian and wetland edge areas with a vegetation structure that provides cover, allowing for moist soils that support a diversity of terrestrial and aquatic insect prey. We have determined that all five of the known locations of shrew are essential to the conservation of the species (CNDDB 2003). These areas all contain wetland and/or riparian habitat and are located within the historical range of the shrew. The specific essential habitat is explained in greater detail below in the Unit Descriptions section.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific primary constituent elements required for the shrew are derived from the biological needs of the shrew as described in the Background section of this proposal and in the final listing rule.

Space for Individual and Population Growth and Normal Behavior

As described previously, shrew were recorded in association with perennial and intermittent wetland habitats along riparian corridors, marsh edges, and other palustrine (marsh type) habitats in the southern San Joaquin Valley of California. The shrew presumably occurred in the moist habitat surrounding wetland margins in the Kern, Buena Vista, Goose and Tulare lakes basins on the valley floor below 350 ft (107 m) elevation (Grinnell 1932, 1933; Hall 1981; Williams and Kilburn 1984; Williams 1986; Service 1998). With the draining and conversion of the majority of the shrew's natural habitat from wetland to agriculture and the channelization of riparian corridors for water conveyance structures, the vegetative communities associated with the shrew have become degraded and non-native species have replaced the plant species associated with the shrew (Grinnell 1932; Mercer and Morgan 1991; Griggs 1992; Service 1998). Current survey information has identified five areas where the shrew has been found (CNDDB 2004; Maldonado 1992; Williams and Harpster 2001; ESRP 2004). The five locations are the former Kern Lake Preserve (Kern Preserve) on the old Kern Lake bed, the Kern Fan recharge area, Cole Levee Ecological Preserve (Cole Levee), the Kern National Wildlife Refuge (Kern NWR) and the Goose Lake slough bottoms. The vegetative communities associated with these areas and with shrew occupancy are characterized by the presence of but is not limited to: Fremont cottonwood (*Populus fremontii*), willows, *Salix* spp.) *glasswort* (*Salicornia* sp.), wild-rye grass (*Elymus* sp.), and rush grass (*Juncus* sp.) and other emergent vegetation (Service 1998). Maldonado (1992) found shrews in areas of moist ground covered with leaf litter near other low-lying vegetation, branches, tree roots, and fallen logs, or in areas with cool, moist soil beneath dense mats of vegetation kept moist by its proximity to the water line. He described specific habitat features that would make them suitable for the shrew: (1) Dense vegetative cover; (2) a thick, three-dimensional understory layer of vegetation and felled logs, branches, and detritus/debris; (3) heavy understory of leaf litter with duff overlying soils; (4) proximity to suitable moisture; and (5) a year-round supply of invertebrate prey. Williams and Harpster (2001) concluded that the best habitat for the shrew was found in ''riparian and wetland communities with an abundance of leaf litter (humus) or dense herbaceous cover.'' They also determined that ''although moist soil in areas with an overstory of willows or cotton woods appears to be favored,'' they doubted that such overstory was essential. Based on changes in the native habitat composition and structure and information on habitat descriptions of where the shrew have been found, we include the moist vegetative communities surrounding permanent and semi-permanent wetlands in our description of shrew critical habitat because they are the habitat requirements needed by the shrew.

Food

The specific feeding and foraging habits of the shrew are not well known. In general, shrews primarily feed on insects and other animals, mostly invertebrates (Harris 1990, Williams 1991, Maldonado 1992). Food probably is not cached and stored, so the shrew must forage periodically day and night to maintain its high metabolic rate.

The vegetation communities described above provide a diversity of structural layers and plant species and likely contribute to the availability of prey for shrews. Therefore, conservation of the shrew should include consideration of the habitat needs of prey species, including structural and species diversity and seasonal availability. Shrew habitat must provide sufficient prey base and cover from which to hunt in an appropriate configuration and proximity to nesting sites. The shrew feeds indiscriminately on available larvae and adults of several species of aquatic and terrestrial insects. An abundance of invertebrates is associated with moist habitats, such as wetland edges, riparian habitat, edges of lakes, ponds, or drainages that possess a dense vegetative cover (Owen and Hoffmann 1983). Therefore, to be considered essential, critical habitat consists of a vegetative structure that contains suitable soil moisture capable of supporting a diversity of invertebrates so that there is a substantial food source to sustain occurrences of the shrew.

Water

Open water does not appear to be necessary for the survival of the shrew. The habitat where the shrew have been found contain areas with both open water and mesic environments (Maldonado 1992; Williams and Harpster 2001). The availability of water contributes to improved vegetation structure and diversity which improves cover availability. The presence of water also attracts potential prey species improving prey availability.

Reproduction and Rearing of Offspring

Little is known about the reproductive needs of the shrew. The breeding season begins in February or March and ends in May or June, but can be extended depending on habitat quality and available moisture (J. Maldonado, Pers Comm., 1998; Paul Collins, Santa Barbara Museum of Natural History, in litt. 2000). The edges of wetland or marshy habitat allow the shrew to provide hospitable environments and

have larger prey base to give birth and raise its young. The shrew's preference for dense vegetative understories also provides cover from predators. Dense vegetation also allows for the soil moisture necessary for a consistent supply of terrestrial and aquatic insect prey (Kirkland 1991; Ma and Talmage 2001, Freas 1990, Maldonado 1992, Maldonado *et al.*, 1998).

The areas proposed for designation as critical habitat for the shrew consist of habitat with the primary constituent elements that are essential for adult and juvenile shrews to maintain and sustain occurrences throughout their range. The PCE's below describe the habitat of units that are being designated as critical habitat. Special management, such as habitat rehabilitation efforts (*e.g.*, provision of an adequate and reliable water source and restoration of riparian habitat), may be necessary throughout the areas being proposed.

Primary Constituents for the Buena Vista Lake Shrew

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the shrew requires the following primary constituent elements:

(i) Riparian or wetland communities supporting a complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation; and

(ii) Suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semi-permanent water; and

(iii) A consistent and diverse supply of prey.

The requisite riparian and wetland habitat is essential for the shrew by providing space and cover necessary to sustain the entire life cycle needs of the shrew, as well as its invertebrate prey. The shrew is preyed upon by many large vertebrate carnivores as well as avian predators. Therefore, a dense vegetative structure provides the cover or shelter essential for evading predators as well as serving as habitat for breeding and reproduction, and allows for the protection and rearing of offspring and the growth of adult shrews.

Criteria Used To Identify Critical Habitat

For the eventual delisting of the shrew, it is necessary to conserve sufficient population numbers to ensure that it can be self-sustaining. The five units proposed to be designated are determined to be essential for the conservation of the species because they contain a variety of habitats. Protecting a variety of habitats and conditions that contain the PCE's will allow the shrew to be self-sustaining because it will increase the ability of the shrew to survive stochastic environmental (*e.g.*, fire), natural (*e.g.*, predators), demographic (*e.g.*, low recruitment), or genetic (*e.g.*, inbreeding) events, therefore lowering the probability of extinction. Suitable habitat within the historic range is extremely limited and remaining habitats are vulnerable to both anthropogenic and natural threats because so few extant occurrences of the shrew exist, and the number of individuals at each location is estimated to be low. Also, these areas provide habitats essential for the maintenance and growth of self-sustaining populations and metapopulations (a set of local populations where typically migration from one local population to other areas containing suitable habitat is possible) of shrews throughout its range. Therefore, these areas are essential to the conservation of the shrew.

We are proposing to designate critical habitat in five units that we have determined are essential to the conservation of the shrew. In our development of critical habitat for the shrew, we used the following methods. All of the units have the primary constituent element described above.

When determining critical habitat boundaries, we made every effort to exclude all developed areas, such as towns, housing developments, and other lands unlikely to contain the primary constituent elements essential for shrew conservation. Our mapping units exclude any developed lands, such as lands supporting outbuildings, paddocks, roads, paved areas, lawns, and other lands unlikely to contain the primary constituent elements.

In summary, we are proposing to designate five critical habitat units within the known geographical area occupied by the species. The primary constituent elements are present and the shrew is extant in all units. Additional areas outside of the geographic area currently known to be occupied by the shrew were evaluated to determine if they are essential to the conservation of the shrew and should be included in the proposed critical habitat. Based upon our evaluation of available information which included the Recovery Plan, survey data, and historical records, we do not find any areas outside of the known geographical area occupied by the shrew to be essential to the conservation of the species at this time.

Special Management Considerations or Protections

Special management considerations or protections may be needed to maintain the physical and biological features as well as the primary constituent elements that are essential for the conservation of the shrew within designated critical habitat. The term ''special management considerations or protection'' originates in section 3(5)(A) of the Act under the definition of critical habitat. We believe that the proposed critical habitat units may require the special management considerations or protections due to the threats identified below.

The majority of locations supporting the shrew are on private land, and are subject to a change in water supply that maintains the current habitat. Elevated concentrations of selenium also represent a serious environmental threat to the species (Service 2002). High levels of selenium have been measured in recharge and evaporation ponds adjacent to areas where the shrew occurs (California Department of Water Resources in litt. 1997). Potential dietary selenium concentrations, from sampled aquatic insects, are within ranges toxic to small mammals (Olson 1986, Skorupa *et al.* 1996), and could include, but may not be limited to, reduced reproductive output or premature death (Eisler 1985, Skorupa *et al.* 1996). The shrew also faces high risks of extinction from random catastrophic events (*e.g.* floods, drought, and inbreeding) (Service 1998). These threats and others mentioned above would render the habitat less suitable for the shrew, and special management may be needed to address them.

Proposed Critical Habitat Designation

We are proposing 5 units as critical habitat for the shrew. These 5 critical habitat units described below constitute our best assessment at this time of the areas essential for the conservation of the shrew. The 5 units proposed as critical habitat for the shrew are:

(1) Kern National Wildlife Refuge; (2) Goose Lake; (3) Kern Fan Recharge Area; (4) Coles Levee; and, (5) Kern Lake.

The approximate area encompassed within each proposed critical habitat unit is shown in Table 1.

TABLE 1.—CRITICAL HABITAT UNITS PROPOSED FOR THE BUENA VISTA LAKE SHREW

[Area estimates reflect all lands within proposed critical habitat unit boundaries, not just the areas supporting primary constituent elements.]

Unit	Federal		State		Local agencies		Private		Total	
	ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
1. Kern National Wildlife Refuge ..	387	157	.....	.....	.....	.....	.....	.....	387	157
2. Goose Lake	.....	.....	.....	.....	.....	.....	1,277	517	1,277	517
3. Kern Fan Recharge Area	.....	.....	.....	.....	2,682	1,085	.....	.....	2,682	1,085
4. Coles Levee	.....	.....	.....	.....	.....	.....	214	87	214	87
5. Kern Lake	.....	.....	.....	.....	.....	.....	90	36	90	36
Grand Total	387	157	0	0	2,682	1,085	1,581	640	4,649	1,881

Although we are aware that less than ten percent of Federal lands occur within these boundaries, the majority of these areas proposed for critical habitat designation occur on privately owned land.

The areas essential for the shrew include areas throughout the species' range in California and includes areas representative of all habitat types where the species is found, so as to better ensure the long term survival of the species. Below are brief descriptions of all the proposed units and the reasons why they are essential for the conservation of the shrew.

Unit 1: Kern National Wildlife Refuge (Kern NWR) Unit

The Kern NWR Unit is in northwestern Kern County. The Kern NWR consists of two sub-units totaling approximately 387 ac (157 ha) (unit 1a, 274 ac (111 ha); unit 1b, 66 ac (27 ha); unit 1c, 47 ac (19 ha)). Shrew habitat in this unit receives its soil moisture regime from the California Aqueduct. There are known occurrences at two locations within the refuge. One of these areas has standing water from September 1 through approximately April 15. After that time, the trees in the area may receive irrigation water so the area may possibly remain damp through May. This area is dry for approximately 3 months during the summer. The second area of known occurrences has standing water from the second week of August through June into early July and is only dry for a short time during the summer. Two other areas where shrew occurrences are likely within the refuge are the Poso Creek Channel, which maintains moisture from August to June and a unit in the northeastern portion of the refuge that is wet for approximately 10 months of the year (Dave Hardt pers.comm.). The Kern NWR has not completed a Comprehensive Conservation Plan (CCP) for the refuge. A draft plan is scheduled to be available to the public and a final CCP completed prior to October, 2004. Once the draft CCP is available to the public, an internal section 7 review will take place and an evaluation of effects of the plan on the shrew will be determined.

Kern NWR has 1,102 acres of wetland communities on the approximately 10,618 acre refuge. Much of this wetland acreage is seasonally flooded. Dominant plants included bulrushes (*Scirpus* sp.), cattails (*Typha* sp.), rushes (*Juncus* sp.), spike rush (*Heleocharis palustris*), and arrowhead (*Sagittaria longiloba*). Riparian areas next to creeks and sloughs comprised approximately 125 acres, less than 1 percent of the refuge. Fremont cottonwoods (*Populus fremontii*), and various species of willows (*Salix* spp.) are the dominant woody plants in riparian areas. Other plant communities on the Refuge that support shrews are Valley iodine bush scrub, dominated by iodine bush (*Allenrolfea occidentalis*), suaeda (*Suaeda* sp.), alkali heath (*Frankenia salina*), and salt-cedar scrub dominated by *Tamarix* sp. (salt cedar). Both of these communities occupy sites with moist, alkaline soils. Iodine bush scrub often has poorly drained soils, the first few inches of which are often dry during the long, hot season. This unit is essential to the conservation of the species because it represents one of five remaining areas known to support an extant population of the shrew that also contains the PCE's.

Unit 2: Goose Lake Unit

The Goose Lake Unit, consisting of 1,277 ac (517 ha) and located about 10 miles south of Kern NWR, is the historic lake bed of Goose Lake. The Goose Lake area consists of approximately 4,000 acres of former marshes and wetlands and over 4,000 acres of upland communities. Goose Lake is managed by the Semitropic Water District as a ground-water recharge basin. There are currently no conservation agreements covering this land. The Goose Lake Unit is found south of Kern National Wildlife Refuge in northwestern Kern County. Shrew habitat in this unit has experienced widespread losses due to the diversion of water for agricultural purposes. This unit is essential to the conservation of the species because it represents one of five remaining areas known to support an extant population of the shrew that also contains the PCE's.

Water from the California Aqueduct is transferred to the Goose Lake area in years of abundant water, where it is allowed to recharge the aquifer that is used for irrigated agriculture. Small, degraded examples of freshwater marsh and riparian communities still exist in the area of Goose Lake and Jerry Slough, which is a portion of historical Goose Slough, an overflow channel of the Kern River. Suitable habitat for shrews is found in the Goose Lake area (Germano and Tabor 1993).

Gooselake Holding Co., a partnership comprised of members of the Tracy family and Buttonwillow Land and Cattle Company, in cooperation with Ducks Unlimited (DU), Inc. and Semitropic Water Storage District (Semitropic WSD), is proposing to create and restore habitat for waterfowl in the project area, and restoration activities are currently planned for the area and funded through grants under the North American Wetlands Conservation Act (NAWCA). This project will enhance existing sloughs and create new water delivery conveyance systems to provide a more efficient and permanent water supply to existing wetlands on the two properties. The wetlands within the project site generally lie within a trough on the southeastern shores of historic Goose Lake. A water conveyance system will provide wetland managers with a more dependable water supply to existing wetland basins and will help to convey excess agricultural field run-off water to the eastern portion of Goose Lake during flood events or periods of excess run-off water discharges. The current water regime for the Goose Lake area is driven by supplies from agricultural activity southeast of Goose Lake, where the

water is mostly from wells. Most of the water supplied to the wetlands located on the eastern portion of Goose Lake comes from tail water generated from this agriculture, but in some years, well water is occasionally added into the canal system and delivered to the wetlands.

In the Southwest part of the Lake, Semitropic WSD has a spillway which is occasionally used in times of flooding. In the northwestern portion of the lake, the district periodically floods wetlands for duck hunting. Currently, much floodwater is lost to the district. Through an agreement being prepared between Semitropic WSD and Gooselake Holding Company, floodwater will be captured and stored on his property from March through April (or May). Later these waters will be pumped into the Semitropic WSD system and delivered to their customers. In exchange for this storage, the district will partially subsidize the landowner's water cost for his wetlands. The result of this will be a significant increase in the duration and area of wetlands flooded each year.

Many of the ditches on the property east of Gooselake are in need of repair. The project will repair much of the water delivery system, allowing the landowner to improve water conveyance. Enhancements proposed at Goose Lake would substantially increase the quantity and quality of shrew habitat on the site. The principle periods that water will be conveyed through the perimeter sloughs will be during the agricultural irrigation season (approximately June through November) and during stochastic flooding events between November and July. It is possible, depending on flows in Jerry Slough caused by the above sources, that water might be conveyed through the perimeter sloughs during any time of the year. Wetland basins will be managed to provide optimal habitat conditions for migrating and wintering waterfowl. This involves flooding seasonal and semi-permanent wetland basins beginning in September and maintaining this wetland habitat through March.

Dominant vegetation along the slough channels includes frankenia (Frankenia), iodine bush, and seepweed (Suaeda). The northern portion of the unit consists of scattered mature Allenrolfea shrubs in an area that has relatively moist soils. The southern portion of the unit is characterized by a dense mat of saltgrass (Distichilis) and clumps of Allenrolfea and Suaeda. A portion of the unit currently exhibits inundation and saturation during the winter months. Dominant vegetation in these areas includes cattails, bulrushes, Juncus sp., and saltgrass.

Approximately 6.5 acres of potential shrew habitat located along the Goose Lake sloughs were surveyed in January 2004 (ESRP 2004). Five shrews were captured during the survey effort with the greatest distance between capture sites being 1.6 miles, indicating that shrews are widely distributed on the site.

Unit 3: Kern Fan Water Recharge Unit

The Kern Fan Water Recharge Area Unit consists of 2,687 ac (1,088 ha). The unit is within the Kern Fan Water Recharge Area (2,800 ac (1,133 ha)), which is owned by the City of Bakersfield. The unit is located adjacent to the Kern Water Bank, a 19,000 ac (7,689 ha) area owned by the Kern Water Bank Authority. Portions of the recharge area are flooded sporadically, forming fragmented wetland communities throughout the area.

Narrow strips of riparian communities exist on both sides of the Kern River. The plant communities of the Kern Fan Water Recharge Area include a mixture of Valley saltbush scrub, Great Valley mesquite shrub, and some remnant riparian areas. The Valley saltbush scrub is characterized by the presence of Valley saltbush (*Atriplex polycarpa*), alkali heath, goldenbush (*Isocoma acradenia*), and common spikeweed (*Hemizonia pungens*). The soils in this area are sandy to loamy with no surface alkalinity. This community seems to intergrade with the Great Valley mesquite scrub plant community. This is an open scrubland dominated by mesquite (*Prosopis juliflora*), Valley saltbush, and goldenbush. The soils also are sandy loams of alluvial origin. Remnant riparian areas are found throughout the water bank area, but are mainly located near the main channel of the Kern River and are dominated by Fremont cottonwood, willow species (*Salix* spp.), stinging nettle (*Urtica dioica*), creeping wild rye (*Leymus triticoides*), mulefat (*Baccharis salicifolia*), and narrow-leaved milkweed (*Asclepias fascicularis*).

Dominant species found in the trapping locations included Fremont cottonwood, stinging nettle, creeping wild rye, and salt grass. The areas under the cottonwoods are normally thick with leaf litter or with creeping wild rye, which tends to grow in thick mats. Some low-lying land has little vegetation and mostly bare soil, whereas some of the higher sites contained lush patches of creeping wild rye.

Willow species, stinging nettles, and a thick mat of creeping wild rye dominate the location of the captured shrews. This site had no standing water at the time of the capture within 100m of the location where the shrews were caught. Water diversion projects are the greatest threats to shrews within this unit. This unit is essential to the conservation of the species because it represents one of five remaining areas known to support an extant population of the shrew that also contains the PCE's. The unit is adjacent to, but not included within, the Kern Water Bank Habitat Conservation Plan/Natural Community Conservation Plan (Kern Water Bank HCP/NCCP) permit area (Kern Water Bank Authority 1997).

Unit 4: Coles Levee Unit

The Coles Levee Unit is approximately 214 ac (87 ha) in Kern County, owned by Aera Energy. The area was established as a mitigation bank in 1992, in an agreement between Atlantic Richfield Company (ARCO) and California Department of Fish and Game. The area serves as a mitigation bank to compensate for take of habitats for listed upland species. The site is mostly highly degraded upland saltbush and mequite scrub, and interlaces with slough channels for the historical Kern River fan where it entered Buena Vista Lake from the northeast. Most slough channels are dry except in times of heavy flooding, every several years. The area contains approximately 2 mi (3.2 km) of much degraded riparian communities along the Kern River.

Located in the unit is a human-made pond that was formed less than 5 years ago. Water from the adjacent oil fields is constantly being pumped into the basin. Vegetation includes bulrushes, stinging nettle, mulefat, salt grass, quailbush (*Atriplex lentiformis*), and poison hemlock (*Conium maculatum*). There are a few willows and Fremont cottonwoods scattered throughout the area. This site runs parallel to the Kern River bed.

This unit is essential to the conservation of the species because it represents one of five remaining areas known to support an extant population of the shrew that also contains the PCE's. An HCP was issued for the Coles Levee Ecological Preserve Area. The HCP permit expired when ARCO sold the property to the current owner and the permit was not transferred.

Unit 5: Kern Lake Unit

The Kern Lake Unit is approximately 90 acres (36 ha) and is found in the southern portion of the San Joaquin Valley in southwestern Kern County, approximately 16 miles south of Bakersfield. This unit lies between Hwy 99 and Interstate 5, south of Herring

Road near the New Rim Ditch. The moisture regime for shrew habitat in this unit is maintained by agricultural runoff from the New Rim ditch. This unit is essential to the conservation of the species because it represents one of five remaining areas known to support an extant population of the shrew that also contains the PCE's. The Kern Lake area was formerly managed by the Nature Conservancy for the Boswell Corporation, and was once thought to contain the last remaining population of the shrew. This area does not have a conservation easement and is managed by the landowners. We are unaware of any plans to develop this site.

The Kern Lake Unit is situated at the edge of the historic Kern Lake. Since the advent of reclamation and development, the surrounding lands have seen intensive cattle and sheep ranching and, more recently, cotton and alfalfa farming. While Kern Lake is now only a dry lake bed, the unit's ''Gator Pond'' site and wet alkali meadows stand as unique reminders of their biological heritage.

A portion of the run-off from the surrounding hills travels through underground aquifers, surfacing as artesian springs at Gator Pond. The heavy clay soils support a distinctive assemblage of native species. An island of native vegetation situated among a sea of cotton fields, this Unit contains three ecologically significant natural communities: Freshwater marsh, alkali meadow, and iodine bush scrub. Gator Pond, in the sanctuary's eastern quarter, lies near the shoreline of the historic Kern Lake.

Shrews were discovered at the Kern Lake Unit in 1986 near a community of saltbushes and saltgrass. In 1988 and 1989, 25 shrews were captured in low-lying, riparian and/or wetland habitats with an overstory of cottonwoods and willows, abundant ground litter, and moist soil (Center for Conservation Biology 1990).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the shrew or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.,* Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat to the shrew. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal

agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat to the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would often result in jeopardy to the species concerned when the area of the proposed action is occupied by the species concerned.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by any Federal agency;

(3) Road construction and maintenance, right-of-way designation, and regulation funded or permitted by the Federal Highway Administration;

(4) Voluntary conservation measures by private landowners funded by the Natural Resources Conservation Service;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Licensing of construction of communication sites by the Federal Communications Commission; and,

(7) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency.

All lands proposed for designation as critical habitat are within the historical geographic area occupied by the species, and are likely to be used by the shrew whether for foraging, breeding, growth of juveniles, dispersal, migration, genetic exchange, or sheltering. We consider all lands included in this designation to be essential to the survival of the species. Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species. Therefore, we believe that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat.

Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (i) essential to the conservation of the species and (ii) which may require special management considerations and protection. Therefore, areas within the geographic area occupied by the species that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species that do not require special management or protection also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

We consider an existing, current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule, and adequate funding for implementing the management plan); and (3) the plan provides assurances that the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for monitoring and reporting progress, and is of a duration sufficient to substantially implement the plan and achieve the plan's goals and objectives).

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations, we use the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that we are considering proposing to designate as critical habitat, as well as for those areas that are formally proposed for designation as critical habitat. Lands we have found that do not meet the definition of critical habitat under section 3(5)(A), or have been excluded pursuant to section 4(b)(2), include those covered by the following types of plans if they provide assurances that the conservation measures they outline will be implemented and effective: (1) Legally operative HCPs that cover the species, (2) draft HCPs that cover the species and have undergone public review and comment (*i.e.*, pending HCPs), (3) Tribal conservation plans that cover the species, (4) State conservation plans that cover the species, and (5) National Wildlife Refuge System Comprehensive Conservation Plans.

Pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. We determined that the lands within the designation of critical habitat for the shrew are not owned or managed by the Department of Defense, there are currently no habitat conservation plans for the shrew, and the designation does not include any Tribal lands or trust resources.

The Coles Levee Ecological Preserve area was covered under a previous HCP; however, the permit has expired (see Coles Levee unit 4). In addition the permit did not cover the shrew. The area is currently owned by Aera Energy and serves as a mitigation bank to compensate for take of habitats for listed upland species. Coles Levee does have a recorded easement; however the easement does not provide any means for protection of the shrew. Should information become available regarding the protection of the lands within the unit, these lands may be excluded from

the designation if they meet our criteria identified above for exclusion.

The Kern Fan Water Recharge Area unit (see unit 5) is owned by the City of Bakersfield as a groundwater recharge zone. The unit is adjacent to but not included within the Kern Water Bank Habitat Conservation Plan/Natural Community Conservation Plan (Kern Water Bank HCP/NCCP) permit area (Kern Water Bank Authority 1997). The Kern Water Bank Authority has requested an expansion of the permit area for the currently approved HCP/NCCP but the expansion does not include the proposed critical habitat area. As a result, the Kern Fan Water Recharge Area unit would not be excluded in the final critical habitat designation unless the current land owners are able to provide assurances that conservation measures for the shrew will be implemented and effective.

An area on the Kern NWR is also included in this proposed designation (see units 2a and 2b). The Comprehensive Conservation Plan (CCP) for the Kern NWR has not been completed and has not gone through a section 7 consultation for activities which may affect the shrew. The draft CCP for the Kern and Pixley NWRs was released for public comment June, 2004 and a final CCP is scheduled for release by October, 2004. Should a final CCP be approved and the CCP be evaluated for effects to the shrew with a finding of no effect or not likely to adversely affect, the areas on the Kern NWR would be excluded in the final critical habitat designation, provided that there are adequate assurances that the conservation measures for the shrew in the CCP and the BO for the CCP will be implemented and effective.

Located about 10 miles south of Kern NWR is the historic lake bed of Goose Lake. The Goose Lake area consists of approximately 4,000 ac (1,618 ha) of former marshes and wetlands and over 4,000 ac (1,618 ha) of upland communities. The proposed Goose Lake unit consists of 2,605 ac (1,054 ha) within this area (see unit 2). Goose Lake is managed by the Semitropic Water District as a ground-water recharge basin. Currently there are no conservation agreements covering this land. However, the Gooselake Holding Co., in cooperation with DU Inc., Semitropic WSD, and the U.S. Fish and Wildlife Service through the Joint Venture Program is proposing the Goose Lake Wetland Project to create and restore habitat for waterfowl in the project area. The proposed project has not completed a section 7 consultation. Should the proposed project complete a section 7 consultation and be evaluated for effects to the shrew, the areas on the Goose Lake unit may be excluded in the final critical habitat designation provided assurances that the conservation measures for the species will be implemented and effective. The project includes restoration activities that are funded through grants under the NAWCA. This project will enhance existing sloughs and create new water delivery conveyance systems to provide a more efficient and permanent water supply to existing wetlands on the two properties.

We anticipate no impact to national security, Tribal lands, partnerships, or habitat conservation plans from this critical habitat designation. Based on the best available information, we believe that all of these units are essential for the conservation of this species. We have found no areas for which the benefits of exclusion outweigh the benefits of inclusion, and so have not proposed to exclude any areas from this proposed designation of critical habitat for the shrew. However, as noted previously, there are a number of pending conservation actions for proposed areas which, if they reach a sufficient state of completion, might warrant exclusion from the final designation.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the shrew is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://sacramento.fws.gov,* or by contacting the Sacramento Fish and Wildlife Office directly (see **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

We will hold a public hearing on Thursday, September 30, 2004 at the DoubleTree Hotel, 3100 Camino del Rio Court, Bakersfield, California. The public hearing will include two sessions: 1 p.m. until 3 p.m. and 6 p.m. until 8 p.m. Registration for the hearings will begin at 12:30 p.m. for the afternoon session and at 5:30 p.m. for the evening session. Further information on the public hearing can be obtained from our Web site at *http://sacramento.fws.gov,* or by contacting the Sacramento Fish and Wildlife Office directly (see **ADDRESSES** section).

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

This document has not been reviewed by the Office of Management and Budget (OMB), in accordance with Executive Order 12866. OMB makes the final determination of significance under Executive Order 12866. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. OMB may review this

document and the draft economic analysis, when the latter is available for public comment.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on section 7 consultations.

The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the shrew is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. A Small Government Agency Plan is not required. There are no state lands in the proposed designation. Although city and county lands comprise about 58 percent of the total proposed designation, this rule proposes to designate only 2,682 acres on local lands. Small governments will not be affected at all unless they proposed an action requiring Federal funds, permits or other authorization. Any such activity will require that the involved Federal agency ensure that the action is not likely to adversely modify or destroy designated critical habitat. However, as discussed above, Federal agencies are currently required to ensure that such activity is not likely to jeopardize the species, and no further regulatory impacts from this proposed designation of critical habitat are anticipated. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Federalism

In accordance with Executive Order 13132, the rule does not have significant federalism effects. A federalism

assessment is not required. In keeping with DOI policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the shrew imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the shrew.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of the shrew. Therefore, proposed designation of critical habitat for the shrew has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the Sacramento Fish and Wildlife Office staff.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(a), revise the entry for ''Shrew, Buena Vista Lake'' under ''MAMMALS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Shrew, Buena Vista Lake.	*Sorex ornatus relictus.*	U.S.A. (CA)	Entire	E	725	17.95(a)	NA
*	*	*	*	*	*		*

* * * * *

3. In § 17.95, amend paragraph (a)(2) by adding an entry for ''Buena Vista Lake shrew'' in the same alphabetical order as this species appears in the table in § 17.11 to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) Mammals.

* * * * *

Buena Vista Lake Shrew (*Sorex ornatus relictus*)

(1) Critical habitat units are depicted for Kern County, California, on the maps below.

(2) The primary constituent elements of critical habitat for the Buena Vista Lake shrew are the habitat components that provide:

(i) Riparian or wetland communities supporting a complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation; and

(ii) Suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semi-permanent water; and

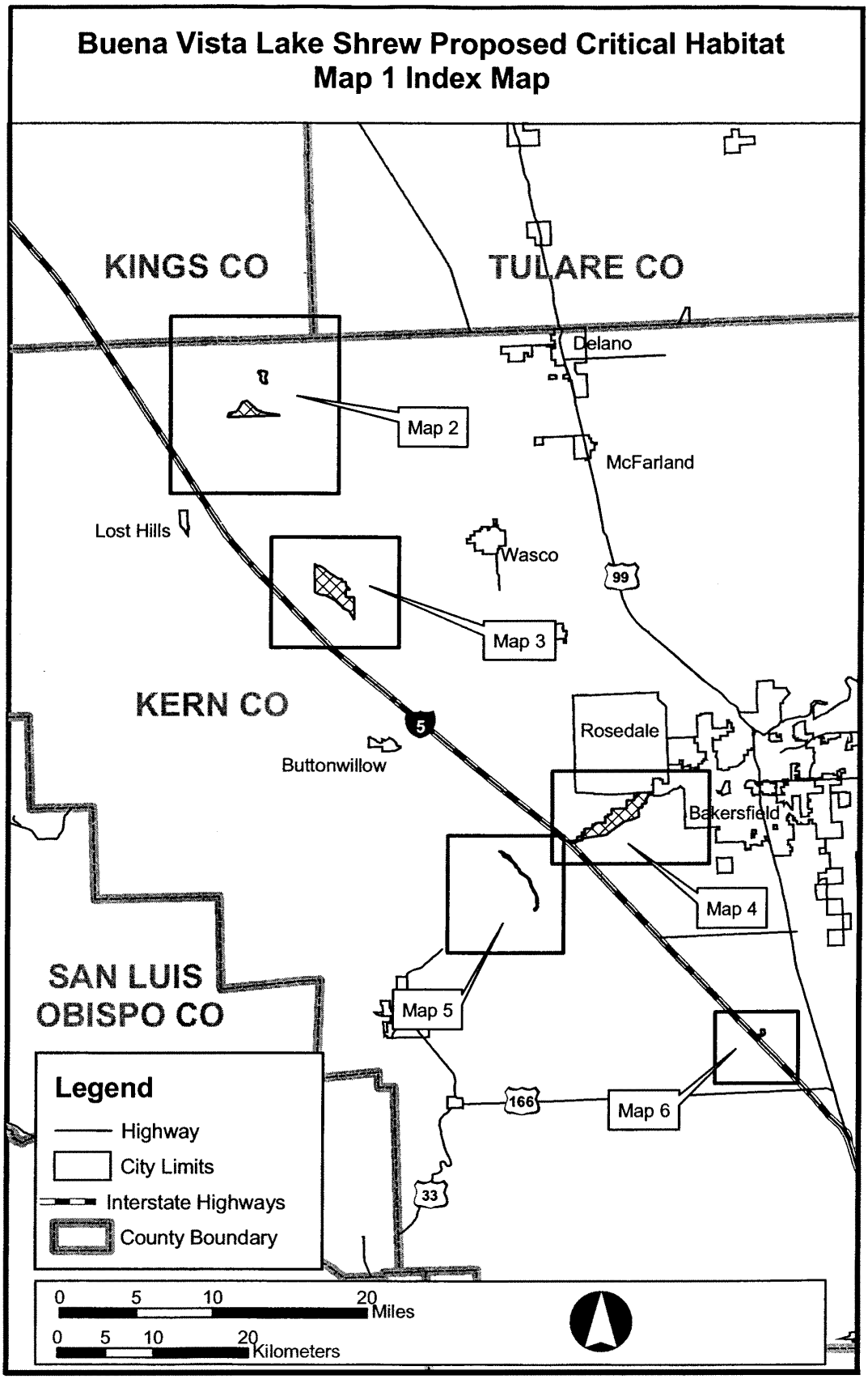
(iii) A consistent and diverse supply of prey.

(3) Critical habitat does not include existing features and structures, such as buildings, aqueducts, airports, roads, and other developed areas not containing one or more of the primary constituent elements.

(4) Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) **Note:** Map 1 (index map) follows:

BILLING CODE 4310–55–U



BILLING CODE 4310–55–C

(6) Unit 1a: Kern National Wildlife Refuge, Kern County, California.

(i) From USGS 1:24,000 quadrangle maps Hacienda Ranch, California, and

Lost Hills NE, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 261370, 3955645; 261384, 3955731; 261457, 3955912; 261502, 3955985; 261534, 3956044; 261643, 3955967; 261679, 3955949; 261775, 3955967; 261797, 3955981; 261784, 3956017; 261779, 3956062; 261802, 3956149; 261829, 3956249; 261815, 3956326; 261788, 3956417; 261784, 3956621; 261734, 3956675; 261711, 3956716; 261716, 3956762; 261756, 3956784; 261788, 3956825; 261793, 3956862; 261797, 3957157; 261806, 3957170; 261825, 3957175; 261943, 3957120; 261993, 3957107; 262179, 3957093; 262297, 3957089; 262315, 3957071; 262424, 3956857; 262469, 3956771; 262479, 3956739; 262479, 3956707; 262465, 3956685; 262460, 3956671; 262460, 3956644; 262465, 3956607; 262469, 3956566; 262479, 3956535; 262465, 3956494; 262451, 3956453; 262447, 3956417; 262447, 3956385; 262460, 3956367; 262488, 3956362; 262519, 3956385; 262551, 3956417; 262598, 3956482; 262561, 3956219; 262543, 3956086; 262536, 3956035; 262456, 3955981; 262429, 3955903; 262397, 3955881; 262347, 3955858; 262320, 3955844; 262265, 3955822; 262224, 3955799; 262197, 3955776; 262202, 3955763; 262220, 3955744; 262256, 3955717; 262288, 3955704; 262383, 3955694; 262438, 3955690; 262487, 3955684; 262486, 3955677; 262477, 3955610; 261938, 3955627; 261370, 3955645; returning to 261370, 3955645.

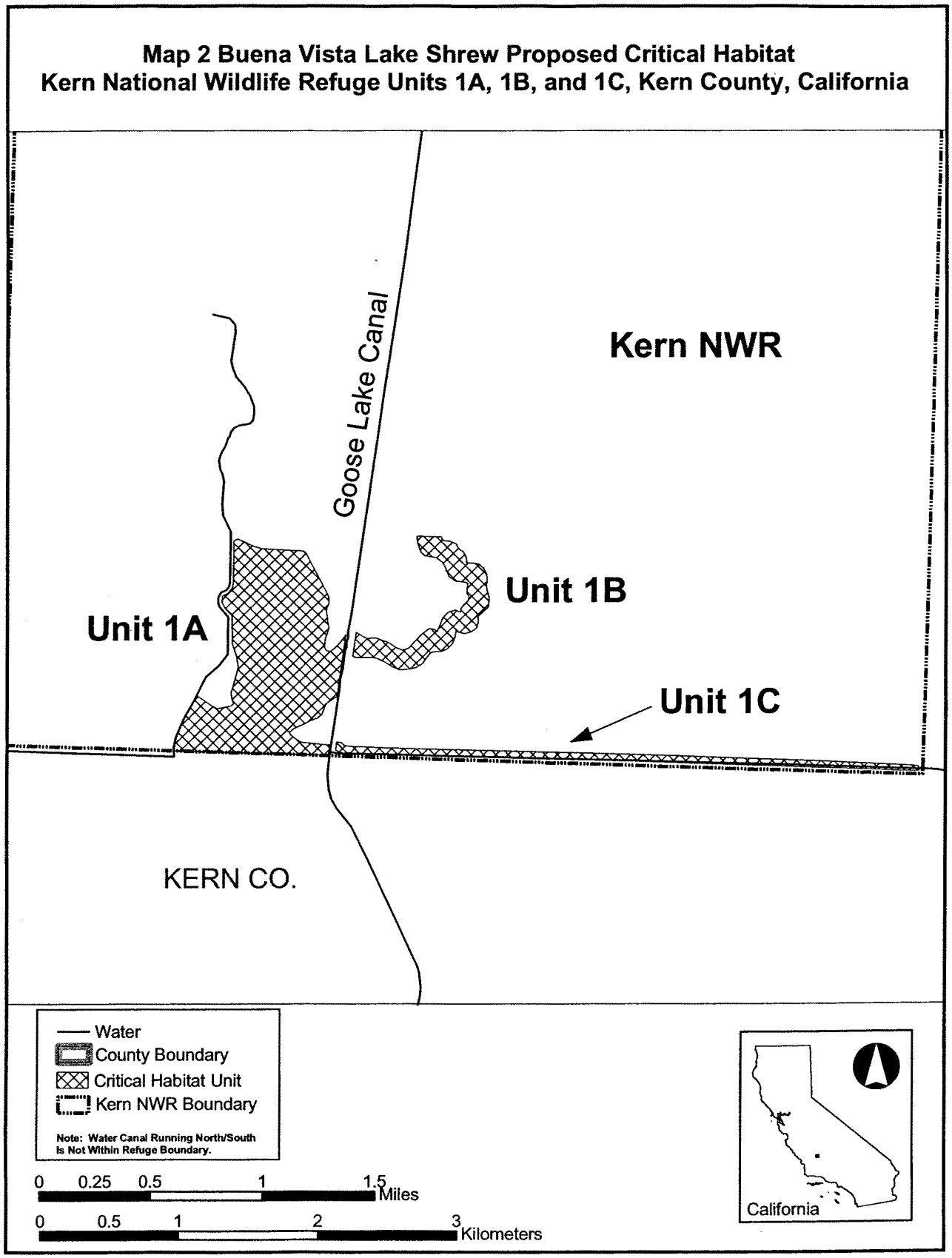
(7) Unit 1b: Kern National Wildlife Refuge, Kern County, California.

(i) From USGS 1:24,000 quadrangle map Lost Hills NW, California, and Lost Hills NE, California; land bounded by the following UTM 11 NAD 27 coordinates (E, N): 263287, 3957189; 263287, 3957174; 263304, 3957163; 263343, 3957160; 263390, 3957139; 263399, 3957115; 263411, 3957100; 263438, 3957086; 263459, 3957050; 263464, 3957023; 263464, 3957003; 263506, 3957003; 263553, 3956997; 263589, 3956964; 263607, 3956929; 263613, 3956887; 263607, 3956834; 263613, 3956801; 263627, 3956748; 263621, 3956686; 263571, 3956638; 263547, 3956617; 263550, 3956573; 263539, 3956532; 263500, 3956505; 263453, 3956490; 263402, 3956502; 263390, 3956511; 263382, 3956463; 263364, 3956416; 263328, 3956381; 263287, 3956363; 263236, 3956360; 263207, 3956354; 263180, 3956321; 263147, 3956271; 263097, 3956241; 263053, 3956232; 262988, 3956226; 262931, 3956250; 262878, 3956283; 262822, 3956309; 262786, 3956318; 262745, 3956315; 262688, 3956318; 262662, 3956321; 262650, 3956327; 262674, 3956499; 262715, 3956472; 262748, 3956455; 262783, 3956458; 262816, 3956458; 262854, 3956443; 262899, 3956428; 262961, 3956389; 263005, 3956372; 263053, 3956386; 263091, 3956431; 263142, 3956484; 263195, 3956526; 263239, 3956520; 263254, 3956502; 263272, 3956540; 263296, 3956603; 263334, 3956647; 263384, 3956662; 263423, 3956647; 263423, 3956674; 263450, 3956703; 263473, 3956727; 263482, 3956757; 263467, 3956780; 263467, 3956810; 263470, 3956831; 263473, 3956854; 263461, 3956860; 263426, 3956866; 263384, 3956869; 263340, 3956902; 263319, 3956949; 263310, 3956976; 263293, 3957006; 263275, 3957020; 263248, 3957041; 263207, 3957047; 263162, 3957056; 263136, 3957080; 263115, 3957136; 263109, 3957171; 263109, 3957195; 263287, 3957189; returning to 263287, 3957189.

(8) Unit 1c: Kern National Wildlife Refuge, Kern County, California.

(i) From USGS 1:24,000 quadrangle map Lost Hills NW, California, and Lost Hills NE, California; land bounded by the following UTM 11 NAD 27 coordinates (E, N): 262564, 3955705; 262575, 3955694; 262592, 3955680; 262623, 3955677; 262864, 3955666; 263540, 3955646; 264029, 3955635; 264946, 3955607; 266049, 3955565; 266680, 3955534; 266700, 3955531; 266714, 3955523; 266714, 3955495; 266588, 3955497; 266243, 3955511; 264214, 3955584; 262687, 3955626; 262572, 3955629; 262528, 3955647; 262530, 3955660; 262533, 3955685; 262536, 3955706; 262564, 3955705; returning to): 262564, 3955705.

(ii) **Note:** Map 2 (Unit 1a, 1b, and 1c) follows:

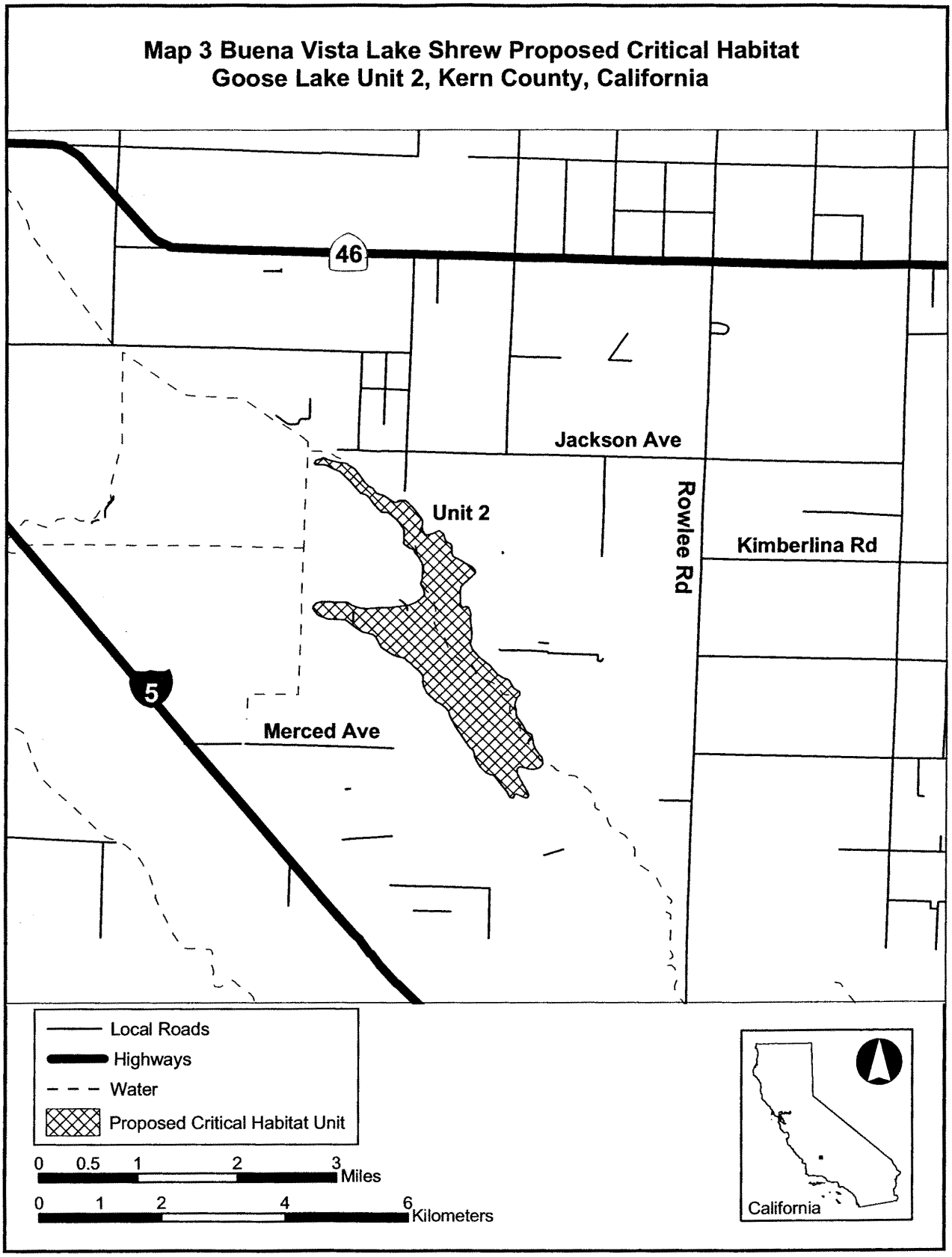


(9) Unit 2: Goose Lake, Kern County, California.

(i) From USGS 1:24,000 quadrangle map Semitropic, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 269741, 3939122;

269841, 3939090; 269931, 3939074; 270005, 3939064; 270065, 3939048; 270081, 3939030; 270117, 3939010; 270185, 3938968; 270273, 3938860; 270351, 3938749; 270403, 3938691; 270443, 3938671; 270484, 3938649; 270502, 3938621; 270544, 3938573; 270598, 3938547; 270660, 3938527; 270782, 3938449; 270824, 3938423; 270848, 3938423; 270878, 3938431; 270930, 3938449; 271005, 3938452; 271020, 3938439; 271064, 3938409; 271120, 3938353; 271186, 3938269; 271260, 3938173; 271286, 3938125; 271286, 3938079; 271278, 3938035; 271288, 3937959; 271318, 3937905; 271334, 3937887; 271392, 3937893; 271444, 3937905; 271556, 3937957; 271578, 3937939; 271623, 3937907; 271635, 3937885; 271639, 3937855; 271653, 3937819; 271667, 3937785; 271685, 3937767; 271727, 3937751; 271749, 3937735; 271761, 3937702; 271761, 3937658; 271763, 3937582; 271765, 3937570; 271777, 3937548; 271793, 3937526; 271843, 3937504; 271905, 3937470; 272025, 3937400; 272087, 3937372; 272123, 3937328; 272141, 3937312; 272143, 3937294; 272139, 3937274; 272125, 3937250; 272091, 3937212; 271995, 3937122; 271931, 3937068; 271911, 3937040; 271901, 3937004; 271901, 3936914; 271901, 3936848; 271903, 3936802; 271907, 3936750; 271915, 3936716; 271935, 3936700; 271969, 3936702; 272009, 3936706; 272037, 3936694; 272047, 3936674; 272061, 3936638; 272075, 3936580; 272067, 3936533; 272065, 3936457; 272083, 3936371; 272089, 3936307; 272085, 3936191; 272067, 3936127; 272067, 3936087; 272101, 3936007; 272181, 3935911; 272241, 3935853; 272379, 3935749; 272429, 3935687; 272504, 3935603; 272525, 3935587; 272573, 3935555; 272625, 3935533; 272669, 3935517; 272703, 3935479; 272729, 3935427; 272763, 3935380; 272810, 3935344; 272858, 3935316; 272864, 3935290; 272860, 3935258; 272822, 3935212; 272790, 3935148; 272788, 3935086; 272808, 3935024; 272802, 3934974; 272814, 3934916; 272882, 3934818; 272920, 3934764; 272964, 3934686; 272998, 3934652; 273032, 3934632; 273064, 3934608; 273084, 3934508; 273090, 3934444; 273126, 3934370; 273172, 3934302; 273216, 3934257; 273234, 3934231; 273242, 3934185; 273244, 3934139; 273228, 3934101; 273208, 3934081; 273158, 3934055; 273122, 3934045; 273076, 3934041; 273018, 3934049; 272956, 3934067; 272940, 3934071; 272890, 3934081; 272870, 3934079; 272850, 3934077; 272832, 3934055; 272824, 3934035; 272828, 3933995; 272832, 3933957; 272850, 3933923; 272876, 3933881; 272912, 3933819; 272922, 3933791; 272946, 3933753; 273012, 3933641; 273014, 3933611; 273004, 3933579; 272980, 3933575; 272946, 3933579; 272916, 3933593; 272898, 3933597; 272854, 3933621; 272818, 3933637; 272800, 3933637; 272788, 3933625; 272780, 3933601; 272763, 3933575; 272743, 3933571; 272705, 3933585; 272665, 3933669; 272445, 3933945; 272411, 3933951; 272379, 3933963; 272317, 3933995; 272227, 3934081; 272177, 3934169; 272139, 3934245; 272135, 3934294; 272115, 3934362; 272063, 3934402; 272011, 3934470; 271817, 3934758; 271739, 3934912; 271711, 3935000; 271663, 3935054; 271596, 3935112; 271514, 3935154; 271470, 3935200; 271364, 3935298; 271310, 3935413; 271296, 3935477; 271304, 3935523; 271304, 3935571; 271254, 3935639; 271156, 3935723; 271082, 3935797; 271040, 3935817; 271006, 3935859; 270976, 3935873; 270910, 3935887; 270824, 3935911; 270712, 3935979; 270624, 3936038; 270598, 3936089; 270550, 3936181; 270528, 3936215; 270488, 3936249; 270419, 3936275; 270327, 3936295; 270265, 3936325; 270199, 3936375; 270135, 3936421; 270089, 3936463; 270033, 3936493; 269891, 3936500; 269745, 3936506; 269603, 3936566; 269575, 3936586; 269523, 3936650; 269503, 3936684; 269513, 3936714; 269557, 3936768; 269633, 3936788; 269761, 3936784; 269835, 3936788; 270035, 3936782; 270071, 3936778; 270153, 3936728; 270285, 3936688; 270417, 3936680; 270550, 3936690; 270716, 3936690; 271054, 3936732; 271166, 3936772; 271242, 3936820; 271312, 3936896; 271324, 3936926; 271314, 3936962; 271300, 3937002; 271266, 3937064; 271260, 3937094; 271278, 3937156; 271290, 3937256; 271286, 3937368; 271278, 3937422; 271222, 3937530; 271164, 3937596; 271150, 3937632; 271136, 3937652; 271084, 3937668; 271038, 3937699; 270979, 3937746; 270981, 3937783; 270987, 3937969; 270960, 3938011; 270868, 3938143; 270728, 3938249; 270692, 3938259; 270628, 3938259; 270606, 3938273; 270500, 3938387; 270435, 3938483; 270401, 3938521; 270373, 3938543; 270315, 3938561; 270287, 3938569; 270113, 3938769; 269941, 3938928; 269843, 3938962; 269715, 3939032; 269585, 3939032; 269563, 3939032; 269543, 3939040; 269533, 3939054; 269533, 3939074; 269543, 3939096; 269567, 3939110; 269591, 3939120; 269621, 3939122; 269659, 3939144; 269685, 3939146; 269709, 3939138; 269741, 3939122; returning to 269741, 3939122.

(ii) **Note:** Map 3 (Unit 2) follows:

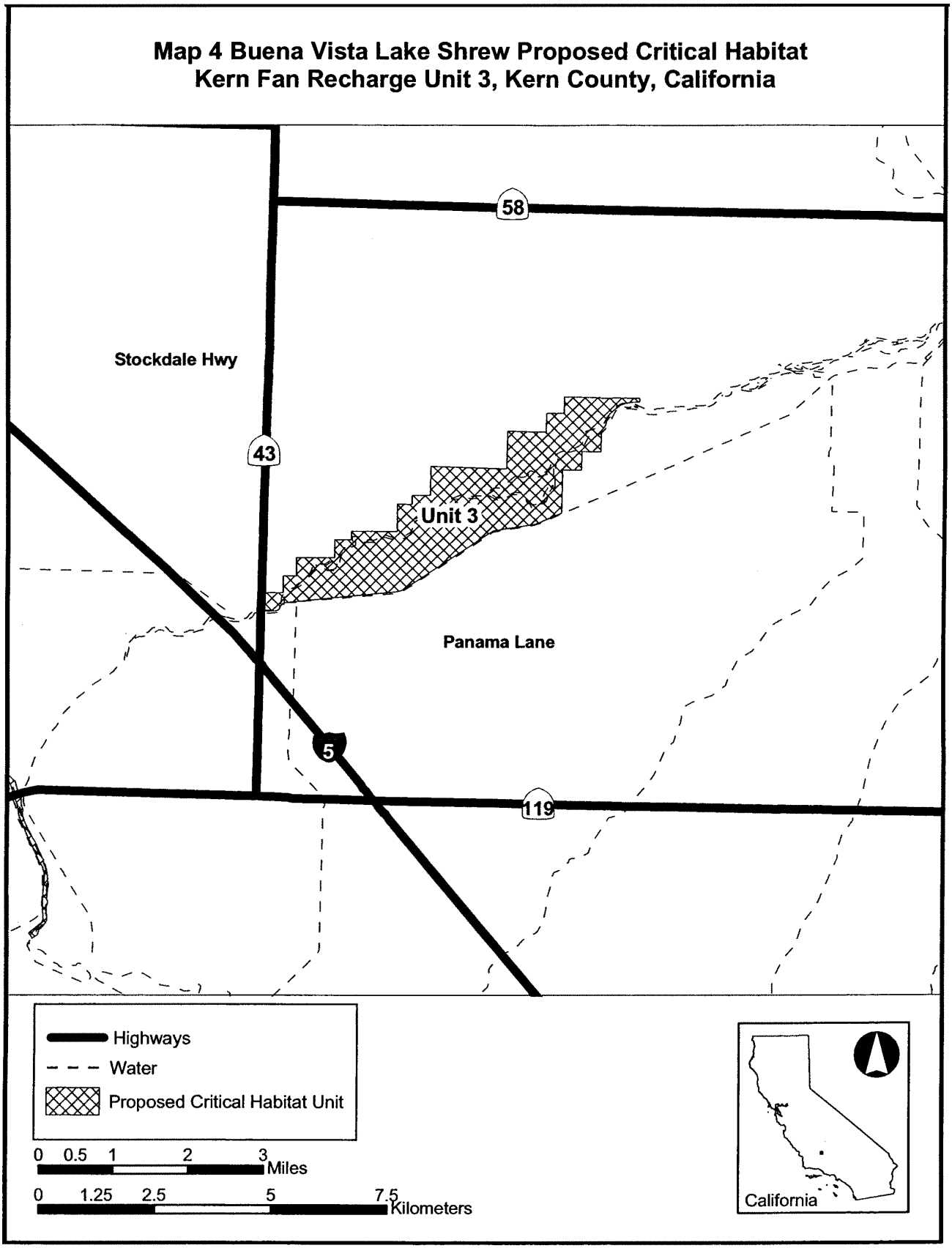


(10) Unit 3: Kern Fan Water Recharge Area, Kern County, California.

(i) From USGS 1:24,000 quadrangle maps Tupman, California, and Stevens, California, land bounded by the following UTM 11 NAD 27 coordinates

(E, N): 295516, 3908835; 295279, 3908837; 295290, 3909235; 295839, 3909235; 295839, 3909605; 296123, 3909598; 296123, 3910008; 296939, 3909995; 296945, 3910388; 297306, 3910388; 297306, 3910580; 298301, 3910571; 298305, 3911170; 298614, 3911161; 298617, 3911357; 299013, 3911357; 299021, 3911981; 300650, 3911934; 300666, 3912745; 301491, 3912726; 301496, 3913131; 301878, 3913131; 301885, 3913492; 302639, 3913467; 302689, 3913456; 302875, 3913452; 302953, 3913467; 303501, 3913456; 303499, 3913377; 303346, 3913377; 303182, 3913345; 303096, 3913310; 302950, 3913206; 302850, 3913113; 302800, 3913024; 302782, 3912942; 302764, 3912860; 302686, 3912771; 302671, 3912700; 302664, 3912300; 302261, 3912303; 302250, 3911900; 301850, 3911907; 301827, 3910972; 301270, 3910731; 301149, 3910709; 300352, 3910586; 298760, 3909525; 298405, 3909289; 298306, 3909259; 296918, 3909128; 295881, 3909023; 295832, 3908998; 295780, 3908939; 295750, 3908877; 295710, 3908847; 295653, 3908837; returning to 295516, 3908835.

(ii) **Note:** Map 4 (Unit 3) follows:

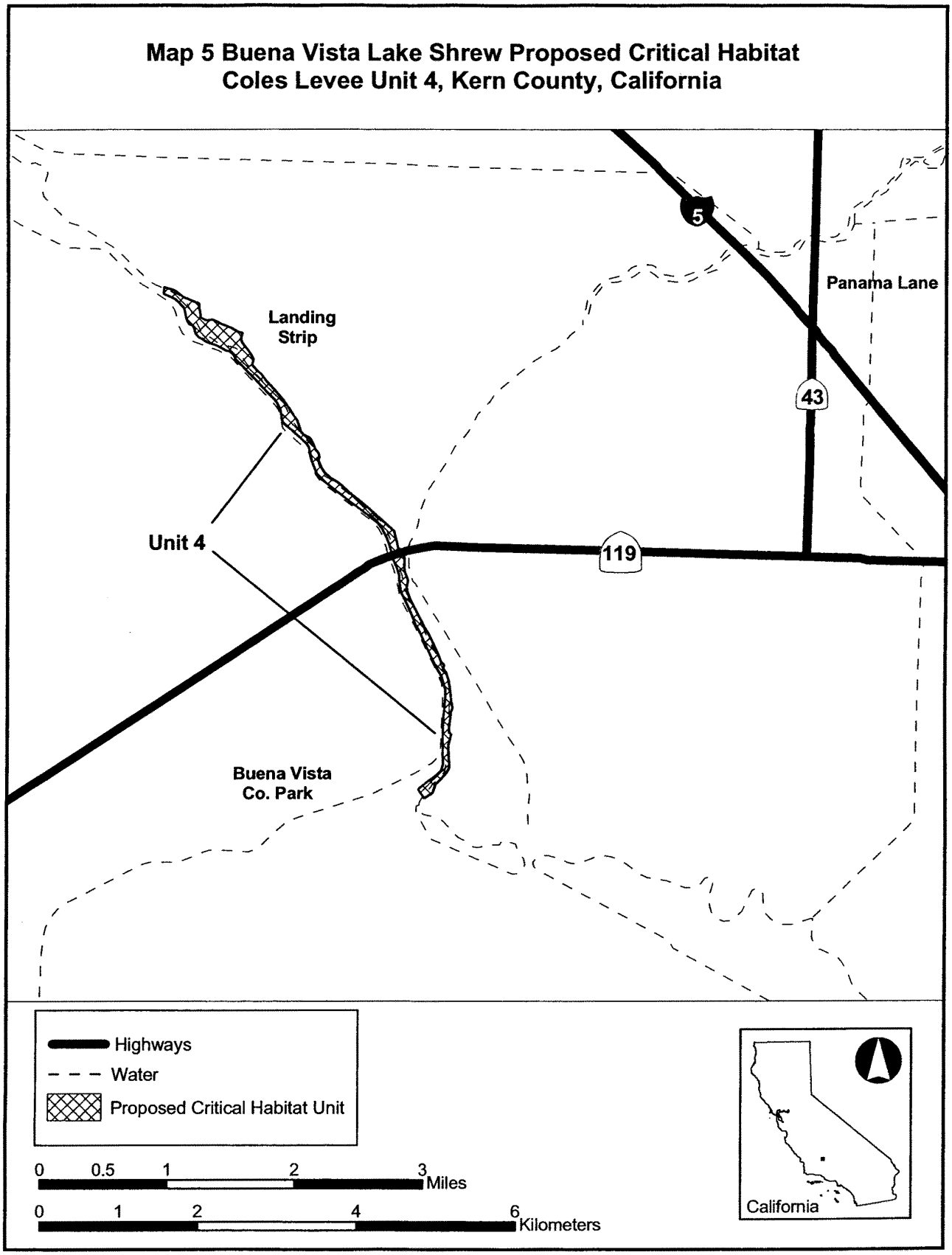


(11) Unit 4: Coles Levee Unit, Kern County, California.

(i) From USGS 1:24,000 quadrangle maps Tupman, and Buena Vista Lakebed, California, land bounded by the following UTM 11 NAD 27

coordinates (E, N): 287308, 3908077; 287165, 3908138; 287172, 3908222; 287285, 3908192; 287341, 3908153; 287414, 3908098; 287610, 3908020; 287614, 3907949; 287624, 3907898; 287631, 3907847; 287668, 3907818; 287716, 3907803; 287779, 3907811; 287843, 3907787; 287915, 3907750; 288008, 3907711; 288058, 3907689; 288114, 3907658; 288160, 3907643; 288138, 3907573; 288150, 3907533; 288182, 3907490; 288229, 3907431; 288272, 3907372; 288298, 3907314; 288284, 3907242; 288348, 3907166; 288396, 3907126; 288453, 3907045; 288530, 3906966; 288583, 3906909; 288667, 3906812; 288705, 3906757; 288744, 3906700; 288796, 3906619; 288848, 3906542; 288901, 3906392; 288938, 3906357; 288998, 3906330; 289020, 3906301; 289045, 3906261; 289081, 3906173; 289115, 3906128; 289131, 3906076; 289119, 3906028; 289135, 3906004; 289165, 3905928; 289197, 3905879; 289271, 3905813; 289358, 3905761; 289389, 3905735; 289480, 3905654; 289597, 3905561; 289758, 3905425; 289910, 3905291; 290046, 3905162; 290070, 3905143; 290115, 3904972; 290125, 3904923; 290185, 3904904; 290200, 3904868; 290206, 3904784; 290205, 3904694; 290207, 3904637; 290218, 3904594; 290234, 3904560; 290251, 3904514; 290244, 3904477; 290234, 3904437; 290242, 3904380; 290275, 3904275; 290324, 3904182; 290376, 3904078; 290418, 3903999; 290467, 3903903; 290499, 3903856; 290545, 3903769; 290575, 3903699; 290601, 3903641; 290624, 3903595; 290673, 3903473; 290708, 3903444; 290705, 3903422; 290695, 3903396; 290733, 3903335; 290771, 3903227; 290793, 3903070; 290795, 3903016; 290802, 3902968; 290815, 3902899; 290812, 3902870; 290794, 3902836; 290778, 3902637; 290775, 3902582; 290802, 3902553; 290785, 3902492; 290764, 3902406; 290768, 3902275; 290782, 3902151; 290776, 3902124; 290744, 3902068; 290668, 3901981; 290608, 3901920; 290572, 3901811; 290459, 3901742; 290454, 3901756; 290386, 3901852; 290407, 3901876; 290507, 3901957; 290601, 3902026; 290671, 3902088; 290699, 3902164; 290699, 3902230; 290693, 3902301; 290694, 3902410; 290690, 3902504; 290694, 3902638; 290701, 3902789; 290711, 3902878; 290722, 3903028; 290722, 3903129; 290696, 3903214; 290677, 3903290; 290619, 3903389; 290577, 3903475; 290495, 3903653; 290439, 3903768; 290401, 3903848; 290347, 3903947; 290298, 3904071; 290224, 3904237; 290169, 3904357; 290152, 3904432; 290141, 3904507; 290139, 3904575; 290113, 3904653; 290087, 3904717; 290060, 3904773; 290050, 3904836; 290030, 3904894; 290008, 3904975; 289979, 3905056; 289927, 3905163; 289868, 3905242; 289805, 3905291; 289745, 3905342; 289684, 3905386; 289617, 3905441; 289518, 3905517; 289397, 3905610; 289269, 3905708; 289176, 3905781; 289124, 3905822; 289088, 3905884; 289068, 3905932; 289055, 3905970; 289036, 3906012; 289029, 3906057; 289016, 3906107; 289006, 3906162; 288994, 3906200; 288973, 3906236; 288940, 3906273; 288835, 3906369; 288791, 3906415; 288729, 3906457; 288672, 3906513; 288656, 3906561; 288651, 3906608; 288641, 3906669; 288619, 3906723; 288598, 3906761; 288545, 3906827; 288415, 3906958; 288351, 3907026; 288255, 3907123; 288204, 3907179; 288155, 3907233; 288109, 3907278; 288080, 3907311; 288060, 3907340; 288028, 3907386; 287992, 3907412; 287960, 3907420; 287893, 3907455; 287829, 3907486; 287774, 3907509; 287709, 3907532; 287645, 3907569; 287613, 3907589; 287570, 3907640; 287558, 3907682; 287537, 3907740; 287491, 3907756; 287471, 3907781; 287449, 3907839; 287435, 3907900; 287419, 3907959; 287365, 3908021; returning to 287308, 3908077.

(ii) **Note:** Map 5 (Unit 4) follows:

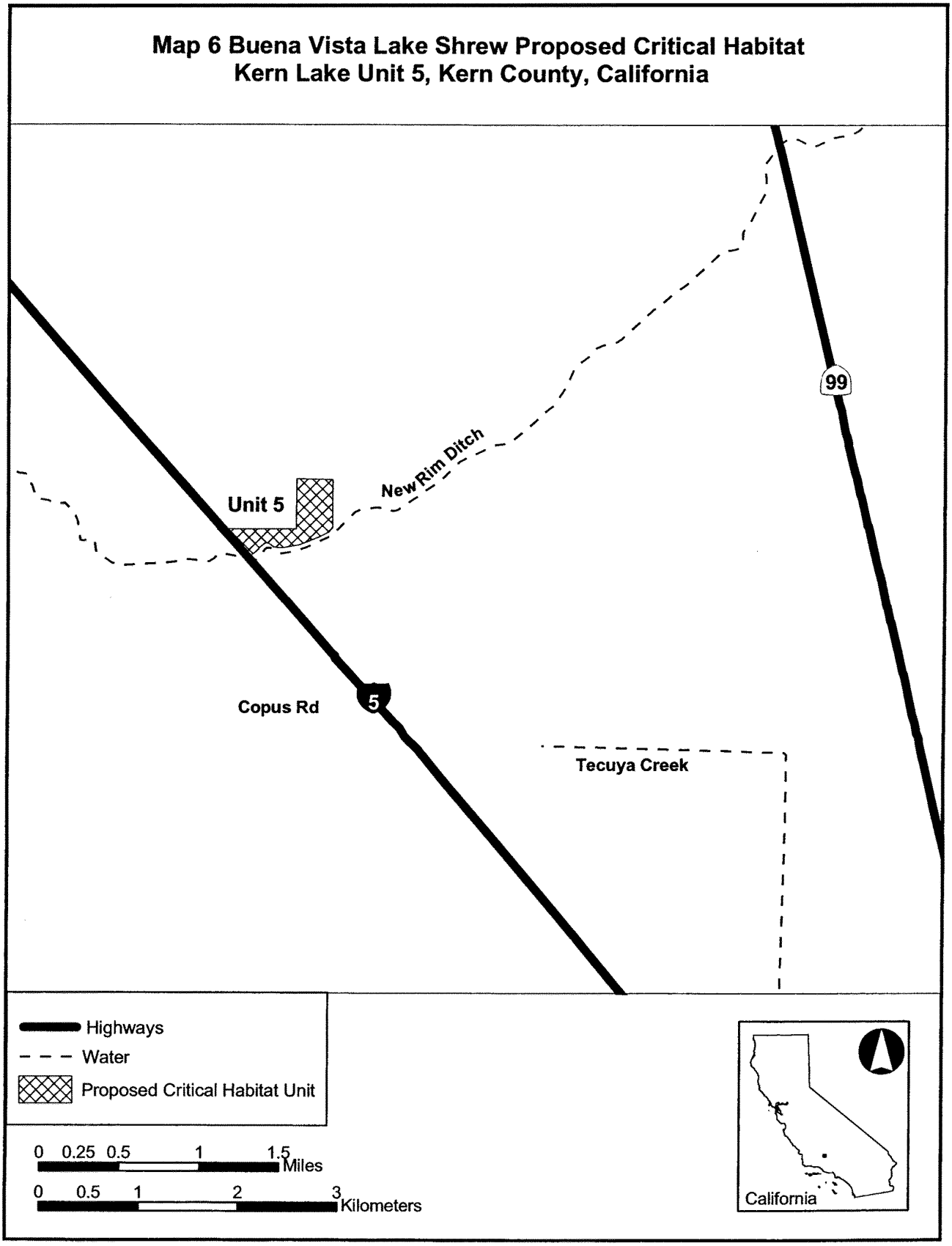


(12) Unit 5: Kern Lake, Kern County, California.

(i) From USGS 1:24,000 quadrangle map Coal Oil Canyon, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 312996, 3887027;

312953, 3887034; 312911, 3887047; 312886, 3887054; 312657, 3887298; 313456, 3887299; 313458, 3887806; 313823, 3887799; 313823, 3887314; 313786, 3887267; 313696, 3887224; 313618, 3887189; 313491, 3887139; 313363, 3887112; 313298, 3887107; 313231, 3887112; 313193, 3887142; 313168, 3887157; 313136, 3887152; 313091, 3887112; 313056, 3887072; returning to 312996, 3887027.

(ii) **Note:** Map 6 (Unit 5) follows:


Map 6 Buena Vista Lake Shrew Proposed Critical Habitat
Kern Lake Unit 5, Kern County, California
99
New Rim Ditch
Unit 5
Copus Rd
5
Tecuya Creek
Highways
Water
Proposed Critical Habitat Unit
0 0.25 0.5 1 1.5 Miles
0 0.5 1 2 3 Kilometers
California

* * * * *

Dated: August 13, 2004.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–18988 Filed 8–18–04; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 69, No. 160
Thursday, August 19, 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.

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service, Agriculture.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: September 13–14, 2004, 8:30 a.m. to 5 p.m. on the first day and 8 a.m. to 4 p.m. on the second day. Written requests to make oral presentations at the meeting must be received by the contact person identified herein at least three business days before the meeting.

ADDRESSES: Monticello Ballroom at the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005. Requests to make oral presentations at the meeting may be sent to the contact person at USDA, Office of the Deputy Secretary, 202 B Jamie L. Whitten Federal Building, 12th and Independence Avenues, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *mschechtman@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The sixth meeting of the AC21 has been scheduled for September 13–14, 2004. The AC21 consists of 18 members representing the biotechnology industry, the seed industry, international plant genetics research, farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, and academic researchers. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative serve as ''ex officio'' members. The AC21 at this meeting will continue its work to develop a report examining the impacts of agricultural biotechnology on American agriculture and USDA over the next 5 to 10 years, specifically: to review two draft introductory chapters prepared by USDA staff with input from specific AC21 members; to review the progress of two work groups on developing report chapters on potential issues to consider and on preparing for the future and to provide guidance to them in their work. The AC21 will also discuss the progress of a work group drafting a separate report for the committee's consideration on the issue of the proliferation of traceability and mandatory labeling regimes for biotechnology-derived products in other countries, the implications of those regimes, and what industry is doing to attempt to address those requirements for products shipped to those countries.

Background information regarding the work of the AC21 will be available on the USDA Web site at *http://www.usda.gov/agencies/biotech/ac21.html.* On September 13, 2004, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration.

The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720–4074, by fax at (202) 720–3191 or by E-mail at *dharmon@ars.usda.gov* at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, and telephone and fax numbers when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

Dated: August 10, 2004.

Rodney J. Brown,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 04–19030 Filed 8–18–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 04–058–1]

International Sanitary and Phytosanitary Standard-Setting Activities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with legislation implementing the results of the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade, we are informing the public of international standard-setting activities of the Office International des Epizooties, the Secretariat of the International Plant Protection Convention, and the North American Plant Protection Organization, and we are soliciting public comment on the standards to be considered.

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

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–058–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–058–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–058–1'' on the subject line.
- Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For general information on the topics covered in this notice, contact Mr. John Greifer, Director, Trade Support Team, International Services, APHIS, room 1132, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250; (202) 720–7677. For specific information regarding standard-setting activities of the Office International des Epizooties, contact Dr. Michael David, Chief, Sanitary International Standards Team, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737–1231; (301) 734–8093. For specific information regarding the standard-setting activities of the International Plant Protection Convention or the North American Plant Protection Organization, contact Mr. Narcy Klag, Program Director, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8469.

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established as the common international institutional framework for governing trade relations among its members in matters related to the Uruguay Round Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade. U.S. membership in the WTO was approved by Congress when it enacted the Uruguay Round Agreements Act (Pub. L. 103–465), which was signed into law by the President on December 8, 1994. The WTO Agreements, which established the WTO, entered into force with respect to the United States on January 1, 1995. The Uruguay Round Agreements Act amended title IV of the Trade Agreements Act of 1979 (19 U.S.C. 2531 *et seq.*). Section 491 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2578), requires the President to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization. The designated agency must inform the public by publishing an annual notice in the **Federal Register** that provides the following information: (1) The SPS standards under consideration or planned for consideration by the international standard-setting organization; and (2) for each SPS standard specified, a description of the consideration or planned consideration of that standard, a statement of whether the United States is participating or plans to participate in the consideration of that standard, the agenda for U.S. participation, if any, and the agency responsible for representing the United States with respect to that standard.

International standard'' is defined in 19 U.S.C. 2578b as any standard, guideline, or recommendation: (1) Adopted by the Codex Alimentarius Commission (Codex) regarding food safety; (2) developed under the auspices of the Office International des Epizooties (the World Organization for Animal Health, OIE) regarding animal health and zoonoses; (3) developed under the auspices of the Secretariat of the International Plant Protection Convention (IPPC) in cooperation with the North American Plant Protection Organization (NAPPO) regarding plant health; or (4) established by or developed under any other international organization agreed to by the member countries of the North American Free Trade Agreement (NAFTA) or the member countries of the WTO. The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the Secretary of Agriculture as the official responsible for informing the public of the SPS standard-setting activities of Codex, OIE, IPPC, and NAPPO. The United States Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) informs the public of Codex standard-setting activities and USDA's Animal and Plant Health Inspection Service (APHIS) informs the public of OIE, IPPC, and NAPPO standard-setting activities.

FSIS publishes an annual notice in the **Federal Register** to inform the public of SPS standard-setting activities for Codex. Codex was created in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization. It is the major international organization for encouraging international trade in food and protecting the health and economic interests of consumers.

APHIS is responsible for publishing an annual notice of OIE, IPPC, and NAPPO activities related to international standards for plant and animal health and representing the United States with respect to these standards. Following are descriptions of the OIE, IPPC, and NAPPO organizations and the standard-setting agenda for each of these organizations. We have described the agenda that each of these organizations will address at their annual general sessions, including standards that may be presented for adoption or consideration, as well as other initiatives that may be underway at the OIE, IPPC, and NAPPO.

The agendas for these meetings are subject to change, and the draft standards identified in this notice may not be sufficiently developed and ready for adoption as indicated. Also, while it is the intent of the United States to support adoption of international standards and to participate actively and fully in their development, it should be recognized that the U.S. position on a specific draft standard will depend on the acceptability of the final draft. Given the dynamic and interactive nature of the standard-setting process, we encourage any persons who are interested in the most current details about a specific draft standard or the U.S. position on a particular standard-setting issue, or in providing comments on a specific standard that may be under development, to contact APHIS. Contact information is provided at the beginning of this notice under **FOR FURTHER INFORMATION CONTACT.**

OIE Standard-Setting Activities

The OIE was established in Paris, France, in 1924 with the signing of an international agreement by 28 countries. It is currently composed of 167 member nations, each of which is represented by a delegate who, in most cases, is the chief veterinary officer of that country. The WTO has recognized the OIE as the international forum for setting animal health standards, reporting global animal disease events, and presenting guidelines and recommendations on sanitary measures relating to animal health.

The OIE facilitates intergovernmental cooperation to prevent the spread of contagious diseases in animals by sharing scientific research among its members. The major functions of the OIE are to collect and disseminate information on the distribution and occurrence of animal diseases and to ensure that science-based standards govern international trade in animals and animal products. The OIE aims to achieve this through the development and revision of international standards for diagnostic tests, vaccines, and the safe international trade of animals and animal products.

The OIE provides annual reports on the global distribution of animal diseases, recognizes the free status of member countries for certain diseases, categorizes animal diseases with respect

to their international significance, publishes bulletins on global disease status, and provides animal disease control guidelines to member countries. Various OIE commissions and working groups undertake the development and preparation of draft standards, which are then circulated to member countries for consultation (review and comment). Draft standards are revised accordingly and then presented to the OIE General Session, which meets annually every May, for review and adoption. Adoption, as a general rule, is based on consensus of the OIE membership.

The next OIE General Session is scheduled for May 21–28, 2005, in Paris, France. Currently, the Associate Administrator for APHIS is the official U.S. delegate to the OIE. The Associate Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption. Information about current and past OIE draft Code chapters may be found on the Internet at *http://www.aphis.usda.gov/vs/ncie/oie/* or by contacting Dr. Michael David (*see* **FOR FURTHER INFORMATION CONTACT** above).

OIE Code Chapters Up for Adoption

Existing Code chapters that may be revised and new chapters that may be drafted in preparation for the next General Session in 2005 include the following:

1. Avian Influenza

This chapter was recently redrafted, however it was not adopted. Country comments are being considered for a second draft that will be up for adoption in 2005.

2. Bovine Spongiform Encephalopathy (BSE)

This chapter is continuously being updated as new and additional information becomes available. For the next General Session, the Code Commission will propose a three tier category under which countries are placed with respect to BSE.

3. Animal Welfare

Various ad hoc groups will be continuing to draft chapters establishing international standards for the transportation of livestock. The chapters should be available for comment and review in the fall of 2004.

Code Commission Future Work Program

During the next few years, the OIE Code Commission is expected to address the following issues or establish ad hoc groups of experts to update and/or develop standards for the following issues:

1. Traceability

This would be a new OIE Code chapter which is intended to improve procedures for identifying animals and animal products and monitoring their movements.

2. Aujeszky's Disease

This disease is also known as pseudorabies in the United States. The OIE will convene an ad hoc group to draft surveillance guidelines for the disease.

3. Appendix on Bluetongue Surveillance

This would be a new OIE appendix which is intended to guide countries in the surveillance and monitoring of bluetongue.

4. Paratuberculosis

This would represent a complete redrafting of a current OIE Code chapter that has been determined to be outdated. A draft should be available for review within 1 or 2 years.

The Process

These chapters are drafted (or revised) by either the Code Commission or by ad hoc groups composed of technical experts nominated by the Director General of the OIE by virtue of their subject-area expertise. Once a new chapter is drafted or an existing one revised, the chapter is distributed to member countries for review and comment. The OIE attempts to provide proposed chapters by early September to allow member countries sufficient time for comment. Comments are due by mid-November of the same year. The draft standard is revised by the OIE Code Commission on the basis of relevant scientific comments received from member countries.

The United States (*i.e.*, USDA/APHIS) intends to review and, where appropriate, comment on all draft chapters and revisions once it receives them from the OIE. USDA/APHIS intends to distribute these drafts to the U.S. livestock and aquaculture industries, veterinary experts in various U.S. academic institutions, and other interested persons for review and comment. Additional information regarding these draft standards may be obtained by contacting Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above).

Generally, if a country has concerns with a particular draft standard, and supports those concerns with sound technical information, the pertinent OIE Code Commission will revise that standard accordingly and present the revised draft for adoption at the General Session in May. In the event that a country's concerns regarding a draft standard are not taken into account, that country may refuse to support the standard when it comes up for adoption at the General Session. However, each member country is obligated to review, comment, and make decisions regarding the adoption of standards strictly on their scientific merits.

Other OIE Topics

Every year at the General Session, two technical items are presented. For the May 2005 General Session, the following technical items will be presented:

1. The implication of genetic engineering for livestock and biotechnology products.

2. Implementation of OIE standards in the framework of the SPS Agreement.

The information in this notice includes all the information available to us on OIE standards currently under development or consideration. Information on OIE standards is available on the Internet at *http://www.oie.int.* Further, a formal agenda for the next General Session should be available to member countries by March 2005, and copies will be available to the public once the agenda is published. For the most current information on meeting times, working groups, and/or meeting agendas, including information on official U.S. participation in OIE activities, and U.S. positions on standards being considered, contact Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above). Those wishing to provide comments on any areas of work under the OIE may do so at any time by responding to this notice (see **ADDRESSES** above) or by providing comments through Dr. Michael David.

IPPC Standard-Setting Activities

The IPPC is a multilateral convention adopted in 1952 for the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control. Under the IPPC, the understanding of plant protection has been, and continues to be, broad, encompassing the protection of both cultivated and noncultivated plants from direct or indirect injury by plant pests. Activities addressed by the IPPC include the development and establishment of international plant health standards, the harmonization of phytosanitary activities through emerging standards, the facilitation of

the exchange of official and scientific information among countries, and the furnishing of technical assistance to developing countries that are signatories to the IPPC.

The IPPC is placed under the authority of the FAO, and the members of the Secretariat of the IPPC are appointed by the FAO. The IPPC is implemented by national plant protection organizations in cooperation with regional plant protection organizations, the Interim Commission on Phytosanitary Measures (ICPM), and the Secretariat of the IPPC. The United States plays a major role in all standard-setting activities under the IPPC and has representation on FAO's highest governing body, the FAO Conference.

The United States became a contracting party to the IPPC in 1972 and has been actively involved in furthering the work of the IPPC ever since. The IPPC was amended in 1979, and the amended version entered into force in 1991 after two-thirds of the contracting countries accepted the amendment. More recently, in 1997, contracting parties completed negotiations on further amendments that were approved by the FAO Conference and submitted to the parties for acceptance. This 1997 amendment updated phytosanitary concepts and formalized the standard-setting structure within the IPPC. The 1997 amended version of the IPPC will enter into force on the thirtieth day after two-thirds of the current contracting parties notify the Director General of FAO of their acceptance of the amendment. At this date, 56 of the required 85 member countries have deposited their official letters of acceptance. The U.S. Senate gave its advice and consent to acceptance of the newly revised IPPC on October 18, 2000. The President submitted the official letter of acceptance to the FAO Director General on October 4, 2001.

The IPPC has been, and continues to be, administered at the national level by plant quarantine officials whose primary objective is to safeguard plant resources from injurious pests. In the United States, the national plant protection organization is APHIS' Plant Protection and Quarantine (PPQ) program. The steps for developing a standard under the revised IPPC are described below.

Step 1: Proposals for a new international standard for phytosanitary measures (ISPM) or for the review or revision of an existing ISPM are submitted to the Secretariat of the IPPC in the form of a discussion paper accompanied by a topic or draft standard. Drafts can be submitted by individual countries, but are more commonly submitted by regional plant protection organizations (RPPOs). Alternately, the Secretariat can propose a new standard or amendments to existing standards.

Step 2: A summary of proposals is submitted by the Secretariat to the ICPM. The ICPM identifies the topics and priorities for standard setting from among the proposals submitted to the Secretariat and others that may be raised by the ICPM.

Step 3: Specifications for the standards identified as priorities by the ICPM are drafted by the Secretariat. The draft specifications are submitted to the Standards Committee for approval/amendment and are subsequently made available to members and RPPOs for comment (60 days). Comments are submitted in writing to the Secretariat. Taking into account the comments, the Standards Committee finalizes the specifications.

Step 4: The standard is drafted or revised in accordance with the specifications by a working group designated by the Standards Committee. The resulting draft standard is submitted to the Standards Committee for review.

Step 5: Draft standards approved by the Standards Committee are distributed to members by the Secretariat and RPPOs for consultation (100 days). Comments are submitted in writing to the Secretariat. Where appropriate, the Standards Committee may establish open-ended discussion groups as forums for further comment. The Secretariat summarizes the comments and submits them to the Standards Committee.

Step 6: Taking into account the comments, the Secretariat, in cooperation with the Standards Committee, revises the draft standard. The Standards Committee submits the final version to the ICPM for adoption.

Step 7: The ISPM is established through formal adoption by the ICPM according to Rule X of the Rules of Procedure of the ICPM.

Step 8: Review of the ISPM is completed by the specified date or such other date as may be agreed upon by the ICPM.

Each member country is represented on the ICPM by a single delegate. Although experts and advisers may accompany the delegate to meetings of the ICPM, only the delegate (or an authorized alternate) may represent each member country in considering a standard up for approval. Parties involved in a vote by the ICPM are to make every effort to reach agreement on all matters by consensus. Only after all efforts to reach a consensus have been exhausted may a decision on a standard be passed by a vote of two-thirds of delegates present and voting.

Technical experts from the United States have participated directly in working groups and indirectly as reviewers of all IPPC draft standards. In addition, documents and positions developed by APHIS and NAPPO have been sources of significant input for many of the standards adopted to date. This notice describes each of the IPPC standards currently under consideration or up for adoption. The full text of each standard will be available on the Internet at *http://www.aphis.gov/ppq/pim/standards/*. Interested individuals may review the standards posted on this Web site and submit comments via the Web site.

The next ICPM meeting is scheduled for April 4–April 8, 2005, at FAO Headquarters in Rome, Italy. The Deputy Administrator for APHIS' PPQ program is the U.S. delegate to the ICPM. The Deputy Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standards up for adoption. The provisional agenda for the Seventh Session of the Interim Commission on Phytosanitary Measures is as follows:

1. Opening of the session.
2. Adoption of the agenda.
3. Report by the chairperson.
4. Report by the Secretariat.
5. Standards up for adoption in 2005.
6. Items arising from the Sixth Session of the ICPM (see section below entitled ''New Standard Setting Initiatives'' for details).
7. Work program for harmonization.
8. Status of the 1997 revised IPPC.
9. Other business.
10. Date and venue of the next meeting.
11. Adoption of the report.

IPPC Standards Up for Adoption in 2005

It is expected that the following standards will be sufficiently developed to be considered by the ICPM for adoption at its April 2005 meeting. The United States, represented by APHIS' Deputy Administrator for PPQ, will participate in the consideration of these standards. The U.S. position on each of these issues will be developed prior to the ICPM session and will be based on APHIS' analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders. The standards that are most likely to be considered for adoption include:

1. Amendments to ISPM No. 5 (Glossary of Phytosanitary Terms)

This standard is intended to assist national plant protection organizations and others in the exchange of information and with the harmonization of vocabulary used in official communication and legislation pertaining to phytosanitary measures. ISPMs are subject to periodic review and amendment. The last time this standard was amended was 2002. The draft standard includes proposals to amend 11 definitions, add 9 new definitions, and add clarification to 2 terms in the form of ''agreed interpretation statements.'' This draft standard was posted on APHIS' Web site on June 15, 2004, with comments due by September 10, 2004. Subsequently this draft will be prepared for ICPM approval at its 7th session in April 2005. The United States (*i.e.*, USDA/APHIS) intends to support adoption of this draft standard.

2. Guidelines on the Concept of Equivalence of Phytosanitary Measures and Its Application in International Trade

This standard describes the principles and requirements that apply to the concept of equivalence of phytosanitary measures. It also describes a procedure for equivalence determinations in international trade. Equivalence is one of the IPPC general principles. It generally applies to cases where phytosanitary measures already exist for a specific pest associated with trade in a specific commodity. Equivalence determinations are based on the specified pest risk and equivalence may apply to individual measures, a combination of measures, or integrated measures in a systems approach. This draft standard was posted on APHIS' Web site on June 15, 2004, with comments due by September 10, 2004. Subsequently this draft will be prepared for ICPM approval at its 7th session in April 2005. The United States (*i.e.*, USDA/APHIS) intends to support adoption of this draft standard.

3. Guidelines for Consignments in Transit

This standard describes phytosanitary procedures that allow consignments of regulated articles to pass in transit through a country under procedures less restrictive than those for import and re-export while appropriately managing the phytosanitary risk. This standard provides guidance for countries in adhering to the IPPC, which states that ''Contracting parties may apply measures specified in this Article to consignments in transit through their territories only where such measures are technically justified and necessary to prevent the introduction and/or spread of pests.'' This draft standard was posted on APHIS' Web site on June 15, 2004, with comments due by September 10, 2004. Subsequently this draft will be prepared for ICPM approval at its 7th session in April 2005. The United States (*i.e.*, USDA/APHIS) intends to support adoption of this draft standard.

4. Guidelines for Inspection of Consignments

This standard describes the procedures for the inspection of consignments of plants, plant products, and other regulated articles at import and export. It is focused on the determination of compliance with phytosanitary requirements, based on visual examination for the detection of pests. Sampling procedures will be covered in a future standard. This draft standard was posted on APHIS' Web site on June 15, 2004, with comments due by September 10, 2004. Subsequently this draft will be prepared for ICPM approval at its 7th session in April 2005. The United States (*i.e.*, USDA/APHIS) intends to support adoption of this draft standard.

5. Requirements for the Establishment, Maintenance, and Verification of Areas of Low Pest Prevalence

This standard describes the requirements for the establishment, maintenance, verification, and use of areas of low pest prevalence for regulated pests. Once established, these areas may be used in conjunction with other phytosanitary measures as part of a systems approach. Such areas are recognized in the IPPC and are described as ''an area, whether all of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest occurs at low levels and which is subject to effective surveillance, control or eradication measures.'' This draft standard was posted on APHIS' Web site on June 15, 2004, with comments due by September 10, 2004. Subsequently this draft will be prepared for ICPM approval at its 7th session in April 2005. The United States (*i.e.*, USDA/APHIS) intends to support adoption of this draft standard.

6. Guidelines for the Export, Shipment, Import, and Release of Biological Control Agents and Beneficial Organisms

This standard provides guidelines for risk management related to the export, shipment import, and release of biological control agents and beneficial organisms. It lists the related responsibilities of contracting parties, national plant protection organizations, importers, and exporters. The standard addresses the importation of biological control agents capable of self-replication, as well as sterile insects, and beneficial organisms, and includes those packaged or formulated as commercial products (*i.e.*, biopesticides). It covers import for purposes including research in quarantine facilities and release into the environment. The scope of this standard does not extend to cover living modified organisms (LMOs) or issues related to product registration. This draft standard was posted on APHIS' Web site on June 15, 2004, with comments due by September 10, 2004. Subsequently this draft will be prepared for ICPM approval at its 7th session in April 2005. The United States (*i.e.*, USDA/APHIS) intends to support adoption of this draft standard.

New Standard-Setting Initiatives, Including Those in Development

A number of expert working group meetings or other technical consultations will take place during 2004 and 2005 on the topics listed below. These standard-setting initiatives are not expected to be completed prior to April 2005 and, therefore, will not be ready for adoption at the 2005 ICPM session. Nonetheless, APHIS intends to participate actively and fully in each of these working groups. The U.S. position on each of the topics to be addressed by these various working groups will be developed prior to these working group meetings and will be based on APHIS' technical analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders.

1. Revision of ISPM No. 2 (Guidelines for Pest Risk Analysis)

This standard was adopted in 1995 and is considered a foundation standard describing the basic framework for conducting a pest risk analysis. This was before the revision of the IPPC and also before many national plant protection organizations had experience with pest risk analysis. The subsequent revision of the IPPC and the rapid advancement of pest risk analysis in practice created the need for updating the guidance provided by ISPM No. 2. In particular, the standard provides no guidance in certain situations such as regulated non-quarantine pests, LMOs, or biological control agents, and it has certain key deficiencies such as not considering the feasibility of measures

in risk management. As a result, ICPM members agreed on the need to review, update, and make consistent the original concept standard with these more contemporary standards.

2. Efficacy of Phytosanitary Measures

This standard will provide guidance for evaluating the efficacy of phytosanitary measures. This will be significant guidance as the IPPC begins to develop recommendations on acceptable phytosanitary measures for managing specific pests. A range of supplemental and specific standards could follow (*e.g.*, hot water treatment for fruit flies).

3. Use of Integrated Measures in a Systems Approach for Pest Risk Management of Citrus Fruit for Citrus Canker

This standard provides specific guidelines for citrus canker risk management to facilitate the trade of citrus fruit. At the Fourth Session of the ICPM, members agreed on the need to develop a standard to harmonize the approach used by countries in establishing systems approaches for export purposes.

4. Guidelines for Regulating Potato Micropropagation Material and Minitubers in International Trade

This standard describes phytosanitary measures to reduce the risks of regulated pests being associated with potato micropropagation material and minitubers in international trade. Internationally, there are large numbers of pests associated with potato propagative material. Since potato minitubers and micropropagation material are intended for use in vegetative propagation, the risk of spreading pests is increased. Certain micropropagation processes can free propagative material from pests and therefore can be used as the basis for importing healthy material. Consequently, the export certification of such material is important and its basis may be harmonized.

5. Classification of Commodities by Phytosanitary Risk Related to Level of Processing and Intended Use

This standard aims to facilitate trade and increase transparency. It is generally acknowledged that the level of processing and the intended use of commodities may result in different levels of pest and disease risk. This may result in differences in the application of phytosanitary measures, hence the need for harmonization.

6. Alternatives to Methyl Bromide

This standard will address the need for an alternative to methyl bromide (MB). With restrictions on the use of MB and decreasing availability of MB, alternative strategies for dealing with quarantine pests need to be developed.

7. Guidelines on Sampling of Consignments

This standard will provide guidelines for sampling for import, export, domestic movement, and transit of consignments. Sampling is an important component of inspection and a standard is needed to provide guidelines in order to adequately and consistently sample consignments being inspected. The draft standard on guidelines for inspection of consignments only contains basic information on sampling. However, more information and guidance is required on the principles and statistical aspects of sampling.

For more detailed information on the above topics, which will be addressed by various working groups established by the ICPM, contact Mr. Narcy Klag (*see* **FOR FURTHER INFORMATION CONTACT** above).

APHIS posts draft standards on the Internet *(http://www.aphis.usda.gov/ppq/pim/standards/)* as they become available and provides information when comments on standards are due. Additional information on IPPC standards is available on the FAO's Web site at *http://www.ippc.int/IPP/En/default.htm.* For the most current information on official U.S. participation in IPPC activities, including U.S. positions on standards being considered, contact Mr. Narcy Klag (*see* **FOR FURTHER INFORMATION CONTACT** above).

Those wishing to provide comments on any of the areas of work being undertaken by the IPPC may do so at any time by responding to this notice (*see* **ADDRESSES** above) or by providing comments through Mr. Klag.

NAPPO Standard-Setting Activities

NAPPO, a regional plant protection organization created in 1976 under the IPPC, coordinates the efforts among Canada, the United States, and Mexico to protect their plant resources from the entry, establishment, and spread of harmful plant pests, while facilitating intra- and inter-regional trade. NAPPO conducts its business through panels and annual meetings held among the three member countries. The NAPPO Executive Committee charges individual panels with the responsibility for drawing up proposals for NAPPO positions, policies, and standards. These panels are made up of representatives from each member country who have scientific expertise related to the policy or standard being considered. Proposals drawn up by the individual panels are circulated for review to government and industry officials in Canada, Mexico, and the United States, who may suggest revisions. In the United States, draft standards are circulated to industry, States, and various government agencies for consideration and comment. The draft standards are posted on the Internet at *http://www.aphis.usda.gov/ppq/pim/standards/;* interested persons may submit comments via that Web site. Once revisions are made, the proposal is sent to the NAPPO working group and the NAPPO standards panel for technical reviews and then to the Executive Committee for final approval, which is granted by consensus.

The annual NAPPO meeting is scheduled for October 18–22, 2004, in Vancouver, Canada. The NAPPO Executive Committee meeting will take place on October 17, 2004, and a special session will be held on October 18, 2004, to solicit comment from industry groups so that suggestions can be incorporated into the NAPPO work plan for the 2005 NAPPO year. The Deputy Administrator for PPQ is a member of the NAPPO Executive Committee. The Deputy Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption or any proposals to develop new standards.

The work plan for 2004 was established after the October 2003 Annual Meeting in New Orleans, LA. The Deputy Administrator for PPQ participated in establishing this NAPPO work plan (see panel assignments below). Below is a summary of current panel assignments as they relate to the ongoing development of NAPPO standards. The United States (*i.e.*, USDA/APHIS) intends to participate actively and fully in the work of each of these panels. The U.S. position on each topic will be guided and informed by the best scientific information available on each of these topics. For each of the following panels, the United States will consider its position on any draft standard after it reviews a prepared draft. Information regarding the following NAPPO panel topics, assignments, activities, and updates on meeting times and locations may be obtained from the NAPPO homepage at *http://www.nappo.org* or by contacting Mr. Narcy Klag (*see* **FOR FURTHER INFORMATION CONTACT** above).

1. Accreditation Panel

The panel will develop an audit protocol for reviewing compliance with the NAPPO laboratory accreditation standard (RSPM No. 9). They will then use this protocol to audit the programs in the three NAPPO countries starting with the United States. They will review and update the current NAPPO laboratory accreditation standard (RSPM No. 9).

2. Biological Control Panel

This panel will finalize the NAPPO standard on biological control containment facilities.

3. Biotechnology Panel

This panel will continue to develop a NAPPO standard for the review of products of biotechnology that focuses on the assessment of the potential to present a plant pest risk. The final module, importation for uses other than propagation, will be developed.

4. Citrus Panel

The panel will revise the NAPPO standard ''Guidelines for the Importation of Citrus Propagative Material into a NAPPO Member Country'' (RSPM No. 16) to include additional pests.

5. Fruit Panel

The panel will finalize the amendments to the plum pox virus standard (RSPM No. 18), and will prepare a new standard entitled ''Guidelines for the International Movement of Pome and Stone Fruit Trees into a NAPPO Member Country.''

6. Grapevine Panel

The panel will provide direction and support to the Technical Advisory Group to include insects and nematodes in the NAPPO standard for grapevines (RSPM No. 15).

7. Potato Panel

The panel will develop an appendix to RSPM No. 3 on nematode identification and update appendix 5 based on the latest molecular information for PVYn.

8. Propagative Material Panel

The panel will review and revise the ''Concept Paper on Propagative Material'' and begin the development of a NAPPO standard on the importation of plants for planting into NAPPO member countries.

9. Standards Panel

The panel will continue to provide updates on standards for the NAPPO newsletter, coordinate the review of new and amended NAPPO standards and ensure that comments received during the country consultation phase are incorporated as appropriate, organize conference calls and prepare NAPPO discussion documents for possible use at the IPPC, and promote implementation of recently adopted standards.

The PPQ Deputy Administrator, as the official U.S. delegate to NAPPO, intends to participate in the adoption of these regional plant health standards, including the work described above, once they are completed and ready for such consideration.

The information in this notice includes all the information available to us on NAPPO standards currently under development or consideration. For updates on meeting times and for information on the working panels that may become available following publication of this notice, check the NAPPO Web site on the Internet at *http://www.nappo.org* or contact Mr. Narcy Klag (see **FOR FURTHER INFORMATION CONTACT** above). Information on official U.S. participation in NAPPO activities, including U.S. positions on standards being considered, may also be obtained from Mr. Klag.

Those wishing to provide comments on any of the topics being addressed by any of the NAPPO panels may do so at any time by responding to this notice (see **ADDRESSES** above) or by transmitting comments through Mr. Klag.

Done in Washington, DC, this 13th day of August 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–19005 Filed 8–18–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; Assessing and Extending the Utility of *The Natural Inquirer*

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection entitled, ''Assessing and Extending the Utility of *The Natural Inquirer*.''

DATES: Comments must be received in writing on or before October 18, 2004, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Dr. Barbara McDonald, Resource Valuation and Use Research, Forestry Sciences Laboratory, Forest Service, USDA, 320 Green Street, Athens, GA 30602–2044.

Comments also may be submitted via facsimile to (706) 559–4245 or by e-mail to *bmcdonald@fs.fed.us.*

The public may inspect comments received at Forestry Sciences Laboratory, Forest Service, USDA, 320 Green Street, Athens, Georgia, during normal business hours. Visitors are encouraged to call ahead to (706) 559–4224 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara McDonald, Resource Valuation and Use Research, at (706) 559–4224.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Assessing and Extending the Utility of *The Natural Inquirer.*

OMB Number: 0596–New.

Expiration Date of Approval: N/A.

Type of Request: New.

Abstract: The Office of Management and Budget (OMB) created guidelines for information quality in accordance with Section 515 of Public Law 106–554. That section is known as the Data Quality Act. OMB published guidelines that require all federal government agencies to create their own agency-specific guidelines to ensure compliance with the Data Quality Act. Hence, the United States Department of Agriculture (USDA) created detailed guidelines for the quality of information disseminated by its agencies and offices. As an agency of the USDA, the Forest Service is subject to these guidelines.

The USDA guidelines state that the USDA ''will strive to ensure and maximize the quality, objectivity, utility, and integrity of the information that its agencies and offices disseminate to the public.'' Specifically, the utility standard provides that agencies and offices should assess the usefulness of information disseminated to its intended users as well as the public.

Forest Service Research and Development (R&D) annually publishes a science journal for middle and high school students called *The Natural Inquirer. The Natural Inquirer* makes Forest Service research accessible and

interesting to middle and high school students. The distribution for the newest *Natural Inquirer*, which includes both national and international destinations, will be over 500,000. Formal, non-formal, and informal educators, as well as the general public, receive this journal through the Forest Service Conservation Education network, federal and state partners, and through *The Natural Inquirer* Web site. *The Natural Inquirer* provides a new benchmark for the utility of Forest Service research, as it extends the utility of the research to an educational resource meant to increase scientific literacy in middle and high school students.

Current evaluation of *The Natural Inquirer* by its users is not systematic or scientifically valid and provides only anecdotal information about the utility of the Forest Service research being presented. The Forest Service, therefore, needs a systematic and scientifically valid way of assessing the usefulness of the journal in accordance with USDA guidelines for implementing the Data Quality Act. Further, such systematic assessment should be the basis for extending the utility of information dissemination via *The Natural Inquirer*.

Five hundred respondents will be selected using a random sample based on addresses of individuals who have ordered *The Natural Inquirer* publication within the United States. They will be asked to respond to questions in the following categories: (1) The utility of *The Natural Inquirer* journal; (2) the utility of *The Natural Inquirer* Web site; (3) suggestions for improvement of utility of *The Natural Inquirer*; and (4) selected demographic information regarding teaching experience.

The majority of information will be collected using the Dillman method through a mail survey instrument. Some personal interviews with a small sample of educators, and classroom observations will also be employed to assess how *The Natural Inquirer* is used in the classroom. A graduate student at the University of Georgia will collect the information. The graduate student will contact potential respondents via a postcard, then with the survey, follow-up postcards as necessary, and follow-up with a thank you note. A Forest Service social scientist will supervise the data collection.

A graduate student from the University of Georgia and a Forest Service social scientist will analyze and evaluate the collected information. The information collected will be used to increase accountability of Forest Service information outreach and to extend the utility of *The Natural Inquirer* publication and Web site for educators and students.

The Forest Service has invested heavily in producing timely, relevant, and credible forest science across a wide range of natural resource disciplines. This information should be readily accessible to the general public, including non-traditional audiences such as students. *The Natural Inquirer* extends the utility of Forest Service research by making it accessible to a middle school audience. This information collection will enable the Forest Service to extend the utility of *The Natural Inquirer*, increase accountability regarding federal information outreach, and provide the most useful information possible to the public by gathering feedback on how to improve the journal for the use of its intended audience.

Estimate of Annual Burden: 20 minutes.

Type of Respondents: Individuals in the United States who have ordered *The Natural Inquirer*.

Estimated Annual Number of Respondents: 400.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 133.33 hours.

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 for Office of Management and Budget approval.

Dated: August 13, 2004.

Bov B. Eav,

Associate Deputy Chief for Research & Development.

[FR Doc. 04–19042 Filed 8–18–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on September 15 and 16, 2004, in Ukiah, California. The purpose of the meeting is to conduct annual implementation monitoring of two projects completed in previous years, relating to standards and guidelines in the Northwest Forest Plan (NWFP).

DATES: The meeting will be held from 8 a.m. to 5 p.m., September 15 and 16, 2004.

ADDRESSES: The meeting will be held in the field both days, beginning at the Bureau of Land Management Office Conference Room, 2550 North State St., Ukiah, CA.

FOR FURTHER INFORMATION CONTACT: Phebe Brown, Committee Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–1137; e-mail *pybrown@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The two projects to be monitored are: (1) County Line hazardous fuel removal, Bureau of Land Management project; and (2) Elk Mountain fuelbreak, Upper Lake Ranger District of the Mendocino National Forest. The meeting is open to the public.

Dated: August 13, 2004.

James D. Fenwood,

Designated Federal Official.

[FR Doc. 04–19033 Filed 8–18–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on September 13, 2004, at the U.S. Forest Service Office, Emerald Bay Conference Room, 35 College Drive, South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency

Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held September 13, 2004, beginning at 9 a.m. and ending at 4 p.m.

ADDRESSES: The meeting will be held at the U.S. Forest Service Office, Emerald Bay Conference Room, 35 College Drive, South Lake Tahoe, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: (1) Review and recommendations on the Forest Service FY 2005 Lake Tahoe Restoration Act Project List; (2) Committee focus for 2004–2006; (3) Nominations for Committee Chair; and (4) Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: August 12, 2004.

Mary G. Morgan,

Acting Forest Supervisor.

[FR Doc. 04–18990 Filed 8–18–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Public Meeting, Davy Crockett National Forest Resource Advisory Committee

AGENCY: Forest Service, Agriculture.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of Agriculture, Forest Service, Davy Crockett National Forest Resource Advisory Committee (RAC) meeting will meet on October 12, 2004.

DATES: The Davy Crockett National Forest RAC meeting will be held on October 12, 2004.

ADDRESSES: The Davy Crockett National Forest RAC meeting will be held at the Davy Crockett Ranger Station located on State Highway 7, approximately one-quarter mile west of FM 227 in Houston County, Texas. The meeting will begin at 6 p.m. and adjourn at approximately 9 p.m. A public comment period will be at 8:45 p.m.

FOR FURTHER INFORMATION CONTACT: Raoul Gagne, District Ranger, Davy Crockett National Forest, Rt. 1, Box 55 FS, Kennard, Texas 75847; telephone: 936–655–2299 or e-mail at: *rgagne@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Davy Crockett National Forest RAC proposes projects and funding to the Secretary of Agriculture under section 203 of the Secure Rural Schools and Community Self Determination Act of 2000. The purpose of the October 12, 2004, meeting is to review and approve project proposals to submit to the Forest Supervisor for National Forests and Grasslands in Texas. These meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: August 9, 2004.

Raoul W. Gagne,

Designated Federal Officer, Davy Crockett National Forest RAC.

[FR Doc. 04–18989 Filed 8–18–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Public Information Collection Evaluation

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The National Agricultural Statistics Service (NASS) is starting preparations for the 2007 Census of Agriculture. NASS invites the general public and other Federal agencies to comment on the recently released 2002 census. This notice announces the intent of the National Agricultural Statistics Service (NASS) to solicit evaluation of a previous information collection, the 2002 Census of Agriculture.

DATES: Comments on this notice must be received by October 18, 2004 to be assured of consideration.

ADDRESSES: Comments may be sent to Ginny McBride, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington DC 20250–2024, or *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION OR COMMENTS CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: 2002 Census of Agriculture.

Type of Request: Solicitation of Evaluations.

Census Web site: http://www.nass.usda.gov/census.

Abstract: The census of agriculture conducted every 5 years is the primary source of statistics concerning the nation's agricultural industry and provides the only basis of consistent, comparable data at the county, state and national levels. The 2002 Census of Agriculture covered all agricultural operations in each state, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of Northern Mariana Islands which meet the census farm definition. Because of the desire to improve data collection in the 2007 Census of Agriculture, we are asking for comments and recommendations concerning the most recent data collection.

Comments: Comments are invited on: (a) Ways to enhance the quality, utility, and clarity of the information collected; (b) ways to minimize the burden of collection of information on those who are to respond. Comments may be sent to Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, Room 5330B South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024, or *gmcbride@nass.usda.gov.*

All responses to this notice will become a matter of public record.

Signed at Washington, DC, July 2004.

Carol House,

Associate Administrator.

[FR Doc. 04–19029 Filed 8–18–04; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081104E]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a joint public meeting of its Coral Scientific and Statistical Committees (SSC) and its Coral Advisory Panel (AP).

DATES: The Council's Coral SSC/AP will convene from 1 p.m. to 5 p.m. on Thursday, September 2, 2004.

ADDRESSES: The meeting will be at the DoubleTree Guest Suites Tampa Bay, 3050 North Rocky Point Drive West, Tampa, FL; telephone: 813–888–8800.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Rick Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will jointly convene its Special Coral Scientific and Statistical Committee (SSC) and Coral Advisory Panel (AP) to discuss information relevant to the location of coral reef resources in the Gulf of Mexico, particularly deep coral reefs and any potential impacts from existing or reasonably foreseeable fishing activities. The Joint Coral AP/SSC will also be asked to provide recommendations relative to a Rulemaking Petition to Protect Deep-Sea Coral and Sponge Habitat filed with the Secretary of Commerce by Oceana.

Although non-emergency issues not contained in the agenda may come before the Joint Coral AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act), those issues may not be the subject of formal action during this meeting. The Joint Coral AP/SSC actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson Act, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the Joint Coral AP/SSC agenda can be obtained by calling (813) 228–2815.

Special Accommodations

The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by August 26, 2004.

The Gulf of Mexico Fishery Management Council is 1 of 8 Regional Fishery Management Councils that were established by the MSFCMA of 1976, as amended. The Gulf of Mexico Fishery Management Council prepares fishery management plans and amendments that are designed to manage fishery resources to the 200–mile limit in the U.S. Gulf of Mexico.

Dated: August 13, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1845 Filed 8–18–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081104D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Oversight Committee in September, 2004. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Wednesday, September 8, 2004, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Braintree Hotel, 37 Forbes Road, Braintree, MA 02184; telephone: (781) 848–0600.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will discuss Essential Fish Habitat (EFH) Omnibus Amendment 2 issues, including, but not limited to, the review of the draft purpose and need statement based on the approved goals and objectives, the draft timeline, Habitat Areas of Particular Concern and Dedicated Habitat Research Areas issues, and thresholds and terms of reference for EFH. They will also review Monkfish Amendment 2/General legal guidance requested on deep-sea coral alternatives. Also on the agenda will be the discussion of Framework 40B to the Northeast Multispecies Fishery Management Plan with the possible development or review of alternatives related to EFH.

The committee will discuss the organization of a workshop, co-sponsored by the Marine Protected Area (MPA) Center, to assist in the development of a draft Council MPA policy. They will hear presentations on an ongoing basis in an effort to increase the understanding of habitat and MPA related issues. Other business will be discussed at the discretion of the Committee.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 13, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1844 Filed 8–18–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Naval Surface Warfare Center Panama City (NSWCPC) Mission Activities and Announcement of Public Scoping Meetings

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to Section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences associated with new and increased Naval Surface Warfare Center Panama City (NSWCPC) mission activities in three military operating areas in the northern Gulf of Mexico and in St. Andrews Bay. Existing and evolving activities include research, development, testing and evaluation, and in-service engineering for mine warfare, special warfare, amphibious warfare, diving, and other naval missions that take place primarily in the coastal region. These activities generally include air, surface, and subsurface operations that require the use of sonar, lasers, live ordnance, and electromagnetic fields.

DATES: Public scoping meetings will be held in Panama City, FL; Port St. Joe, FL; and Pensacola, FL, to receive oral and written comments on environmental concerns that should be addressed in the EIS. The public meeting dates are as follows:

1. Tuesday, September 14, 2004, 6 p.m. to 9 p.m., Panama City, FL.
2. Wednesday, September 15, 2004, from 6 p.m. to 9 p.m., Port St. Joe, FL.
3. Thursday, September 16, 2004, 6 p.m. to 9 p.m., Pensacola, FL.

ADDRESSES: The public meeting locations are as follows:

1. Panama City, FL—Florida State University, Panama City Campus, 4750 Collegiate Drive, Panama City, FL 32405.
2. Port St. Joe, FL—Port St. Joe High School, 100 Shark Drive, Port St. Joe, FL 32456.
3. Pensacola, FL—Pensacola Junior College, Warrington Campus, 5555 West Highway 98, Pensacola, FL 32507.

FOR FURTHER INFORMATION CONTACT: Naval Surface Warfare Center Panama City, Attn: Mrs. Carmen Ferrer, 110 Vernon Avenue, Panama City, FL 32407; telephone (850) 234–4146; E–Mail: *carmen.ferrer@navy.mil.*

SUPPLEMENTARY INFORMATION: The NSWCPC currently utilizes the adjacent coastal and marine environments to provide naval research, development, test and evaluation (RDT&E) and in-service support for acquisition of various systems. The northern Gulf of Mexico military operating areas currently utilized encompasses portions of the Eglin Gulf Test and Training Range (EGTTR). The adjacent littoral and coastal environments are also currently used to test and evaluate systems. These sites include St. Andrews Bay, East Bay, West Bay and beaches along the Gulf of Mexico up to the mean high water line. The environmental consequences associated with such support have historically been addressed on a test-by-test or program-by-program basis. This method frequently creates time constraints and schedule limitations, including delays.

The proposed action is to improve NSWCPC's capabilities to conduct new and increased mission operations for DOD and other users within three military operating areas in the northern Gulf of Mexico, and in the St. Andrews Bay area.

The proposed action would enable the Navy to successfully meet current and future national and global defense challenges by developing a robust capability to meet littoral and expeditionary warfare requirements and by providing RDT&E, and in-service engineering for mine warfare, special warfare, amphibious warfare, diving, and other naval missions that take place primarily in the coastal region. This allows the Navy to meet its statutory mission to deploy world wide naval forces equipped and trained to meet existing and emergent threats, and to enhance its ability to operate jointly with other components of the armed forces.

Alternatives to be considered in the EIS include two action alternatives that address variations in the level and tempo of mission operations plus a no action alternative. Additionally, the EIS may also consider other alternatives defined during the public scoping process, if the options meet established operational criteria.

Alternative 1 involves an increase in NSWCPC capabilities over baseline mission activities, using foreseeable (*e.g.* over a five year period) test and training requirements to project needed capabilities. Alternative 1 would enhance NSWCPC's ability to meet future needs by incorporating new test capabilities and increases in tempo and intensity of RDT&E activities.

Alternative 2 also involves an increase in NSWCPC capabilities over baseline mission activities. Alternative 2 also uses foreseeable test and training requirements to project needed capabilities. The principal difference between Alternatives 1 and 2 is that Alternative 2 proposes an increase in testing and training tempo 15% greater than that proposed in Alternative 1.

The no action alternative addresses historic and current mission activities (*e.g.* baseline mission activities or the status quo) at the NSWCPC operating areas.

The EIS will evaluate the potential environmental effects associated with the identified alternatives. The EIS will focus on the following areas: air quality; water resources; coastal zone management; noise; wildlife, including threatened and endangered species, marine mammals, and migratory birds; fisheries including an analysis of essential fish habitat, coastal/marine/benthic communities, and special biological resource areas; socioeconomic resources; and cultural resources. The analysis will include an evaluation of the direct, indirect, and cumulative impacts. Environmental effects that occur outside of U.S. territorial waters will be evaluated under Executive Order 12114. No decision will be made to implement any alternative until the NEPA process is completed.

The Navy is initiating the scoping process to identify community concerns and local issues that should be addressed in the EIS. Federal, state, and local agencies and interested persons are encouraged to provide oral and/or written comments to NSWCPC to identify specific issues or topics of environmental concern. The Navy will consider these comments in determining the scope of the EIS.

Written comments on the scope of the EIS must be postmarked by October 16, 2004, and should be mailed to: Commanding Officer, Naval Surface Warfare Center Panama City, Attn: Environmental Team Lead, Mrs. Carmen Ferrer, 110 Vernon Avenue, Panama City, FL 32407–7001; telephone (850) 234–4146; E-Mail: *carmen.ferrer@navy.mil.*

Dated: August 16, 2004.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–19045 Filed 8–18–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 18, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 13, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: Community Partnerships for Adult Learning Website—Customer Survey.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 3,000.

Burden Hours: 750.

Abstract: The U.S. Department of Education's Office of Vocational and Adult Education established the Community Partnerships for Adult Education (C–PAL) project to facilitate the building of partnerships to improve the quality of adult education in the United States. The project's Web site (*http://www.c-pal.net*) was launched in June of 2002 and contains a high-quality and broadly representative selection of community building and adult education resources. The C–PAL project staff is committed to ensuring that the Web site continues to meet the ongoing needs of the adult education community and that it contains up-to-date information about adult education programs, practices, and products. To this end, we have created and plan to post the Community Partnerships for Adult Learning Website Customer Survey in an effort to compile and respond to user feedback about the Web site.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2604. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–18983 Filed 8–18–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 20, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: August 13, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Intergovernmental and Interagency Affairs

Type of Review: Extension.

Title: Sign-on Form for Educational Partnerships and Family Involvement.

Frequency: One time.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 720.

Burden Hours: 60.

Abstract: Educational Partnerships and Family Involvement promotes educational opportunities for parents and youth and disseminates publications and relevant information.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2559. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–18984 Filed 8–18–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–375–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

August 11, 2004.

Take notice that on August 6, 2004, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Twelfth Revised Sheet No. 395, with a proposed effective date of August 1, 2004.

Columbia states that on July 1, 2004, it filed revised tariff sheets to eliminate the Gas Research Institute (GRI) surcharge from its rates pursuant to a January 21, 1998, Stipulation and Agreement approved by the Commission. Gas Research Institute, 83 FERC ¶61,093 (1998); order on reh'g, 83 FERC ¶ 61,331 (1998). On July 28, 2004, the Commission accepted Columbia's proposed revised tariff sheets (July 28 Order) subject to Columbia making a tariff sheet revision.

Columbia states that it was directed to remove the GRI reference from Section 20.2, Apportionment to Discounts, in the General Terms and Conditions of its Tariff. The Commission required that Columbia make the revision to the tariff sheet within 10 days of the date of issuance of the July 28 Order. Columbia states that the revised tariff sheet listed above reflects the change required by the Commission in the July 28 Order.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1840 Filed 8–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–373–001]

Columbia Gulf Transmission Company; Notice of Compliance Filing

August 11, 2004.

Take notice that on August 6, 2004, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 220, with a proposed effective date of August 1, 2004.

Columbia Gulf states that on July 1, 2004, it filed revised tariff sheets to eliminate the Gas Research Institute (GRI) surcharge from its rates pursuant to a January 21, 1998, Stipulation and Agreement approved by the Commission. Gas Research Institute, 83 FERC ¶ 61,093 (1998); order on reh'g, 83 FERC ¶ 61,331 (1998).

On July 28, 2004, the Commission accepted Columbia Gulf's proposed revised tariff sheets (July 28 Order) subject to Columbia Gulf making a tariff sheet revision. Columbia Gulf states that it was directed to remove the GRI reference from Section 20.2, Apportionment to Discounts, in the General Terms and Conditions of its Tariff. The Commission required that Columbia Gulf make the revision to the tariff sheet within 10 days of the date of issuance of the July 28 Order. Columbia Gulf states that the revised tariff sheet listed above reflects the change required by the Commission in the July 28 Order.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu

of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208-3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1839 Filed 8–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–378–000]

Gas Technology Institute; Notice of Extension of Time

August 11, 2004.

On July 8, 2004, the Commission issued a Notice of Five-Year Research, Development and Demonstration Plan (Notice) announcing an application for approval of the plan filed on July 1, 2004, by the Gas Technology Institute, in the above-docketed proceeding. On August 9, 2004, Bruce B. Ellsworth (Ellsworth) filed a motion for an extension of time within which to file comments in response to the Commission's notice. In the motion, Ellsworth states that due to the press of other commitments and the time needed to request additional supportive information, an extension of time is needed to prepare and submit a comment.

Upon consideration, notice is hereby given that an extension of time for the filing of comments in response to the Commission's notice is granted to and includingAugust 23, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1841 Filed 8–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–366–001]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

August 11, 2004.

Take notice that on August 9, 2004, Iroquois Gas Transmission System, L.P., (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2004:

Sixth Revised Sheet No. 16
Sixth Revised Sheet No. 30
First Revised Sheet No. 151A

In the July 28, 2004 order, the Commission accepted Iroquois' proposal to revise its tariff to reflect the elimination of the Gas Research Institute (GRI) surcharge from its tariff, effect August 1, 2004. In approving Iroquois' request, the Commission noted that Iroquois has failed to remove references to the GRI surcharge from Sheets 16, 30 and 151A. In accordance with the Commission's directives, Iroquois states that it is filing revisions to those tariff sheets in order to eliminate the references to the GRI surcharge.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1838 Filed 8–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–448–000]

North Baja Pipeline, LLC; Notice of Tariff Filing

August 11, 2004.

Take notice that, on August 5, 2004, North Baja Pipeline, LLC (NBP) submitted a compliance filing pursuant to Commission order issued on January 16, 2002, in Docket Nos. CP01–22–000, *et al.*

NBP states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1842 Filed 8–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04-392-000]

Penn-Jersey Pipe Line Co. and NUI Utilities, Inc. (Elizabethtown Gas Division); Notice of Application

August 11, 2004.

On August 3, 2004, Penn-Jersey Pipe Line Co. (Penn-Jersey) and NUI Utilities, Inc. (Elizabethtown Gas Division) (NUI) filed a Joint Application pursuant to sections 7(b) and 7(f) of the Natural Gas Act, as amended, 15 U.S.C. 717f(b) and 717f(f) (2000), and part 157 of the Commission's regulations, 18 CFR part 157 (2004), for an order (i) approving Penn-Jersey's abandonment of its jurisdictional facilities and service authorized under its part 157 certificate of public convenience and necessity; (ii) granting NUI/Elizabethtown a determination of a service area within which NUI/Elizabethtown may, without further Commission authorization, enlarge or expand its facilities, and (iii) granting such waivers or other relief as the Commission may deem necessary or appropriate, all as more fully set forth in the application which is on file with the Commission. The filing may be also viewed on the Web at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding the application should be directed to C.R. Carver, President and Treasurer, Penn-Jersey Pipe Line Co., 105 Stewart Rd, Short Hills, NJ 07078–1923, at (973) 379–5342 or by fax at (973) 467–0529 or Mary Patricia Keefe, NUI Utilities, Inc., 1085 Morris Ave, Union, NJ 07083 at (908) 351–7373 or by fax at (908) 352-3908.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: September 1, 2004.

Magalie Roman Salas,

Secretary.

[FR Doc. E4–1843 Filed 8–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–539–001, ER04–539–002, and EL04–121–000]

PJM Interconnection, LLC; Notice of Initation of Investigation and Refund Effective Date

August 11, 2004.

On August 10, 2004, the Commission issued an order in the above-referenced dockets initiating an investigation in Docket No. EL04–121–000 pursuant to section 206 of the Federal Power Act to determine whether the existing tariff provision providing for an exemption from mitigation for generators in particular control areas needs to be revised in light of the expansions of the PJM system.

The refund effective date in Docket No. EL04–121–000, established pursuant to section 206(b) of the Federal Power Act, will be 60 days following publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1836 Filed 8–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2016–073]

City of Tacoma, Washington; Notice Rejecting Request for Rehearing

August 11, 2004.

On June 10, 2004, the Director, Division of Hydropower Administration and Compliance, issued an order approving a public information management plan filed by Tacoma Power pursuant to Article 405 of the license for the Cowlitz River Hydroelectric Project No. 2016.[1] On July 13, 2004, Friends of the Cowlitz and CPR–Fish filed a request for rehearing of that order.

Pursuant to Section 313(a) of the Federal Power Act, 16 U.S.C. 8251(a), a request for rehearing may be filed only by a party (intervenor) to the proceeding. With regard to a licensee's post-licensing compliance filings, the Commission entertains motions to intervene only where the filing entails a material change in the plan of project development or terms of the license;

[1] 107 FERC ¶62,225 (2004).

would adversely affect the rights of a property holder in a manner not contemplated by the license; or involves an appeal by an agency or entity specifically given a consultation role by the license article pursuant to which the compliance filing is made.[2] None of these circumstances was present here,[3] and accordingly the Commission did not issue notice of, or entertain non-consulted entities' intervention motions concerning, Tacoma Power's Article 405 compliance filing.[4] In light of this, the rehearing request filed by Friends of the Cowlitz and CPR–Fish is rejected.

This notice constitutes final agency action. Request for rehearing by the Commission of this rejection notice must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713 (2004).

Magalie R. Salas,

Secretary.

[FR Doc. E4–1837 Filed 8–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–449–000]

Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 11, 2004.

Take notice that on August 9, 2004, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing proposed to become effective September 10, 2004.

Trunkline states that this filing is being made to propose generally applicable tariff provisions that offer contract demand reduction rights under specified circumstances. Trunkline also states that it proposes to allow shippers to elect from four types of contract demand reduction options if they meet the eligibility requirements set forth in the tariff. They include (1) regulatory unbundling; (2) loss of load; (3) plant outage and (4) buyout.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1835 Filed 8–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project—Base Charge and Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Base Charge and Rates.

SUMMARY: The Deputy Secretary of the Department of Energy (DOE) has approved the FY 2005 Base Charge and Rates (Rates) for Boulder Canyon Project (BCP) electric service provided by the Western Area Power Administration (Western). The Rates will provide sufficient revenue to pay all annual costs, including interest expense, and investment repayment within the allowable period.

DATES: The Rates will be effective the first day of the first full billing period beginning on or after October 1, 2004. These Rates will stay in effect through September 30, 2005, or until superseded by other rates.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2442, e-mail *jmurray@wapa.gov*.

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved the existing Rate Schedule BCP–F6 for BCP electric service on September 18, 2000 (Rate Order No. WAPA–94, 65 FR 60932, October 13, 2000), on an interim basis. Rate Schedule BCP–F6, effective October 1, 2000, through September 30, 2005, allows for an annual recalculation of the rates. On July 31, 2001, the Federal Energy Regulatory Commission (Commission) approved Rate Order No. WAPA–94 on a final basis.

Under Rate Schedule BCP–F6, the existing composite rate, effective on October 1, 2003, was 12.91 mills per kilowatthour (mills/kWh), the base charge was $51,719,075, the energy rate was 6.46 mills/kWh, and the capacity rate was $1.17 per kilowattmonth (kWmonth). The newly calculated Rates for BCP electric service, to be effective October 1, 2004, will result in an overall composite rate of 14.82 mills/kWh. This is an increase of approximately 15 percent when compared with the existing BCP electric service composite rate. The increase is due to an increase in the annual base charge and a decrease in the projected energy sales. The Fiscal Year (FY) 2005 base charge is increasing to $57,654,683. The increase is due mainly to an increase in annual operation, maintenance, visitor services expenses, and replacement costs. A contributing factor to the increases is the additional security costs incurred at the Hoover Dam. The FY 2005 energy rate of 7.41 mills/kWh is approximately a 15-percent increase from the existing energy rate of 6.46 mills/kWh. The increase in the energy rate is due to a decrease in the projected energy sales resulting from a continuing drop in lake elevations due to poor hydrology in the lower Colorado River basin. The FY 2005 capacity rate of $1.39/kWmonth is approximately a 19-percent increase

[2] Kings River Conservation District, 36 FERC ¶61,365 (1986). In addition, intervention in a relicensing proceeding does not carry over into post-licensing proceedings. *See* Pacific Gas and Electric Company, 40 FERC ¶61,035 (1987).

[3] Article 405 gave neither of these entities a consultation role. *See* 98 FERC ¶61,274 at 62,110 (2002).

[4] Even if their rehearing requests would have been entertained, Friends of the Cowlitz and CPR–Fish did not move to intervene in this proceeding.

from the existing $1.17/kWmonth capacity rate. The capacity rate is increasing due to decreased generation ratings resulting from lower lake elevations. Another factor that contributes to the increase in the energy and capacity rates is the increase in the annual base charge due to increasing annual costs.

The following summarizes the steps taken by Western to ensure involvement of all interested parties in determining the Rates:

1. A **Federal Register** (FR) notice was published on February 18, 2004 (69 FR 7627), announcing the proposed rate adjustment process, initiating a public consultation and comment period, announcing public information and public comment forums, and presenting procedures for public participation.

2. On February 27, 2004, a letter was mailed from Western's Desert Southwest Customer Service Region to the BCP Contractors and other interested parties announcing an informal customer meeting and public information and comment forums.

3. Discussion of the proposed Rates was initiated at an informal BCP Contractor meeting held March 11, 2004, in Phoenix, Arizona. At this informal meeting, representatives from Western and the Bureau of Reclamation (Reclamation) explained the basis for estimates used to calculate the Rates and held a question and answer session.

4. At the public information forum held on March 25, 2004, in Phoenix, Arizona, Western and Reclamation representatives explained the proposed Rates for FY 2005 in greater detail and held a question and answer session.

5. A public comment forum held on April 15, 2004, in Phoenix, Arizona, gave the public an opportunity to comment for the record. Five persons representing the BCP Contractors and Interested Parties made oral comments.

6. Western received three comment letters during the 90-day consultation and comment period. The consultation and comment period ended May 18, 2004. All comments were considered in developing the Rates for FY 2005. Written comments were received from: Irrigation & Electrical Districts Association of Arizona, Metropolitan Water District of Southern California, Southern California Edison.

Comments and responses, paraphrased for brevity, are presented below.

Security Costs

Comment: A number of Contractors expressed concern about the additional security costs that Hoover Dam is incurring in FY 2005. It is troubling to the BCP Contractors that Hoover Dam, as one of the five national critical infrastructures in the Western United States, is unable to receive annual nonreimbursable security funding, which in FY 2005 would total approximately $4 million. The BCP Contractors stated that if the Federal Government is unwilling to spread the costs to all beneficiaries of the multi-purpose facility (flood control, river regulation, water storage and irrigation, municipal and industrial uses, international treaties, power generation, recreation, and environmental mitigation), then the government should assume the obligation to pay for the increased security costs. One Contractor asked Western to represent its position on increased security costs during discussions concerning the FY 2005 Energy and Water Appropriations Development Bill.

Response: Western and Reclamation recognize the concerns the BCP Contractors have regarding additional security costs at Hoover Dam. The decision regarding reimbursement of security costs is based on congressional enactment of the annual budget for Federal agencies and reflects a decision of reimbursability adopted during the President's budget formulation process. The beneficiaries' reimbursable obligations in FY 2005 are being determined consistent with Reclamation policy and Hoover Dam's specific authorizations. Western will implement any congressional decision to make these costs nonreimbursable in its rate development and project repayment.

Comment: What happens if the Contractors are successful in getting the additional costs declared nonreimbursable in FY 2005? How do the Contractors get the benefit of this?

Response: If the Contractors are successful in obtaining nonreimbursable authority for the additional Hoover security costs, and depending on the timing, the benefit to the BCP Contractors would occur at year end when actual expenses are reconciled with estimated expenses.

Comment: In Reclamation's green book provided to a House subcommittee just a few weeks ago, Hoover Dam was among other Reclamation facilities singled out to pay for security costs. If Hoover Dam is a national critical infrastructure, why are security costs for Hoover Dam not a national obligation, instead of being treated as reimbursable in Western's power rates?

Response: Reimbursability of security costs at Hoover Dam is being determined consistent with Reclamation policy and Hoover Dam's specific authorizations. Security upgrades at Hoover Dam continue to be critical to improving our security posture and improving effectiveness. Hoover Dam has received substantial support for security through the appropriation process in the past 2 years. Reclamation is aggressively pursuing appropriations to complete upgrades to systems and processes in future years.

Comment: An Interested Party stated that Reclamation has an obligation to assess a surcharge associated with incurred security costs similar to those imposed at airports, Disneyland, and entertainment facilities.

Response: Reclamation has no obligation to assess a surcharge, but will review this option for possible implementation in the future.

Visitor Center

Comment: The Contractors have stressed the importance of Reclamation's efforts to manage the Visitor Center budget. With rising costs, fewer visitors, and reduced revenues since the September 11, 2001, terrorist attack, the BCP Contractors feel the need to find other sources of income. The BCP Contractors claim they were promised that Reclamation would manage the Visitor Center so that revenues would offset at least 50 percent of the capital repayment requirements so that the Visitor Center did not cause high power rate increases.

Response: Reclamation agreed to strive for generation of revenues to fund operation, maintenance, and replacement expenses associated with the Visitor Facilities, together with approximately 50 percent of the capital repayment requirements. Refurbishment of the exhibits and ongoing new product development are aimed at bringing repeat and new business to the facility. Reclamation has received a $538,000 grant for renovating the old exhibit building, a $275,000 grant for the canoe launch area, a $545,000 grant for the River Mountains Loop pedestrian trail, and is pursuing other grant opportunities.

Future Budgets

Comment: An Interested Party suggested Reclamation postpone every possible replacement in FY 2005 to mitigate the increase in replacement costs in the proposed base charge and rates. They further state that replacements need to be prioritized and only those absolutely necessary should be made in FY 2005.

Response: Reclamation agrees and supports efforts to mitigate the increase in the proposed base charge and rates. Reclamation's effort is demonstrated and implemented during the annual

Technical Review Committee (TRC) process. FY 2005 replacement costs were examined and reviewed during the TRC process in September 2003, by Reclamation, Western, and the BCP Contractors. The FY 2005 Final Ten Year Operating Plan includes the increased replacement costs that are included in the upcoming proposed FY 2005 Base Charge and Rates.

Comment: A Contractor asked Western to consider deferring principal payments in FY 2005 and the next couple of years while the replacement costs are abnormally high. They also suggested that Western investigate the ability to refinance over a longer period or find another way to finance future replacement costs.

Response: Western and Reclamation are open to any discussions with the BCP Contractors related to lowering the annual revenue requirement. The existing rate methodology is designed to recover all annual costs including principal payments and complies with Department of Energy Order RA 6120.2, Basic Policy for Rate Adjustments. Additionally, the Boulder Canyon Project Implementation Agreement (BCPIA) sets forth the expectation that the project's full revenue requirement will be funded each year, including the principal payments on a ''house type'' levelized debt payment. While there may be some flexibility to defer principal payments, Western and Reclamation believe the Contractors must raise this issue to the Engineering and Operating Committee (E&OC) for resolution. Likewise, the BCP Contractors must bring up proposals for alternate methods of financing future replacement costs (*i.e.*, capitalizing replacements vs. annual expensing) to the E&OC for review, discussion, and resolution before implementation by Western.

Comment: An Interested Party expressed concern over the effects of the anticipated long-term drought. The BCP Contractors are faced with less energy and capacity due to less water storage behind Hoover Dam and the falling level of Lake Mead means units are de-rated. He said it is time for a new paradigm on financial planning for this Project and suggested that the BCP Contractors, Western, and Reclamation take a hard look at costs and do some inventive thinking about future costs.

Response: Both Western and Reclamation have expended significant effort on keeping costs down and increasing efficiency and productivity, and will continue their ongoing effort to manage costs. If a constant 3 percent escalation factor used for budgeting was applied to Western's actual expenses beginning in FY 1998, Western would have expended approximately $806,000.00 more in FY 2003 than the actual expenditures. FY 2003 demonstrates Western's success in cost containment. See table below:

Fiscal year	Western's actual O&M program	3% annual inflation rate from FY 1998 actuals
1998	$3,814,306	$3,814,306
1999	4,431,417	3,928,735
2000	4,606,203	4,046,597
2001	4,321,965	4,167,995
2002	4,353,469	4,293,035
2003	3,615,829	4,421,826

In addition to ongoing cost containment, Western will continue to identify sources that have historically provided additional revenue to the BCP, which reduces the amount paid by the BCP Contractors. For FY 1998 through FY 2003 other revenues transferred to the BCP totaled $5,049,942. See table below:

Fiscal year	Western's other revenues transferred to BCP
1998	$1,195,321
1999	1,382,369
2000	1,738,317
2001	238,657
2002	64,318
2003	430,960

In FY 2004, approximately $2 million in sales of generator-based ancillary services provided by the BCP will be credited to help reduce the overall revenue requirement. While Western does not expect these amounts to continue at this magnitude, it illustrates Western's commitment to minimizing the net revenue requirement.

As one customer pointed out, over the past few years, Reclamation has improved unit availability and dramatically reduced critical items identified in the comprehensive power review. In FY 2004, Reclamation will have completed two overhauls using roughly the same number of employees required for one unit due to improvements in productivity, planning, and scheduling. High costs to establish reliability should taper off somewhat in the future years. See table below:

Fiscal year	Reclamation's actual O&M program[1]	3% annual inflation rate from FY 1998 actuals
1998	$27,134,796	$27,134,796
1999	28,145,636	27,948,840
2000	29,699,462	28,787,305
2001	34,579,410	29,650,924
2002	33,567,080	30,540,452
2003	36,507,037	31,456,666

[1] Includes Operations, Maintenance, Post Civil Service Retirement, Administrative & General Expenses, Extraordinary Operation and Maintenance, Replacements, Visitor Services.

Rate Adjustment

Comment: An Interested Party commented that adding the additional security costs to the FY 2005 rate base at this time is premature. He further commented that Western and Reclamation need to face the reality of the budgeting situation and not raise rates until they have some specific authorization from Congress concerning FY 2005. Since both agencies will be operating under continuing resolutions for some time into FY 2005, the rate increase can be planned, but any rate increase should be postponed until a budget is finally decided upon.

Response: The BCP Base Charge and Rates are determined by using the most current budget projections. The costs are all estimated based on historical data and inflation. Under Hoover Dam legislation, we cannot allow for a deficiency in any given year, nor does the existing rate methodology allow for delaying annual repayment of the BCP. Section 13.12 under the BCPIA requires an annual rate review to adjust the base charge either upward or downward annually to assure sufficient revenues to pay all costs and financial obligations associated with the BCP. Any under- or over-collection of revenues is recognized at year end when actual expenses are reconciled with estimated expenses. It is true that Western has operated under a continuing resolution at times in the past. FY 2005 could be similar; however, waiting until Western receives legislative direction is not justification for postponing an annual rate adjustment.

BCP Electric Service Rates

BCP electric service rates are designed to recover an annual revenue requirement that includes operation and maintenance expenses, payments to States, visitor services, uprating program, replacements, investment repayment, and interest expense. Western's power repayment study (PRS) allocates the projected annual revenue requirement for electric service equally between capacity and energy.

Procedural Requirements

BCP electric service rates are developed under the Department of Energy Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved, were transferred to and vested in the Secretary of Energy, acting by and through Western.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing DOE procedures for public participation in electric service rate adjustments are located at 10 CFR 903, effective September 18, 1985 (50 FR 37835). DOE procedures were followed by Western in developing the rate formula approved by the Commission on July 31, 2001, at 96 FERC ¶ 61,171.

The Boulder Canyon Project Implementation Agreement Contract No. 95–PAO–10616 requires Western, prior to October 1 of each rate year, to determine the annual rates for the next fiscal year. The rates for the first rate year and each fifth rate year thereafter, will become effective provisionally upon approval by the Deputy Secretary of Energy subject to final approval by the Commission. For all other rate years, the rates will become effective on a final basis upon approval by the Deputy Secretary of Energy.

Western will continue to provide the BCP Contractors annual rates by October 1 of each year using the same ratesetting formula. The rates are reviewed annually and adjusted upward or downward to assure sufficient revenues to achieve payment of all costs and financial obligations associated with the project. Each fiscal year, Western prepares a PRS that updates actual revenues and expenses and includes future estimates of annual revenues and expenses for the BCP including interest and capitalized costs.

Western's BCP electric service ratesetting formula set forth in Rate Order No. WAPA–70 was approved on April 19, 1996, in Docket No. EF96–5091–000 at 75 FERC ¶ 62,050, for the period beginning November 1, 1995, and ending September 30, 2000. Rate Order No. WAPA–94 extended the existing ratesetting formula beginning on October 1, 2000, and ending September 30, 2005. The BCP ratesetting formula includes a base charge, an energy rate, and a capacity rate. The ratesetting formula was used to determine the BCP FY 2005 Base Charge and Rates.

Western proposes the FY 2005 base charge of $57,654,683, the energy rate of 7.41 mills/kWh, and the capacity rate of $1.39/kWmonth be approved on a final basis.

Consistent with procedures set forth in 10 CFR 903, Western held a consultation and comment period. The notice of the proposed FY 2005 Rates for electric service was published in the **Federal Register** on February 18, 2004.

Following review of Western's proposal, I approve the FY 2005 Rates, on a final basis for the BCP electric service, under Rate Schedule BCP–F6, through September 30, 2005.

Dated: August 5, 2004.

Kyle E. McSlarrow,

Deputy Secretary.

[FR Doc. 04–19046 Filed 8–18–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OA–2004–0005, FRL–7803–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Pilot Test of the Pollution and Abatement Costs and Expenditures (PACE) Survey, EPA ICR Number 2158.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 18, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OA–2004–0005, to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Kelly Maguire, Office of Policy, Economics, and Innovation, National Center for Environmental Economics, MC 1809T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–2273; fax number: (202) 566–2339; e-mail address: *maguire.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OA–2004–0005, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will

be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are manufacturing, mining, and electric utility operations.

Title: Pilot Test of the Pollution and Abatement Costs and Expenditures (PACE) Survey.

Abstract: The Pollution Abatement Costs and Expenditures (PACE) Survey was conducted by the U.S. Bureau of the Census annually between 1973 and 1994 (excluding 1987) and again in 1999. This pilot test is to evaluate a revised PACE survey instrument which will be reinstituted in 2006.

The data from the PACE Survey are mainly used by the U.S. Environmental Protection Agency (EPA) to better satisfy legislative and executive requirements to track the costs of regulatory programs and to provide aggregate national statistics on costs and expenditures for pollution abatement activities. Other users of these aggregate data include trade associations, manufacturers, marketing and research companies, universities, financial and environmental institutions, other federal agencies, state and local governments, and environmental reporters.

This information collection request is to conduct a pilot of the redesigned survey instrument being considered for use in reinstating the annual PACE Survey conducted by the Bureau of the Census. The survey collects information on facility-specific costs and expenditures for pollution abatement activities among manufacturing, mining, and electric utility facilities. Pollution abatement includes treatment, recycling, waste disposal, pollution prevention, and other pollution management activities such as monitoring and testing and record-keeping and reporting.

Participation in the pilot test of the PACE survey will be voluntary. The findings from the pilot test will be used to develop the final version of the survey that will be required by law (Title 13, U.S. Code). The survey responses from the pilot test will only be used to validate the redesigned survey instrument.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The public reporting burden for this collection of information is estimated to average 4.5 hours per response.

Estimated Number of Respondents: 1000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4500 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: August 5, 2004.

Al McGartland,

Director, National Center for Environmental Economics, Office of Policy, Economics, and Innovation.

[FR Doc. 04–19048 Filed 8–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OARM–2004–0001, FRL–7809–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; General Administrative Requirements for Assistance Programs, EPA ICR Number 0938.09, OMB Control Number 2030–0020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 18, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OARM–2004–0001, to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket-Mail Code 2822IT, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Marguerite Pridgen, Office of Grants and Debarment, Mail Code 3903R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–5308; fax number: (202) 565–2470; e-mail address: *pridgen.marguerite@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OARM–2004–0001, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through

EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comments that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statue, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are non-profit organizations applying for EPA assistance awards, including grants and cooperative agreements.

Title: General Administrative Requirements For Assistance Programs.

Abstract: The Environmental Protection Agency (EPA) is establishing procedures for assessing administrative capability of non-profit organizations applying for EPA assistance agreements. Under the new procedures, EPA will require non-profit applicants recommended for award to complete a checklist entitled ''EPA Administrative Capability Questionnaire'' and return it to EPA with supporting documentation. The responses to the form will be a basis for assessing administrative capability and deciding whether to make awards to the non-profit applicant. Applicants that provide information that demonstrates they are administratively capable will be ''certified'' for a specified period (*e.g.*, four years) and therefore, would not have to resubmit the questionnaire and supporting documents during that time unless administrative management issues arise before the certification period has ended. This Notice invites comments on the proposed data collection effort.

In applying for a non-construction, discretionary grant from EPA, each applicant is currently required to complete and submit Standard Form (SF) series forms SF 424, SF 424A, and SF 424B. By signing the SF 424B, ''Assurances—Non-Construction Programs,'' the applicant is assuring compliance with various statutory and regulatory requirements (40 CFR Part 30—Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations) and is assuring that it ''[h]as the * * * institutional, managerial and financial capability (including funds sufficient to pay the non Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.'' Despite this assurance of administrative and programmatic capability, EPA's Office of the Inspector General and Office of Grants and Debarment within EPA's Office of Administration and Resources Management have documented numerous instances of non-profit recipients that have inadequate administrative systems to manage EPA funds or lack the capability to successfully perform the project scope of work.

Recognizing that it is preferable to address such issues before, rather than after an assistance agreement is awarded, EPA is prescribing uniform pre-award procedures for evaluating the administrative and programmatic capability of non-profit applicants. Specifically, EPA will require that non-profit applicants recommended for award complete a checklist entitled ''EPA Administrative Capability Questionnaire'' and return it to the designated EPA office with supporting documentation. Note that much of the information to be collected in the proposed questionnaire is currently being collected from assistance agreement recipients during EPA's post-award monitoring activities (ref.: OMB 2030–0020, Expiration date 12/31/05). In addition, 40 CFR Part 30 currently requires non-profit organizations that receive EPA assistance agreements to maintain documentation supporting their administrative capability.

For purposes of this Notice, EPA uses the term ''administrative capability'' to mean the capability of an applicant to develop and implement administrative systems required by 40 CFR Part 30, including systems related to financial management, property management, procurement standards and financial reporting and record-keeping.

As part of its pre-award procedures, EPA is considering whether to collect information on programmatic capability from non-profit organizations that apply for non-competitive grants. For purposes of this Notice, EPA uses the term ''programmatic capability'' to mean the technical capability of an applicant to successfully carry out a project, taking into account factors such as past performance on similar projects, prior experience, timely progress reporting, the qualifications of key personnel and allocation of roles and responsibilities for proper project management, and the adequacy of equipment, resources and facilities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The EPA estimates the average annual reporting burden for non-profit applicants recommended for award to complete the ''Administrative Capability Questionnaire'' to be 2 hours. In the first year of the new pre-award procedures, EPA will only require non-profit applicants recommended for new assistance awards of greater than $100,000 to provide this information. The estimated applicant pool for these awards is 210, which results in a burden of 420 hours (210 × 2 hours). In subsequent years, EPA may require all non-profit applicants recommended for new awards to provide this information. Based on a total non-profit applicant

pool of approximately 700, the resultant burden would be 1400 hours (700 X 2).

The EPA estimates the average annual reporting burden for non-profit applicants recommended for award to provide programmatic capability information to be 6 hours. The Agency also estimates that 35% of the 700 new awards to non-profit organizations—245 awards—would be made non-competitively. The resultant burden would be 1470 hours (245 × 6 hours).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: August 13, 2004.

Howard Corcoran,

Acting Assistant Administrator, Office of Administration and Resources Management.

[FR Doc. 04–19049 Filed 8–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7803–3]

Sixth Meeting of the World Trade Center Expert Technical Review Panel and 9/11 World Trade Center Dust Health Effects Conference to Continue Evaluation on Issues Relating to Impacts of the Collapse of the World Trade Center Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: The World Trade Center Expert Technical Review Panel (or WTC Technical Panel) will hold its sixth meeting intended to provide for greater input from individuals on ongoing efforts to monitor the situation for New York residents and workers impacted by the collapse of the World Trade Center. The panel members will help guide the EPA's use of the available exposure and health surveillance databases and registries to characterize any remaining exposures and risks, identify unmet public health needs, and recommend any steps to further minimize the risks associated with the aftermath of the World Trade Center attacks. The panel will meet several times over the course of approximately two years. These panel meetings will be open to the public, except where the public interest requires otherwise. Information on the panel meeting agendas, documents (except where the public interest requires otherwise), and public registration to attend the meetings will be available from an Internet web site. EPA has established an official public docket for this action under Docket ID No. ORD–2004–0003.

DATES: The sixth meeting of the WTC Technical Panel will be held on September 13, 2004, from 9 a.m. to 5 p.m., Eastern Daylight Savings Time. On-site registration will begin at 8:30 a.m. Also, on September 12, 2004, EPA, in collaboration with the New York University Environmental Lung Health Center/Division of Pulmonary and Critical Care Medicine, New York University Department of Environmental Medicine, Fire Department of New York, and Mt. Sinai Department of Community and Preventative Medicine, will co-sponsor a *9/11 World Trade Center Dust Health Effects Conference* from 12 noon to 5 p.m., Eastern Daylight Savings Time. This will be a comprehensive health symposium entailing multidisciplinary research on the health effects of the World Trade Center disaster.

ADDRESSES: The WTC Technical Panel meeting on September 13 will be held at St. John's University, Saval Auditorium, 101 Murray Street (between Greenwich Street and West Side Highway), New York City (Manhattan). The auditorium is located on the second floor of the building and is handicap accessible. A government-issued identification (*e.g.*, driver's license) is required for entry. The *9/11 World Trade Center Dust Health Effects Conference* on September 12 will be held at the Rosenthal Pavilion in the New York University Kimmel Center, 60 Washington Square South, New York, NY 10012.

FOR FURTHER INFORMATION CONTACT: For WTC Technical Panel meeting information, registration and logistics, please see the panel's Web site *http://www.epa.gov/wtc/panel* or contact ERG at (781) 674–7374. The meeting agenda and logistical information will be posted on the Web site and will also be available in hard copy. For further information regarding the WTC Technical Panel, contact Ms. Lisa Matthews,EPA Office of the Science Advisor, telephone (202) 564–6669 or e-mail: *matthews.lisa@epa.gov*. For further information regarding the *9/11 World Trade Center Dust Health Effects Conference* on September 12, please see the web site *http://www.med.nyu.edu/pulmonary* or contact Mr. Derek Grimes, Senior Research Coordinator, NYU School of Medicine, Division of Pulmonary and Critical Care Medicine, at (212) 263–2315.

SUPPLEMENTARY INFORMATION:

I. WTC Technical Panel Meeting Information

Eastern Research Group, Inc., (ERG), an EPA contractor, will coordinate the WTC Technical Panel meeting. To attend the panel meeting as an observer, please register by visiting the web site at: *http://www.epa.gov/wtc/panel*. You may also register for the meeting by calling ERG's conference registration line between the hours of 9 a.m. and 5:30 p.m. EDST at (781) 674–7374 or toll free at 1–800–803–2833, or by faxing a registration request to (781) 674–2906 (include full address and contact information). Pre-registration is strongly recommended as space is limited, and registrations are accepted on a first-come, first-served basis. The deadline for pre-registration is September 8, 2004. Registrations will continue to be accepted after this date, including on-site registration, if space allows. There will be a limited time at the meeting for oral comments from the public. Oral comments will be limited to five (5) minutes each. If you wish to make a statement during the observer comment period, please check the appropriate box when you register at the web site. Please bring a copy of your comments to the meeting for the record or submit them electronically via e-mail to *meetings@erg.com*, subject line: WTC.

II. Background Information

Immediately following the September 11, 2001 terrorist attack on New York City's World Trade Center, many federal agencies, including the EPA, were called upon to focus their technical and scientific expertise on the national emergency. EPA, other federal agencies, New York City, and New York State public health and environmental authorities focused on numerous cleanup, dust collection, and ambient air monitoring activities to ameliorate and better understand the human health impacts of the disaster. Detailed information concerning the environmental monitoring activities that were conducted as part of this response is available at the EPA Response to 9–

11 web site at *http://www.epa.gov/wtc/*.

In addition to environmental monitoring, EPA efforts also included toxicity testing of the dust, as well as the development of a human exposure and health risk assessment. This risk assessment document, *Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster*, is available on the Web at *http://www.epa.gov/ncea/wtc.htm*). Numerous additional studies by other Federal and State agencies, universities, and other organizations have documented impacts to both the outdoor and indoor environments and to human health.

While these monitoring and assessment activities were ongoing, and the cleanup at Ground Zero itself was occurring, EPA began planning for a program to clean and monitor residential apartments. From June 2002 until December 2002, residents impacted by World Trade Center dust and debris in an area of about 1 mile by 1 mile south of Canal Street were eligible to request either federally-funded cleaning and monitoring for airborne asbestos or monitoring of their residences. The cleanup continued into the summer of 2003, by which time the EPA had cleaned and monitored 3,400 apartments and monitored 800 apartments. Detailed information on this portion of the EPA response is also available at *http://www.epa.gov/wtc/*.

A critical component of understanding long-term human health impacts is the establishment of health registries. The World Trade Center Health Registry is a comprehensive and confidential health survey of those most directly exposed to the contamination resulting from the collapse of the World Trade Center towers. It is intended to give health professionals a better picture of the health consequences of 9/11. It was established by the Agency for Toxic Substances and Disease Registry (ATSDR) and the New York City Department of Health and Mental Hygiene (NYCDHMH) in cooperation with a number of academic institutions, public agencies, and community groups. Detailed information about the registry can be obtained from the registry Web site at: *http://www.nyc.gov/html/doh/html/wtc/index.html.*

In order to obtain individual advice on the effectiveness of these programs, unmet needs, and data gaps, the EPA has convened a technical panel of experts who have been involved with World Trade Center assessment activities. Dr. Paul Gilman, EPA Science Advisor, serves as Chair of the panel, and Dr. Paul Lioy, Professor of Environmental and Community Medicine at the Environmental and Occupational Health Sciences Institute of the Robert Wood Johnson Medical School-UMDNJ and Rutgers University, serves as Vice Chair. A full list of the panel members, a charge statement and operating principles for the panel are available from the panel Web site listed above. Panel meetings typically will be one-or two-day meetings, and they will occur over the course of approximately a two-year period. Panel members will provide individual advice on issues the panel addresses. These meetings will occur in New York City and nearby locations. All of the meetings will be announced on the web site and by a **Federal Register** Notice, and they will be open to the public for attendance and brief oral comments.

The focus of the sixth meeting of the WTC Technical Panel is to review status of a sampling and testing proposal (refined based on input from the July 26 meeting) to determine the geographic extent of World Trade Center contamination, to provide an update on the World Trade Center signature validation study, and also to brief the panel members on current public health studies related to World Trade Center impacts. Further information on meetings of the WTC Technical Panel can be found at the web site identified earlier: *http://www.epa.gov/wtc/panel*. Also, as noted above, on September 12, 2004, EPA and some members of the WTC panel will participate in a *9/11 World Trade Center Dust Health Effects Conference* at the New York University Kimmel Center. This comprehensive health symposium entailing multidisciplinary research on the health effects of the World Trade Center disaster is co-sponsored by EPA, New York University Environmental Lung Health Center/Division of Pulmonary and Critical Care Medicine, New York University Department of Environmental Medicine, Fire Department of New York and Mt. Sinai Department of Community and Preventative Medicine.

III. How to Get Information on E-DOCKET

EPA has established an official public docket for this action under Docket ID No. ORD–2004–0003. 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 Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752; facsimile: (202) 566–1753; or e-mail: *ORD.Docket@epa.gov*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Dated: August 13, 2004.

William H. Farland,

Acting EPA Science Advisor and Assistant Administrator for Research and Development.

[FR Doc. 04–19050 Filed 8–18–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov.* Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011517–010.

Title: APL/HSDG/Lykes/Evergreen Vessel Sharing Agreement.

Parties: American President Lines Ltd.; APL Co, Pte Ltd.; Hamburg-Süd; Lykes Lines Limited, LLC; and Evergreen Marine Corp (Taiwan) Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment revises the slot allocation of Evergreen.

Agreement No.: 011642–009.

Title: East Coast United States/East Coast of South America Vessel Sharing Agreement.

Parties: A.P. Moller-Maersk A/S; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Mercosul Line Navegacao e Logistica Ltda.; Alianca Navegacao e Logistica Ltda.; and Hamburg-Süd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment revises the slot allocations of the parties.

Agreement No.: 011888.

Title: APL/MOL 2004 Peak Season Space Charter Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; and Mitsui O.S.K. Lines, Ltd.

Filing Party: David B. Cook, Esq.; Shea & Gardner; 1800 Massachusetts Avenue, NW., Washington, DC 20036–1872.

Synopsis: The agreement authorizes the parties to cooperate in providing a limited number of round-trip voyages during the 2004 peak season in the trade between ports in the State of Washington and China (including Hong Kong) and Taiwan. The parties requested expedited review.

By Order of the Federal Maritime Commission.

Dated: August 13, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–18949 Filed 8–18–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 13, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Metropolitan Bank Group, Inc., Chicago, Illinois; to acquire 100 percent of the voting shares of Allegiance Community Bank, Tinley Park, Illinois.

Board of Governors of the Federal Reserve System, August 13, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–19047 Filed 8–18–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Times and Dates: 8:30 a.m.—5 p.m., October 19, 2004. 8:30 a.m.—12:30 p.m., October 20, 2004.

Place: Doubletree Hotel Atlanta Buckhead, 3342 Peachtree Road, Atlanta, Georgia, 30326 Telephone: (404) 231–1234 or toll free (404) 231–3112.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The Committee shall provide advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The Committee shall also review and report regularly on childhood lead poisoning prevention practices and recommend improvements in national childhood lead poisoning prevention efforts.

Matters to be Discussed: Agenda items include: Update on the Primary Prevention Workgroup document, update on the Adverse Health Effects of Blood Lead Levels less than 10 Report, update from the Lead and Pregnancy Workgroup, update of strategic planning process by state and local childhood lead poisoning prevention programs, update on cooperation with Housing Urban Development and Environmental Protection Agency enforcement of the Lead Disclosure Rule, and an update on research and program evaluation activities ongoing in the Lead Poisoning Prevention Branch. Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

Contact Person for More Information: Crystal M. Gresham, Program Analyst, Lead Poisoning Prevention Branch, Division of Emergency and Environmental Health Services, NCEH, CDC, 4770 Buford Hwy, NE, M/S F–40, Atlanta, Georgia 30341, telephone (770) 488–7490, fax (770) 488–3635.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 13, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–18991 Filed 8–18–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 8:30 a.m.–5:15 p.m., September 22, 2004. 8:30 a.m.–3:10 p.m., September 23, 2004.

Place: Doubletree Hotel (Atlanta/Buckhead), 3342 Peachtree Rd. NE., Atlanta, Georgia 30326, Telephone: (404) 231–1234.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters to be Discussed: The agenda will include updates from CDC, the Centers for Medicare & Medicaid Services, and the Food and Drug Administration; and presentations and discussion on non-regulatory approaches to laboratory improvement.

Agenda items are subject to change as priorities dictate.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible. Oral Comments: In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To assure adequate time is scheduled for public comments, individuals or groups planning to make an oral presentation should, when possible, notify the contact person below at least one week prior to the meeting date. Written Comments: For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, the comments should be received at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below. Written comments will be included in the meeting's Summary Report.

Contact Person for Additional Information: Rhonda Whalen, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE., Mailstop F–11, Atlanta, Georgia 30341–3717; telephone (770) 488–8042; fax (770) 488-8279; or via e-mail at *RWhalen@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 3, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–18992 Filed 8–18–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry Public Meeting of the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy Sites (DOE): Oak Ridge Reservation Health Effects Subcommittee

Name: Public meeting of the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Time and Date: 12 p.m.–6:30 p.m., September 14, 2004.

Place: Oak Ridge Mall, Alpine Meeting Room, 333 East Main Street, Oak Ridge, Tennessee.

Background: Under a Memorandum of Understanding (MOU) was signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS, has delegated program responsibility to CDC. Community involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ORRHES is part of these efforts.

Purpose: The purpose of this meeting is to address issues that are unique to community involvement with the ORRHES, and agency updates.

Matters to be Discussed: Agenda items will include a presentation and discussion on the ORRHES Web site, and updates and recommendations from the Public Health Assessment, Communications and Outreach, Agenda, Guidelines and Procedures, and the Health Education Needs Assessment Workgroups, and agency updates.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Marilyn Horton, Designated Federal Official and Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–32 Atlanta, Georgia 30333, telephone 1–888–42–ATSDR (28737), fax (404) 498–1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATDSR.

Dated: August 13, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–18993 Filed 8–18–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10113]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of currently approved collection.

Title of Information Collection: Application for Participation in Medicare Replacement Drug Demonstration.

Use: Section 641 of the MMA mandated a demonstration that would pay for drugs/biologicals prescribed as replacements for existing covered Medicare drugs. A report to Congress evaluating the impact of this demonstration was also mandated. In order to enroll in this demonstration, a beneficiary will be required to submit the application forms. Beneficiaries who wish to be considered for a low-income subsidy must also provide the information on the ''Application for Financial Assistance.''

Form Number: CMS–10113

OMB#: 0938–0924.

Frequency: One per beneficiary.

Affected Public: Individuals or Households.

Number of Respondents: 50,000.

Total Annual Responses: 50,000.

Total Annual Hours: 20,417.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office at (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Pam Gulliver, CMS–10113, Room C5–10–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 12, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–19017 Filed 8–18–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0204]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions

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 September 20, 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 written 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: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

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.

Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions—21 CFR Part 60 (OMB Control Number 0910–0233)—Extension

FDA's patent extension activities are conducted under the authority of the Drug Price Competition and Patent Term Restoration Act of 1984 and the Animal Drug and Patent Term Restoration Act of 1988 (35 U.S.C. 156). New human drugs, animal drugs, human, biological, medical device, food additive, or color additive products regulated by FDA must undergo FDA safety, or safety and effectiveness, review before marketing is permitted. Where the product is covered by a patent, part of the patent's term may be consumed during this review, which diminishes the value of the patent. In enacting 35 U.S.C. 156, Congress sought to encourage development of new, safer, and more effective medical and food additive products. It did so by authorizing the U.S. Patent and Trademark Office (PTO) to extend the patent term by a portion of the time during which FDA's safety and effectiveness review prevented marketing of the product. The length of the patent term extension is generally limited to a maximum of 5 years, and is calculated by PTO based on a statutory formula. When a patent holder submits an application for patent term extension to PTO, PTO requests information from FDA, including the length of the regulatory review period for the patented product. If PTO concludes that the product is eligible for patent term extension, FDA publishes a document in the **Federal Register**, which describes the length of the regulatory review period, and the dates used to calculate that period. Interested parties may request, under § 60.24 (21 CFR 60.24), revision of the length of the regulatory review period, or may petition under § 60.30 (21 CFR 60.30) to reduce the regulatory review period by any time where marketing approval was not pursued with ''due diligence.'' The statute defines due diligence as ''that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period.'' As provided in § 60.30(c), a due diligence petition ''shall set forth sufficient facts, including dates if possible, to merit an investigation by FDA of whether the applicant acted with due diligence.'' Upon receipt of a due diligence petition, FDA reviews the petition and evaluates whether any change in the regulatory review period is necessary. If so, the corrected regulatory review period is published in the **Federal Register**. A due diligence petitioner not satisfied with FDA's decision regarding the petition may, under § 60.40 (21 CFR 60.40), request an informal hearing for reconsideration of the due diligence determination. Petitioners are likely to include persons or organizations having knowledge that FDA's marketing permission for that product was not actively pursued throughout the regulatory review period. The information collection for which an extension of approval is being sought is the use of the statutorily created due diligence petition.

Since 1992, seven requests for revision of the regulatory review period

have been submitted under § 60.24. Three regulatory review periods have been altered. Two due diligence petitions have been submitted to FDA under § 60.30. There have been no requests for hearings under § 60.40 regarding the decisions on such petitions.

In the **Federal Register** of May 19, 2004 (69 FR 28929), 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:

ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
60.24(a)	7	1	7	100	700
60.30	2	0	2	50	100
60.40	0	0	0	0	0
Total					800

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 12, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–18976 Filed 8–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0112]

Guidance for Industry on Independent Consultants for Biotechnology Clinical Trial Protocols; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Independent Consultants for Biotechnology Clinical Trial Protocols,'' dated August 2004. The guidance document provides guidance to sponsors of clinical trials for certain products on when and how to request from FDA the engagement of an independent consultant to participate in the review of protocols for clinical studies intended to serve as the primary basis of claims of efficacy. This guidance document finalizes the draft guidance of the same title dated May 2003.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448; or the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling the CBER voice information system at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210; or Susan S. Johnson, Center for Drug Evaluation and Research, Office of New Drugs (HFD–20), 5515 Security Lane, suite 7215, Rockville, MD 20852, 301–594–3937.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Independent Consultants for Biotechnology Clinical Trial Protocols'' dated August 2004. On June 12, 2002, the President signed the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, which includes the Prescription Drug User Fee Amendments of 2002 (PDUFA III). A letter from the Secretary of Health and Human Services (June 4, 2002), to Congress concerning PDUFA III included an addendum containing the performance goals and programs to which FDA committed as a means of facilitating the development and review of products subject to PDUFA III. One commitment was for FDA to establish a program to allow sponsors of clinical trials for certain products to request that FDA engage an independent consultant to participate in the review of protocols for clinical studies that are intended to serve as the primary basis of claims of efficacy. This guidance document is intended to explain when and how a sponsor may take advantage of this program.

This guidance document finalizes the draft guidance document of the same title dated May 2003 (68 FR 24486, May 7, 2003). The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**) regarding this guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/cber/guidelines.htm*, *http://www.fda.gov/ohrms/dockets/default.htm*, or *http://www.fda.gov/cder/guidance/index.htm*.

Dated: August 11, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–18974 Filed 8–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation for Ecstasy, Other Club Drugs, Methamphetamine, and Inhalants Prevention Initiative—NEW

SAMHSA's Center for Substance Abuse Prevention (CSAP) under the Substance Abuse and Mental Health Services Administration (SAMHSA) will request OMB approval for two new instruments: the Targeted Capacity Expansion and Process Measure Questionnaire (TCEPMQ), and the Direct Service Intervention Dosage Data Form (DSIDDF). These instruments will be used to conduct an evaluation of capacity building, process, and project level dosage for the Ecstasy, Other Club Drugs, Methamphetamine, and Inhalant Prevention Initiative (the Initiative). These instruments will permit the grantee sites to report data about their progress in conducting targeted capacity expansion and in delivering direct service interventions.

The TCEPMQ and the DSIDDF are instruments designed to capture project level information. The TCEPMQ captures information from the projects about their project implementation and whether the project is being implemented as planned; the types of needs assessments conducted and the findings of the needs assessments; measures of awareness of Ecstasy, other club drug, methamphetamine and inhalant problems and openness to prevention efforts; measures of the projects' relationship-building activities, such as who they collaborate with, how often, and the effectiveness of these relationships; measures of their work to improve organizational and community resources; measures of contextual factors that may affect their planned activities; and a description of the effect of their capacity building activities on the community. The TECPMQ contains a total of 41 questions, 20 of which have closed-ended responses, and 21 of which require open-ended narrative responses.

The DSIDDF is designed to collect information about the projects' implementation of evidence-based prevention programs and any changes they made to the programs. The instrument also captures information about program dosage and fidelity to the model. The DSIDDF contains a total of 10 questions, 7 of which have closed-ended responses and 3 of which have open-ended, narrative responses. By collecting this information, CSAP will be able to assess the projects' progress in implementing targeted capacity expansion within the funded communities.

These electronic, standard instruments will facilitate accurate and appropriate data collection and will ensure that consistent data are collected from all projects. The practical utility of using such standard instruments is much higher than relying on narrative reports, allowing for immediate analysis and prompt technical assistance to sites experiencing program difficulties.

The estimated time needed to complete the TCEPMEQ is 3.75 hours and 2 hours for the DSIDDF. After the projects have completed their first submission of these instruments, there data will be pre-filled, which will further reduce the time burden on the respondents for the next three quarterly submission. By providing pre-filled responses, respondents will only need to provide information for those questions in which their responses have changed. The annual burden estimates for this activity are shown below:

Instrument	Number of respondents		Estimated quarterly respondent burden (by hour)				Total annual hourly respondent burden (total number of burden hours for all respondents)
	Ecstasy and other club drugs	Methamphetamine and inhalants	Quarter 1	Quarter 2	Quarter 3	Quarter 4	
TCEPMQ	12	20	*3.75	2	2	2	9.75 (312)
DSIDDF	11	19	2	.5	.5	.5	3.5 (105)
Totals	12	20	5.75	2.4	2.5	2.5	13.25 (417)

*This includes one hour extra for projects to read the related Administration Guide the first time only.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received by October 18, 2004.

Dated: August 6, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–18648 Filed 8–18–04; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: U.S. Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) will hold its eighth meeting. The meeting location is the Teton Mountain Lodge, 3385 West Village Drive, Teton Village, Wyoming 83025. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will review the overall direction of the U.S. Geological Survey's Earthquake Hazards Program with emphasis on activities in the U.S. Intermountain West region.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: Session commencing at 8 a.m. on September 13, 2004, and adjourning at 5:00 p.m. on September 14, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. David Applegate, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6714.

Dated: August 5, 2004.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 04–19019 Filed 8–18–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–04–1910–BJ–5BPA]

Notice of Filing of Plats of Survey, Nebraska

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plats of surveys of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, PO Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Indian Affairs and are necessary for the management of these lands. The lands surveyed are: The plat and field notes representing the dependent resurvey of portions of the subdivisional lines and subdivision of section lines, and the survey of the subdivision of section 34, Township 26 North, Range 9 East, Sixth Principal Meridian, Nebraska, was accepted August 12, 2004.

Copies of the preceding described plat and field notes are available to the public at a cost of $1.10 per page.

Dated: August 13, 2004.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 04–18994 Filed 8–18–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–04–9820–BK–WY02]

Notice of Filing of Plats of Survey, Wyoming

SUMMARY: The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on August 3, 2004.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, PO Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the U.S. Forest Service, and are necessary for the management of resources. The lands surveyed are:

The plat and field notes representing the dependent resurvey of Mineral Survey Nos. 64 and 66, Township 15 North, Range 86 West, Sixth Principal Meridian, Wyoming, was accepted August 3, 2004.

Copies of the preceding described plat and field notes are available to the public at a cost of $1.10 per page.

Dated: August 13, 2004.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 04–18995 Filed 8–18–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of two currently approved information collections (OMB Control Numbers 1010–0018 and 1010–0039).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB for review and approval two information collection requests (ICRs) entitled ''Form MMS–126, Well Potential Test Report (WPT)''; and ''Form MMS–127, Sensitive Reservoir Information Report (SRI).'' This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by September 20, 2004.

ADDRESSES: You may submit comments either by fax (202) 395–6566 or email (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0018 or 1010–0039). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to email your comments to MMS, the address is: *rules.comments@mms.gov*. Reference Information Collection 1010–0018 or 1010–0039 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of forms MMS–126 and MMS–127.

SUPPLEMENTARY INFORMATION:

Titles and OMB Control Numbers:

Form MMS–126, Well Potential Test Report (WPT), 1010–0039.

Form MMS–127, Sensitive Reservoir Information Report (SRI), 1010–0018.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and

to preserve and maintain free enterprise competition.

Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations ''to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein'' and to include provisions ''for the prompt and efficient exploration and development of a lease area.''

These information collection requests (ICRs) concern forms used to collect information required under 30 CFR part 250. Various sections of 30 CFR part 250, subpart K, require respondents to submit forms MMS–126 and MMS–127. MMS District and Regional Supervisors use the information on form MMS–126 for various environmental, reservoir, reserves, and conservation analyses, including the determination of maximum production rates (MPRs) when necessary for certain oil and gas completions. The form contains information concerning the conditions and results of a well potential test. This requirement implements the conservation provisions of the OCS Lands Act and 30 CFR part 250. The information obtained from the well potential test is essential to determine if an MPR is necessary for a well and to establish the appropriate rate. It is not possible to specify an MPR in the absence of information about the production rate capability (potential) of the well.

MMS District and Regional Supervisors use the information submitted on form MMS–127 to determine whether a rate-sensitive reservoir is being prudently developed. This represents an essential control mechanism that MMS uses to regulate production rates from each sensitive reservoir being actively produced. Occasionally, the information available on a reservoir early in its producing life may indicate it to be non-sensitive, while later and more complete information would establish the reservoir as being sensitive. Production from a well completed in the gas cap of a sensitive reservoir requires approval from the Regional Supervisor. The information submitted on form MMS–127 provides reservoir parameters that are revised at least annually or sooner if reservoir development results in a change in reservoir interpretation. The engineers and geologists use the information for rate control and reservoir studies.

MMS will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196, ''Data and information to be made available to the public.'' No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion but not less than annually.

Estimated Number and Description of Respondents: Approximately 151 Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for form MMS–126 is a total of 795 hours (average burden of 0.6 hour per form). The estimated annual ''hour'' burden for form MMS–127 is a total of 1,194 hours (average burden of 1.2 hours per form).

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: MMS has identified no ''non-hour cost'' burden associated with either form MMS–126 or MMS–127.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on December 12, 2003, we published a **Federal Register** notice (68 FR 69419) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms; specifies that the public may comment at anytime on these collections of information; and provides the address to which they should send comments. This information is also contained in the PRA statement on each of the forms. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 20, 2004.

Public Comment Policy: MMS's practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson (202) 208–3976.

Dated: April 14, 2004.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 04–19003 Filed 8–18–04; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1063–1068 (Final)]

Certain Frozen or Canned Warmwater Shrimp and Prawns From Brazil, China, Ecuador, India, Thailand, and Vietnam

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–1063–1068 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the

United States is materially retarded, by reason of less-than-fair-value imports from Brazil, China, Ecuador, India, Thailand, and Vietnam of certain frozen or canned warmwater shrimp and prawns, provided for in subheadings 0306.13.00 and 1605.20.10 of the Harmonized Tariff Schedule of the United States (HTSUS).[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: Effective: July 16, 2004 (China and Vietnam); August 4, 2004 (Brazil, Ecuador, India, and Thailand).

FOR FURTHER INFORMATION CONTACT: Jim McClure ((202) 205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain frozen or canned warmwater shrimp and prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on December 31, 2003, by the Ad Hoc Shrimp Trade Action Committee, Washington, DC.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on November 15, 2004, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on December 1, 2004, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 19, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 23, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is November 22, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 8, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 8, 2004. On December 27, 2004, the Commission will make available to

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''certain warmwater shrimp and prawns, whether frozen or canned, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen or canned form.

''The frozen or canned warmwater shrimp and prawn products included in the scope of the investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through either freezing or canning and which are sold in any count size.

''The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp *(Penaeus vannemei)*, banana prawn *(Penaeus merguiensis)*, fleshy prawn *(Penaeus chinensis)*, giant river prawn *(Macrobrachium rosenbergii)*, giant tiger prawn *(Penaeus monodon)*, redspotted shrimp *(Penaeus brasiliensis)*, southern brown shrimp *(Penaeus subtilis)*, southern pink shrimp *(Penaeus notialis)*, southern rough shrimp *(Trachypenaeus curvirostris)*, southern white shrimp *(Penaeus schmitti)*, blue shrimp *(Penaeus stylirostris)*, western white shrimp *(Penaeus occidentalis)*, and Indian white prawn *(Penaeus indicus)*.

''Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the investigation. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the investigation.

''Excluded from the scope are (1) breaded shrimp and prawns (1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.

''The products covered by this scope are currently classifiable under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, 1605.20.10.30, and 1605.20.10.40. ''

parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 29, 2004, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Dated: August 13, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–18985 Filed 8–18–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Second Review)]

Natural Bristle Paintbrushes From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on natural bristle paintbrushes from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on natural bristle paintbrushes from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Debra Baker ((202) 205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 6, 2004, the Commission determined that the domestic interested party group response to its notice of institution (69 FR 24191, May 3, 2004) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on September 1, 2004, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before September 7, 2004, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by September 7, 2004. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Dated: August 13, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–18986 Filed 8–18–04; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by Bestt Liebco; Elder & Jenks, Inc.; Purdy Corp.; Shur-Line; True Value Manufacturing; and Wooster Brush Co., and the response of the Paint Applicator Division of the American Brush Manufacturers Association, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Steven A. Barnes, M.D.; Revocation of Registration

On September 16, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order

to Show Cause to Steven A. Barnes, M.D. (Dr. Barnes) who was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BB4875437, under 21 U.S.C. 824(a)(3) and (a)(4), and deny any pending applications for renewal or modification of that registration. Specifically, the Order to Show Cause alleged that Dr. Barnes was without State license to handle controlled substances in the State of Texas. The Order to Show Cause also notified Dr. Barnes that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Barnes at his registered location in Houston, Texas. The order was returned to DEA on October 20, 2003, by the United States Postal Service with a stamped notation: ''attempted, not known.'' On December 17, 2003, DEA again mailed the Order to Show Cause to Dr. Barnes at a second address, however, the order was not returned. DEA has not received a request for hearing or any other reply from Dr. Barnes or anymore purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the attempted delivery of the Order to Show Cause to the registrant's address of record, as well as to a second address, and (2) no request for hearing having been received, concludes that Dr. Barnes is deemed to have waived his hearing right. *See* David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Barnes is currently registered with DEA as a practitioner authorized to handle controlled substances in Schedules II through V. According to information in the investigative file, on March 15, 2002, DEA received information from the Texas Department of Public Safety (DPS) regarding the termination of Dr. Barnes' DPS Controlled Substance Registration Certificate. The DPS action with respect to Dr. Barnes' State controlled substance registration was taken in conjunction with the temporary suspension of his State medical license by the Texas State Board of Medical Examiners (Board). In support of its order of temporary suspension, the Board found that Dr. Barnes was unable to practice medicine ''* * * with reasonable skill and safety to patients because of excessive use of drugs, narcotics, chemicals, or other substance.''

On April 5, 2002, the Board and Dr. Barnes entered into an Agreed Order. The Agreed Order restricted Dr. Barnes' practice of medicine for a period of five years under various terms and conditions, including Dr. Barnes agreement to abstain from ''the consumption of alcohol, dangerous drugs, or controlled substances in any form unless prescribed by another physician for legitimate and documented therapeutic purposes.''

On February 27, 2003, the Board was notified by a State drug testing service that on February 25, 2003, Dr. Barnes tested positive for cocaine from a head hair sample. Additionally, the Board has been previously notified by the drug testing service that Dr. Barnes had ''a negative dilute drug tests on June 4, 2002, and October 2, 2002.'' After reviewing evidence presented by the Board staff and Dr. Barnes before a Board panel on March 21, 2003, the panel found that Dr. Barnes violated the terms of the April 5, 2002, Agreed Order by ingesting cocaine. As a result, the Board entered an Order on May 27, 2003, suspending Dr. Barnes' Texas medical license. There is no evidence before the Deputy Administrator to rebut findings that Dr. Barnes' Texas medical license has been suspended, or that the suspension has been lifted. Therefore, the Deputy Administrator finds that since Dr. Barnes is currently not authorized to practice medicine in Texas, it is reasonable to infer that he is not authorized to handle controlled substances in that State.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Richard J. Clement, M.D., 68 FR 12103 (2003); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here it is clear that Dr. Barnes' medical license has been suspended and the suspension has not been lifted. As a result, Dr. Barnes is not licensed to handle controlled substances in Texas, where he is registered with DEA. Therefore, he is not entitled to maintain that registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BB4875437, issued to Steven A. Barnes, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of the aforementioned registration be, and it hereby is, denied. This order is effective September 20, 2004.

Dated: July 27, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–18972 Filed 8–18–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–15]

K & Z Enterprises, Inc.; Denial of Application

On December 13, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to K & Z Enterprises, Incorporated, d/b/a/ Georgia Wholesale (Respondent), proposing to deny its application executed on June 15, 2001, for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting the application of the Respondent would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h) and 824(a).

The Order to Show Cause was delivered to the Respondent by certified mail, and on January 22, 2003, the Respondent, through its president Kamar Hamrani (Mr. Hamrani), submitted a written response essentially addressing the allegation in the Order to Show Cause. However, there was no mention of any request for hearing in the Respondent's letter.

On February 10, 2003, the presiding Administrative Law Judge Gail A. Randall (Judge Randall) issued an Order for Prehearing Statements, directing the respective parties to file pre-hearing statements. However, in lieu of filing a pre-hearing statement, counsel for DEA filed Government's Request for Finding and Motion for Summary Disposition on February 12, 2003. The Government argued, *inter alia,* that there was no language in any of the Respondent's written submissions where a hearing was requested, as required by 21 CFR 1309.53. The Government therefore requested that Judge Randall make a finding that the Respondent had waived its right to a hearing and the contents of the Respondent's written submissions

be submitted to the Deputy Administrator for determination as to whether or not a registration should be issued.

By Order dated February 19, 2003, Judge Randall afforded the Respondent an opportunity to respond to the Government's motion. The Respondent was directed to file its response by March 12, 2003, however, no such response was ever submitted. Judge Randall found that a hearing had not been requested in this proceeding and on March 18, 2003, issued an Order Terminating Proceedings. Following the termination of proceedings, Judge Randall transmitted the matter to the Deputy Administrator for issuance of a final order.

In light of the above, the Deputy Administrator similarly finds that the Respondent has waived its hearing right. *Aqui Enterprises,* 67 FR 12576 (2002). After considering relevant material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67 (2003).

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Phenylpropanolamine, also a list I chemical, is presently a legitimately manufactured and distributed product used to provide relief of the symptoms resulting from irritation of the sinus, nasal, and upper respiratory tract tissues, and is also used for weight control. Phenylpropanolamine is also a precursor chemical used in the illicit manufacture of methamphetamine and amphetamine. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is an ongoing public health concern in the United States.

The Deputy Administrator's review of the investigative file reveals the DEA received an application dated June 15, 2001, from the Respondent. The Respondent's address of record is a location in Doraville, Georgia. The application was submitted on behalf of the Respondent by Mr. Hamrani. The Respondent initially sought DEA registration as a distributor of the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. However, Mr. Hamrani subsequently informed DEA in writing of his desire to withdraw phenylpropanolamine from his company's registration application.

On October 27, 2001, DEA diversion investigators conducted a pre-registration inspection of the Respondent's premises, where they met with Mr. Hamrani. During the inspection, investigators advised Mr. Hamrani of regulatory requirements and problems surrounding the diversion of list I chemicals. The investigators also reviewed security, recordkeeping, and distribution procedures with Mr. Hamrani and provided him with appropriate materials regarding DEA requirements for handlers of listed chemicals.

DEA's inspection revealed that Respondent had become incorporated on March 9, 2001. Mr. Hamrani informed DEA investors that his previous business experience was as a manager/owner of gasoline stations with attached convenience stores. Respondent's primary business consists of wholesale distribution of merchandise to retail convenience stores and jobbers, with a product line that included soda and juice drinks, automotive oil, and various snacks. Mr. Hamrani told DEA investigators of his desire to sell to his customers two boxes of 24 bottles and two boxes of 24 blister paks of ''Heads-Up,'' ''Max Brand,'' and ''Mini-Two-Way'' ephedrine products, as well as nationally recognized pseudoephedrine brand products. Mr. Hamrani estimated that the sale of list I chemical products by his firm would constitute less than one percent of total sales. DEA also requested, and Mr. Hamrani provided, a list of Respondent's proposed customers.

From March through June 2002, DEA investigators conducted verifications of eighteen establishments from the list of prospective customers provided by the Respondent. These customers were located in the vicinity of Atlanta and Lawrenceville, Georgia and were comprised primarily of convenience stores and gas station's. DEA's investigation revealed that four of the purported customers did not exist. Two retailers refused to cooperate with DEA's investigation and another purported customer did not sell over-the-counter products of any kind. Several of the gas station's customers informed DEA personnel that while they purchased beverage and other non-drug products from the Respondent, they had no agreement to purchase over-the-counter medication products from Respondent.

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or combination of factors, and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. See, *e.g., Energy Outlet,* 64 FR 14269 (1999). See also *Henry J. Schwartz, Jr., M.D.,* 54 Fed. Reg. 16422 (1989).

The Deputy Administrator finds factors four and five relevant to the Respondent's pending registration application.

With respect to factor four, the applicant's past experience in the distribution of chemicals, the Deputy Administrator finds this factor relevant to Mr. Hamrani's apparent lack of experience in the handling of list I chemical products. The DEA investigative file shows that the Respondent is a retailer of general merchandise and before that, Mr. Hamrani operated gasoline stations with attached convenience stores. Mr. Hamrani's past history as an entrepreneur suggests that he has not had any experience in handling listed chemical products. In prior DEA decisions, the lack of experience in the handling of list I chemicals was a factor in a determination to deny a pending application for DEA registration. See, *Matthew D. Graham,* 67 FR 10229 (2002); *Xtreme Enterprises, Inc.* 67 FR 76195 (2002). Therefore, this factor similarly weighs against the granting of the Respondent's pending application.

With respect to factor five, other factors relevant to and consistent with the public safety, the Deputy Administrator finds this factor relevant to the Respondent's proposal to distribute listed chemical products primarily to convenience stores and gas

stations. While there are no specific prohibitions under the Controlled Substance Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found that business establishments such as gas stations and convenience stores constitute sources for the diversion of listed chemical products. *See e.g., Sinbad Distributing,* 67 FR 10232, 10233 (2002); *K.V.M. Enterprises,* 67 FR 70968 (2002) (denial of application based in part upon information developed by DEA that the applicant proposed to sell listed chemicals to gas stations, and the fact that these establishments in turn have sold listed chemical products to individuals engaged in the illicit manufacture of methamphetamine); *Xtreme Enterprises, Inc.,* supra.

The Deputy Administrator also finds factor five relevant to the results of DEA's verification of the Respondent's proposed customers. Among the Respondent's potential customers were four establishments no longer in existence; two that refused to cooperate with DEA investigator; one that did not sell over-the-counter products of any kind; and several that had no standing agreement to purchase any over-the-counter medication products from Respondent. DEA has previously found that incomplete customer information, or questionable conduct by customers are grounds to deny an application to distribute list I chemicals. *Island Wholesale,* 68 FR 17406 (2003); *Shani Distributors,* 68 FR 62324 (2003).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by K & Z Enterprises, Incorporated be, and it hereby is, denied. This order is effective September 20, 2004.

Dated: July 27, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–18969 Filed 8–18–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–1]

David A. Hoxie, M.D.; Revocation of Registration

On August 21, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David A. Hoxie, M.D. (Respondent), proposing to revoke his DEA Certificate of Registration, BH4678833, pursuant to 21 U.S.C. 824(a)(1) and 824(a)(4), and deny any pending applications for renewal of registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged in relevant part that the Respondent materially falsified DEA applications for registration and that his continued registration would be inconsistent with the public interest.

By letter dated September 15, 2002, the Respondent requested a hearing on the issues raised by the Order to Show Cause. Following pre-hearing procedures, a hearing was held on August 26, 2003, in Columbus, Ohio. Counsel for the Government presented the testimony of three witnesses and introduced documentary evidence. The Respondent did not testify on his behalf or introduce any documentary evidence. After the hearing, both parties submitted written proposed findings of fact, conclusions of law, and argument.

On April 7, 2004, Administrative Law Judge Gail A. Randall (Judge Randall) issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision (Opinion and Recommended Ruling), recommending that Respondent's DEA Certificate of Registration be revoked and that any pending applications to renew or modify that registration be denied. On May 24, 2004, counsel for the Respondent filed exceptions to Judge Randall's Opinion and Recommended Ruling and on May 26, 2004, Judge Randall transmitted the record of these proceedings to the Administrator of DEA.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge. Her adoption is in no manner diminished by any recitation of facts, issues, or conclusions herein, or of any failure to mention a matter of fact or law.

The record before the Deputy Administrator shows that as of the date of the hearing, the Respondent was licensed to practice medicine in the State of Ohio. A review of the record in this proceeding reveals that in or around 2002, DEA's Columbus, Ohio office sought assistance from the agency's Los Angeles Field Division in obtaining information on any possible prior arrests in California involving the Respondent. To that end, a diversion investigator from the Los Angeles Field Division contacted the city's police department to obtain arrest records pertaining to the Respondent. The Los Angeles investigator also provided to the Bureau of Records, in Sacramento, Respondent's date of birth and Social Security number to further his search of arrest records involving the Respondent.

According to a Los Angeles Police Department arrest report which was admitted into the record of this proceeding, on or around December 15, 1973, the Respondent was arrested and charged with possession of marijuana. However, there is no record regarding the disposition of this charge. The record also contains an arrest report for September 19, 1978, which documents the Respondent's arrest on a charge of ''Poss Controlled Substance.'' As with the Respondent's prior arrest, the record is silent with regard to the disposition of this charge.

The record also contains a Los Angeles Consolidated Booking Form which documents the July 6, 1980, arrest of the Respondent on the charge of driving under the influence of drugs. However, the record is unclear as to the disposition of this charge. The record contains yet another arrest report dated July 11, 1981, which documents the arrest of the Respondent on the charge of driving under the influence of alcohol and drugs. A field sobriety test performed at the time of the arrest describes Respondent as having ''very poor'' coordination, ''very thick and slurred'' speech, and ''tottering unsteady, falling/stumbling'' balance. The report also notes that the Respondent later entered into treatment where he apparently conveyed to the treating physician that he had smoked two PCP (phenylcyclohexylamine) cigarettes.

The above arrest record also contained a document entitled ''Los Angeles PD Disposition of Arrest and Court Action.'' The exhibit identifies the Respondent as the arrestee and lists his date of birth. However, the section of the form entitled ''Court Information'' was blank and therefore, the disposition of this charge is unclear.

The Respondent was again arrested on August 7, 1983, and charged with possession of PCP. A Government witness testified that he obtained information that the Respondent had entered a final plea of ''Nolo'' to two misdemeanor charges, one for possession of a controlled substance in violation of the State Health and Safety Code, and a second charge related to a vehicle code violation. Pursuant to a

plea agreement, the Respondent received a suspended sentence for 90 days in jail, and given credit for time served. On November 30, 1983, the charges were disposed of, and the Respondent was placed on prohibition for two years, ending on November 29, 1985.

As with Respondent's prior arrests, the record is unclear as to the total sentence served. A Government witness testified at the hearing that the court had ''dismissed'' or ''put aside'' the sentence for count three. The court further ordered probation for 36 months for counts one and two. With respect to his compliance with probation, evidence was presented that on March 17, 1988, the Respondent was found in violation and was sentenced to 30 days in jail. However, the record is unclear as to the specific criminal violation the probation relates to, since the probation term for the Respondent's 1983 conviction was to end in November of 1985.

On January 26, 1984, the Respondent was again arrested in Los Angeles, California and charged with being under the influence of PCP. However, there is no information in the record as to the disposition of this charge. Further evidence was presented that on September 25, 1984, in Los Angeles, California, the Respondent was arrested for driving with a suspended drivers' license and apparently provided a statement to the arresting officer that he (Respondent) was aware of the suspension of his license.

On or about November 14, 1995, the Respondent was issued DEA Certificate of Registration BH4678833 for his medical practice in Ohio. The last renewal of this registration was issued to the Respondent on October 18, 2001, and its date of expiration is October 31, 2004.

The two DEA applications at issue in the Government's allegation of material falsification are renewal applications dated October 31, 2001, and the second dated October 14, 1998. On both renewal applications, the Respondent was asked the following questions: ''Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law?''; (2) ''Has the applicant ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied?''; and (3) ''Has the applicant ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation?'' On both applications, the Respondent provided a ''No'' response to these three questions.

The record also contains the Respondent's application for an Ohio medical license, signed before a Notary Public on June 17, 1996. A review of that application reveals that Respondent provided a ''No'' response to the following question: ''Have you ever been convicted or found guilty of a violation of Federal law, State law, or municipal ordinance other than a minor traffic violation?''

Also admitted into evidence was the Respondent's application for Virginia medical license, dated January 20, 1995. The Respondent provided a ''No'' response to the following question included on the application: ''Have you ever been convicted of a violation of/or pled Nolo Contendere to any Federal, State, or local statute, regulation or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor (Excluding traffic violations, except convictions for driving under the influence)?''

As noted above, in response to the Order to Show Cause the Respondent directed a letter to DEA dated September 15, 2002, requesting a hearing. In that letter, the Respondent denied that he had ever been arrested for drug charges, engaged in a plea bargain or received probation, and had never violated probation or received a sentence of an additional thirty days in jail.

During an interview conducted in March of 2002 by a DEA diversion investigator and an investigator from the Ohio Medical Board, the Respondent again denied these events. Specifically, the Respondent denied ever having been arrested on any charge including those related to controlled substance violations, ever having been convicted, ever having entered into any plea bargains, and ever having served any probation time. When asked during that interview why it had taken him so long to complete his education, the Respondent attributed the delay to his having been in jail on several occasions. However, Respondent never acknowledged that he had been convicted of any Controlled Substances Act offenses.

The Respondent further informed the DEA diversion investigator that he only possessed a drivers' license for the State of California. However, during a subsequent investigation by the Ohio Medical Board, it was revealed that the Respondent also had obtained driver licenses in New York and Michigan.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for renewal of such registration if she determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See* Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (1989).

First, pursuant to 21 U.S.C. 824(a)(1), a registration may be revoked if the registrant has materially falsified an application for registration. DEA has previously held that in finding that there has been a material falsification of application, it must be determined that the applicant knew or should have known that the response given to the liability question was false. *See,* James C. LaJavic, D.M.D., 64 FR 55962, 55964 (1999); Martha Hernandez, M.D., 62 FR 61,145 (1997); Herbert J. Robinson, M.D., 59 FR 6304 (1994).

As noted above, in August of 1983, the Respondent was charged with unlawful possession of PCP, a Schedule II controlled substance. On or about November 30, 1983, the charge was disposed of through a Nolo plea and the Respondent was placed on probation for a period of three years. Yet, a review of the Respondent's DEA renewal applications for 1998 and 2001 reveal ''no'' responses to the liability question which asked whether the applicant has ever been convicted of a crime in connection with controlled substances under State or Federal law. In light of this evidence, as well as the Respondent's failure to provide evidence to the contrary, the Deputy Administrator is left to conclude that the Respondent knew or should have known that his ''no'' response to a liability question on a DEA registration application was false, and therefore he materially falsified his application for

registration. Accordingly, grounds exist to revoke the Respondent's registration pursuant to 21 U.S.C. 824(a)(1). Thomas E. Johnston, D.O., 45 FR 72311, 72312 (1980); *see* also Bobby Watts, M.D. 58 FR 46995 (1993).

Next, the Deputy Administrator must consider whether Respondent's continued registration would be inconsistent with the public interest. As to factor one, the recommendation of the appropriate State licensing board or professional disciplinary authority, there is no evidence in the record of any actions, adverse or otherwise, regarding any professional license held by the Respondent. Similarly, with respect to factors two and three, there is no evidence in this matter with respect to Respondent's dispensing of controlled substances, or of any conviction under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

With regard to factor four, compliance with applicable State, Federal, or local laws relating to controlled substances, the Deputy Administrator agrees with Judge Randall's finding that the Respondent violated California State law by unlawfully (1) being under the influence of controlled substances in the 1980's, to include marijuana, (2) possessing PCP, (3) being under the influence of PCP, and (4) violating probation given as a result of these infractions.

With regard to factor five, other conduct which may threaten the public health or safety, the Deputy Administrator is troubled by the extent and ease with which the Respondent has engaged in dishonest conduct. In addition to his material falsification of DEA registration applications, the Respondent provided false statements to a DEA investigator when he denied any previous arrests on drug charges and claimed to have a drivers' license only in California when he also held drivers' licenses in two additional jurisdictions. The Respondent repeated the same denials in his September 2002 letter to DEA, despite evidence to the contrary.

The Respondent further demonstrated questionable candor when he provided false responses to questions on applications for medical licensure in Ohio and Virginia. His false responses to questions on State professional license applications further support the revocation of his DEA Certification of Registration. *See, Bernard C. Musselman, M.D.,* 64 FR 55965 (1999).

As referenced above, the Respondent did not testify during the hearing. The Deputy Administrator may draw a negative inference from Respondent's failure to testify during an administrative hearing. *See, Michael G. Sargent, M.D.,* 60 FR 22076 (1995); *Raymond A. Carlson, M.D.,* 53 FR 7425 (1988); *Antonio C. Camacho, M.D.,* 51 FR 11654 (1986). The negative inference which is drawn from Respondent's failure to testify is that he was unwilling to be forthright and completely honest with the Administrative Law Judge and the Drug Enforcement Administration. *See Antonio C. Camacho, M.D., supra.* In light of the Respondent's demonstrated lack of candor regarding his previous conduct, a similar inference is drawn here.

On May 24, 2004, counsel for the Respondent filed exceptions to the Opinion and Recommended Ruling of Judge Randall. The Respondent argued in relevant part that: (1) The evidence in this proceeding did not establish that he materially falsified a DEA registration application; (2) Judge Randall should not have relied on arrest reports which were insufficient to prove a conviction; (3) there was only one reliable document in the record which established that Respondent did not falsify his DEA application; and (4) the Government's unproven assertions do not meet its burden of proving that the Respondent's continued registration is not consistent with the public interest.

The Respondent's arguments relate primarily to the reliability of evidence regarding the disposition of his arrest for possession of PCP and the impact of that event on his subsequent responses to questions on DEA registration applications. As noted above, the Deputy Administrator agrees with Judge Randall's finding that evidence of Respondent's arrest and subsequent conviction on a controlled substance charge was established by a preponderance of evidence. While the Respondent subsequently raised questions regarding the reliability of arrest reports admitted into the record, the fact remains that he provided no similar evidence during the hearings to rebut these reports. Meanwhile, in addition to the arrest reports, the record contains corroborating testimony of the Respondent's ''Nolo'' plea to the charge of possession of PCP and the Government also provided documentary evidence regarding the disposition of the charges. Having addressed the Respondent's central contention regarding the reliability of evidence surrounding his criminal conviction, the Deputy Administrator does not find it necessary to address the remaining arguments raised in the Respondent's exceptions.

In light of allegations regarding his prior arrests and conviction related in part to substance abuse, Respondent's failure to testify at the administrative hearing or provide evidence regarding these matters severely compromises any favorable consideration of his continued registration with DEA. As noted by Judge Randall, ''* * * DEA does not have any evidence that the Respondent takes responsibility for his past misconduct. Further, the DEA does not have any evidence that the Respondent wants to provide assurances that his future handling of controlled substances would be consistent with the public interest.''

The Deputy Administrator finds that the Respondent has demonstrated conduct which raise questions regarding his character and ultimately, his fitness to possess a DEA Certificate of Registration. The Respondent has been involved in a series of arrests and at least one criminal conviction related primarily to substance abuse. Although many of these incidents occurred nearly two decades ago, the Respondent by choosing not to testify at the hearing or provide any evidence on his behalf has left the record bereft of any information that would support his continued registration with DEA. To exacerbate matters further, the Respondent falsified two DEA applications, two State professional licensing applications, and was not forthright regarding his arrests or conviction in a discussion with a DEA investigator or and in a subsequent letter to the agency. Given the totality of the circumstances, the only conclusion to be reached here in Respondent's continued registration would be inconsistent with the public interest and his DEA Certificate of Registration should be revoked.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BH4678833, previously issued to David A. Hoxie, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications to renew or modify said registration be denied. This order is effective September 20, 2004.

Dated: July 27, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–18973 Filed 8–18–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John E. McCrae d/b/a J & H Wholesale; Denial of Application

On December 8, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John E. McCrae d/b/a J & H (J & H) prosing to deny its application executed on April 29, 2003, for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting the application of J & H would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h) and 824(a). The Order to Show Cause also notified J & H that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to J & H at its address of record in Middleburg, Florida and was received on behalf of the firm on December 16, 2003. Nevertheless, DEA has not received a request for hearing or any other reply from J & H, or anyone purporting to represent the company in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause to the applicant's address of record, and (2) not request for hearing having been received, concludes that J & H has waived its hearing right. *See* Aqui Enterprises, 67 FR 12576 (2002). After considering relevant material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67 (2003). The Deputy Administrator finds as follows:

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Psedoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Phenylpropanolamine, also a list I chemical, is presently a legitimately manufactured and distributed product used to provide relief of symptoms resulting from irritation of the sinus, nasal and upper respiratory tract tissues, and is also used for weight control. Phenylpropanolamine is also a precursor chemical used in the illicit manufacture of methamphetamine and amphetamine. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is an ongoing public health concern in the United States.

The Deputy Administrator's review of the investigative file reveals that by application dated April 29, 2003, J & H sought DEA registration as a distributor of the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. The application was submitted on behalf of J & H by its owner, John E. McCrae (Mr. McRae). There is no evidence in the investigative file that J & H has sought to modify its pending application in any respect.

According to the investigative file, on July 11, 2003, a DEA diversion investigator contacted Mr. McRae regarding J & H's pending application. It is not clear from the investigative file whether the July 11 contact was made in person or over the telephone. The diversion investigator advised Mr. McRae that DEA would need to review a list of his company's potential customers, products, and suppliers of list I chemicals. Mr. McRae was informed that list I chemicals are regulated by DEA because they have been used in the illicit manufacture of methamphetamine and other controlled substances.

Mr. McRae at one point inquired with DEA investigators about the timing of any approval of his company's pending registration application. He stated that he had been approached by customers seeking to purchase list I chemical products from him, and further added that he could ''double [his] sales tomorrow'' if his application was approved. DEA learned that Mr. McRae has no prior experience handling over-the-counter medications, including list I chemical products.

On August 6, 2003, two DEA diversion investigators conducted an on-site pre-registration inspection at J & H's proposed registered location. The location requested by J & H as a proposed DEA registered address was Mr. McRae's home residence. DEA's inspection revealed that Mr. McRae sells approximately 150 novelty and general merchandise items to customers located in various Florida cities, including Jacksonville and Gainsville. Mr. McRae estimated that the sale of list I chemical products would constitute approximately ten percent or less of his company's total sales.

Mr. McRae then provided to DEA personnel a list of customers to whom listed chemical products would be sold. The customer list was comprised primarily of convenience and beverage stores, as well as gas stations. Mr. McRae stated that he began selling novelty items to convenience stores on a full time basis in March 2003. When asked about the manner in which he identified his customers, Mr. McRae explained that he makes site visits to his customers' stores and knows them from prior transactions. He further stated that on most occasions, he deals with the owner of a particular establishment and only accepts cash payment, which usually comes directly from the customers' cash register. Only occasionally has Mr. McRae accepted a business check in payment for a sale and he never accepts personal checks.

As noted above, J & H is located at Mr. McRae's residential home. With respect to security of the premises, DEA investigators found that the home had a residential alarm system. DEA's inspection further revealed that the only security devices were contact switches on the home's front and patio doors and there was no motion detector on the premises because of the family canine.

With respect to storage of listed chemical products, DEA personnel were informed that these products would be stored in a plastic tote bin maintained in the garage of the residence. When DEA investigators arrived at the residence, they noted that an exterior garage door was open and a young male friend of Mr. McRae's son entered the home through the interior garage door. Family members and the visitor were later seen using the garage's interior door to depart the home.

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or combination of

factors. and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See e.g.,* Energy Outlet, 64 FR 14269 (1999). *See* also Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Deputy Administrator finds factors one, four and five relevant to J & H's pending registration application.

With regard to factor one, maintenance of effective controls against diversion of listed chemicals into other than legitimate channels, the DEA pre-registration inspection documented inadequate security at the proposed registered location of J & H. Mr. McRae proposes to store listed chemical products in the garage of his residential location. However, DEA investigators documented a residential alarm system in which the only security devices are contact switches on the front and patio doors of the residence. Additionally, the garage where listed chemicals are to be stored has an exterior overhead door which appears to be easily accessed, and the interior garage door appears to be a common passage way into and out of the residential home for Mr. McRae's family members and their friends.

With regard to factor two, compliance with applicable Federal, State, and local law, there is no evidence before the Deputy Administrator that J & H has failed to comply in any respect with such laws.

With respect to factor four, the applicant's past experience in the distribution of chemicals, the Deputy Administrator finds this factor relevant to Mr. McRae's lack of experience in handling of list I chemical products. In prior DEA decisions to deny pending applications for DEA registration. *See,* Matthew D. Graham, 67 FR 10229 (2002); Xtreme Enterprises, Inc., 67 FR 76195 (2002). Therefore, this factor similarly weighs against the granting of J & H's pending application.

With respect to factor five, other factors relevant to and consistent with the public safety, the Deputy Administrator finds this factor relevant to J & H's proposal to distribute listed chemical products from a residential location to customers comprised primarily of convenience stores and gas stations. While there are no specific prohibitions under the Controlled Substance Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found that gas stations and convenience stores constitute sources for the diversion of listed chemical products. *See, e.g.,* Sinbad Distributing, 67 FR 10232, 10233 (2002); K.V.M. Enterprises, 67 FR 70968 (2002) (denial of application based in part upon information developed by DEA that the applicant proposed to sell listed chemicals to gas stations, and the fact that these establishments in turn have sold listed chemical products to individuals engaged in the illicit manufacture of methamphetamine); Xtreme Enterprise, Inc., *supra.*

In the instant matter, the Deputy Administrator finds curious the product specific inquiries of J & H's customers with respect to the applicant's sale of list I chemical products. The Deputy Administrator is also intrigued by Mr. McRae's reliance on the marketing of these products to ''double'' his overall sales totals when his own projections regarding these products were approximately ten percent or less of total sales.

The high priority placed upon the proposed sale of listed chemical products by J & H to convenience stores and gas stations, in conjunction with the specific requests by these entities to obtain listed chemical products for sale appears to defy current data regarding the marketing and sale of these products. DEA has previously accepted expert analysis of sales data regarding listed chemical products where it was found that establishments such as convenience stores and gas stations ''have a very small or no likelihood of selling [listed chemical] products over the counter to consumers seeking remedies for nasal congestion from allergies, colds or other conditions.'' *See,* Branex, Incorporated, 69 FR 8682, 8690–92 (2004). Consistent with the ruling in Branex, the Deputy Administrator concludes here that the scale of J & H's proposed sale of list I chemical products to its customers appears not in keeping with the normal chain of distribution for goods of this kind.

As noted above, there is no evidence in the investigative file that J & H ever sought to modify its pending application with respect to the listed chemical products it seeks to distribute. Among the listed chemical products the firm seeks to distribute is phenylpropanolamine. In keeping with prior DEA rulings, the Deputy Administrator also finds factor five relevant to J & H's request to distribute phenylpropanolamine, and the apparent lack of safety associated with the use of that product. DEA has previously determined that an applicant's request to distribute phenylpropanolamine constitutes a ground under factor five for denial of an application for registration. Shani Distributors, 68 FR 62324 (2003). Based on the foregoing, and the lack of evidence by the applicant to the contrary, the Deputy Administrator concludes that granting the pending application of J & H would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by John E. McRae d/b/a J & H Wholesale be, and it hereby is, denied. This order is effective September 20, 2004.

Dated: July 27, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–18971 Filed 8–18–04; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Proveedora Jiron, Inc. Edilberto Jiron, President; Denial of Application

On October 30, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Proveedora Jiron, Incorporated, Edilberto Jiron, President (Proveedora) proposing to deny its application, executed on March 25, 2003, for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged in relevant part that granting the application of Proveedora would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h) and 824(a). The Order to Show Cause also notified Proveedora that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to Edilberto Jiron (Mr. Jiron), President of Proveedora at his firm's proposed registered location in Miami, Florida. A return receipt, which was part of the investigative file, indicates that the show cause order was received on November 12, 2003, on behalf of Proveedora. DEA has not received a request for hearing or any other reply from Proveedora or anyone purporting to represent the company in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for hearing having been received, concludes that Proveedora has waived its hearing

right. *See* Aqui Enterprises, 67 FR 12576 (2002). After considering relevant material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67 (2003). The Deputy Administrator finds as follows:

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. As noted in previous DEA final orders, Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a persistent and growing problem in the United States. Yemen Wholesale Tobacco and Candy Supply, Inc., 67 FR 9997 (2002); Denver Wholesale, 67 FR 99986 (2002).

The Deputy Administrator's review of the investigative file reveals that on March 25, 2003, Proveedora submitted an application for DEA registration as a distributor of the list I chemicals ephedrine and pseudoephedrine. The application was submitted on behalf of Proveedora by Mr. Jiron. Upon receipt of the application, the DEA Miami Field Division initiated a pre-registration investigation in or around April or May of 2003.

According to a DEA investigative report contained in the investigative file, on May 29, 2003, a DEA diversion investigator from the Miami Field Division contacted Mr. Jiron by telephone to schedule an appointment. Apparently, the investigator explained to Mr. Jiron that ''information and documents'' were needed to process the firm's application. There is no mention in the report of what specific information or documents were requested of Mr. Jiron. Mr. Jiron is quoted as replying to the investigator that he felt uncomfortable ''divulging this information'' although the investigator explained that all documents and information will remain confidential.

Similarly, a review of a July 15, 2003, certified letter from the DEA Miami Field Division to Mr. Jiron reveals a written reminder to the applicant of a prior discussion he had with DEA personnel where it was explained to that ''information and documents were needed to in order to proceed with his application.'' Again, there is no reference in the aforementioned letter of what information was requested of Mr. Jiron for completion of his company's application for DEA registration. According to the investigative file, the certified letter was returned to DEA unclaimed.

The investigative file further reveals that on August 18, 2003, a DEA diversion investigator telephoned an employee of Proveedora to verify the firm's address, and left a message for Mr. Jiron to contact the DEA apparently in regard to the firm's pending registration application. However, Mr. Jiron never contacted DEA regarding the matter.

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or combination of factors, and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.,* Energy Outlet, 64 FR 14269 (1999). *See also* Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

In rendering a final agency decision in this matter, the Deputy Administrator admittedly proceeds with great reluctance. Although a finding has been made that the applicant has waived its right to a hearing, nevertheless, the investigative file that has been provided ostensibly to assist the Deputy Administrator in rendering a ruling in this matter is at best, incomplete. The investigative file contains scant information about DEA's investigation of the applicant, virtually no information in any of the DEA investigative reports or correspondences on what information the agency requested of the applicant to complete its investigation, and no background information which may have explained why the applicant declined DEA's repeated requests for additional information.

Nevertheless, in balancing public interest concerns and in response to the ongoing public health threat brought on by the diversion of list I chemical products, the Deputy Administrator finds the balance of interests weighs in favor of denying the application of Proveedora.

In its Order to Show Cause, the agency references the applicant's failure to provide requested documents or statements within a reasonable time, and how such inaction on the part of the applicant may be deemed a waiver by the applicant to present such matters for consideration by the Administrator pursuant to the ''Additional information'' provision found at 21 CFR 1301.15. Notwithstanding the above concerns surrounding the incomplete DEA investigative file, the Deputy Administrator agrees that the record is silent with respect to information that would support Proveedora's application. However, with respect to the agency's request for additional information relevant to an application for the registration of a list I chemical distributor, the appropriate regulatory provision is found at 21 CFR 1309.35, which is identical in scope to § 1301.15 in that it provides:

> The Administrator may require an applicant to submit such documents or written statements of facts relevant to the application as he deems necessary to determine whether the application should be granted. The failure of the applicant to provide such documents or statements within a reasonable time after being requested to do so shall be deemed to be a waiver by the applicant of an opportunity to present such documents or facts for consideration by the Administrator in granting or denying the application.

It appears from the investigative file that the owners of Proveedora were not compliant with repeated DEA request for information necessary to the processing of its registration application. Such information is a necessary part of the investigative function in determining the fitness of an applicant to handle highly abused list I chemical products. DEA has previously found that an applicant's failure to provide information necessary to the completion of a pending application was a relevant determination in a decision to deny the application pursuant to 21 CFR 1309.35. Callahan's Foods, 68 FR 43750 (2003). *See also,* CHM Wholesale Co., 67 FR 9985 (2002).

In light of the above, and the absence of evidence to the contrary, the Deputy Administrator is left to conclude that Proveedora cannot be entrusted with the responsibilities of a DEA registration. As a result, the Deputy Administrator further concludes that it would be inconsistent with the public interest to grant the application of Proveedora.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by Proveedora Jiron, Incorporated, Edilberto Jiron, President, be, and it hereby is, denied. This order is effective September 20, 2004.

Dated: July 27, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–18970 Filed 8–18–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 12, 2004.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Employer's First Report of Injury or Occupational Disease; Physician's Report on Impairment of Vision; and Employer's Supplementary Report of Accident or Occupational Illness.

OMB Number: 1215–0031.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business and other for-profit and not-for-profit institutions.

Number of Respondents: 21,060.

Form	Annual responses	Average response time hours	Annual burden hours
LS–202	21,000	0.25	5,250
LS–205	60	0.75	45
LS–210	2,160	0.25	540
Total	23,220	.....	5,835

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $10,333.

Description: The Longshore and Harbor Workers' Compensation Act provides benefits to workers injured in maritime employment on the navigable waters of the United States and adjoining area customarily used by an employee in loading, unloading, repairing, or building a vessel. The Form LS–202 is used by employers initially to report injuries that have occurred which are covered under the Longshore Act and its related statutes. The Form LS–210 is used to report additional periods of lost time from work. The Form LS–205 is a medical report based on a comprehensive examination of visual impairment. Regulatory authority is found in 20 CFR 702.201, 702.202, and 702.407.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Operator Controversion; Operator Response; Operator Response to Schedule for Submission of Additional Evidence; and Operator Response to Notice of Claim.

OMB Number: 1215–0058.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit and State, local, or tribal government.

Number of Respondents: 8,200.

Form	Annual responses	Average response time hours	Annual burden hours
CM–970	100	0.25	25
CM–970a	100	0.17	17

Form	Annual responses	Average response time hours	Annual burden hours
CM–2970	4,000	0.17	667
CM–2970a	4,000	0.25	1,000
Total	8,200		1,709

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $3,280.

Description: The Black Lung Benefits Act (30 U.S.C. 901 *et seq.*) provides benefits to coal miners totally disabled due to pneumoniosis, and their surviving dependents. When the Division of Coal Mine Workers' Compensation makes an initial finding that an applicant is eligible for benefits, and, if a coal mine operator has been identified as potentially liable for payment of those benefits, the responsible operator is notified of the initial finding. The CM–970 gives the operator an opportunity to controvert the liability. The CM–970A is sent to the operator with the Notice of Claim notifying the operator of potential liability of payment for benefits. The CM–970A gives the operator an opportunity to agree or disagree with the identification. The CM–970A is used for all claims filed before January 19, 2001. The CM–2970 and CM–2970A serve the same purposes as the CM–970 and CM–970A; however, these forms are be used for all claims filed after January 19, 2001. Regulatory authority is found in 20 CFR 725.408, 725.410, 725.412, and 725.413.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 04–19001 Filed 8–18–04; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an Advisory Council on Employee Welfare and Pension Benefit Plans (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year.

The terms of five members of the Council expire on November 14, 2004. The groups or fields they represent are as follows: (1) Employee organizations (representing an organization whose members participate in a multiemployer plan); (2) the insurance profession; (3) the accounting profession; (4) employers; and (5) the general public (representing persons actually receiving benefits from a private-sector plan). The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse ERISA Advisory Council.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to Debra Golding, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–5656, Washington, DC 20210. Recommendations must be delivered or mailed on or before October 1, 2004. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization.

Signed at Washington, DC, this 13th day of August 2004.

Ann L. Combs,

Assistant Secretary of Labor, Employee Benefits Security Administration.

[FR Doc. 04–19002 Filed 8–18–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations; Mine Accident, Injury, and Illness Report and Quarterly Mine Employment and Coal Production Report (MSHA Forms 7000–1 and 7000–2)

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.

DATES: Submit comments on or before October 18, 2004.

ADDRESSES: Send comments to Melissa Stoehr, Acting Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via E-mail to *stoehr.melissa@dol.gov.* 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

The reporting and recordkeeping provisions in 30 CFR 50, Notification, Investigation, Reports and Records of Accidents, Injuries and Illnesses, Employment and Coal Production in Mines, are essential elements in MSHA's Congressional mandate to reduce work-related injuries and illnesses among the nation's miners.

Section 50.10 requires mine operators and mining contractors to immediately notify MSHA in the event of an accident. This immediate notification is critical to MSHA's timely investigation and assessment of the probable cause of the accident.

Section 50.11 requires that the operator or contractor investigate each accident and occupational injury and prepare a report. The operator or contractor may not use MSHA Form 7000–1 as a report, unless the mine employs fewer than 20 miners and the occurrence involves an occupational injury not related to an accident.

Section 50.20(a) requires mine operators and mining contractors to report each accident, injury, or illness to MSHA on Form 7000–1 within 10 working days after an accident or injury has occurred or an occupational illness has been diagnosed. The use of MSHA Form 7000–1 provides for uniform information gathering across the mining industry.

MSHA tabulates and analyzes the information from MSHA Form 7000–1, along with data from MSHA Form 7000–2, to compute incidence and severity rates for various injury types. These rates are used to analyze trends and to assess the degree of success of the health and safety efforts of MSHA and the mining industry.

Accident, injury, and illness data when correlated with employment and production data provide information that allows MSHA to improve its safety and health enforcement programs, focus its education and training efforts, and establish priorities for its technical assistance activities in mine safety and health. Maintaining a current database allows MSHA to identify and direct increased attention to those mines, industry segments, and geographical areas where hazardous trends are developing. This could not be done effectively utilizing historical data. The information collected under Part 50 is the most comprehensive and reliable occupational data available concerning the mining industry.

Section 103(d) of the Federal Mine Safety and Health Act of 1977 (Mine Act) mandates that each accident be investigated by the operator to determine the cause and means of preventing a recurrence. Records of such accidents and investigations shall be kept and made available to the Secretary or his authorized representative and the appropriate State agency. Section 103(h) requires operators to keep any records and make any reports that are reasonably necessary for MSHA to perform its duties under the Mine Act. Section 103(j) of the Mine Act requires operators to notify MSHA of the occurrence of an accident and to take appropriate measures to preserve any evidence which would assist in the investigation into the cause or causes of the accident.

Data collected through MSHA Form 7000–1 and MSHA Form 7000–2 enable MSHA to publish timely quarterly and annual statistics, reflecting current safety and health conditions in the mining industry. These data are used not only by MSHA, but also by other Federal and State agencies, health and safety researchers, and the mining community to assist in measuring and comparing the results of health and safety efforts both in the United States and internationally.

II. Desired Focus of Comments

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 can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

This request for collection of information contains provisions whereby persons may be temporarily qualified or certified to perform tests and examinations; requiring specialized expertise; related to miner safety and health at coal mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Mine Accident, Injury, and Illness Report and Quarterly Mine Employment and Coal Production Report.

OMB Number: 1219–0007.

Form(s): MSHA 7000–1 and MSHA 7000–2.

Frequency: Quarterly and on occasion.

Affected Public: Business or other for-profit.

Respondents: 26,250.

Estimated Time per Response: 30 minutes for hardcopy filings and 15 minutes for Form 7000–02 electronic filings.

Total Burden Hours: 105,042.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $34,105.

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 11th day of August, 2004.

Lynnette M. Haywood,

Deputy Director, Office of Administration and Management.

[FR Doc. 04–19000 Filed 8–18–04; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 04–103]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal

agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Kathleen Shaeffer, Code V, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathleen Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street, SW., Code V, Washington, DC 20546, (202) 358–1230, *kshaeff1@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting Office of Management and Budget approval for a new information collection which will be used to evaluate the need for NASA to establish a central repository of reusable components for earth science data systems. The NASA Earth Science Data Systems Working Group, who will be collecting the information, needs to better understand the community's needs with respect to such a repository before it can be built.

II. Method of Collection

Collection of information will be entirely through an online Web-based questionnaire in order to minimize respondent burden.

III. Data

Title: Earth Science Software Reuse.
OMB Number: 2700–XXXX.
Type of review: New collection.
Affected Public: Federal Government; Business or other for-profit; Not-for-profit institutions.
Estimated Number of Respondents: 60.
Estimated Time Per Response: 20 minutes.
Estimated Total Annual Burden Hours: 20.
Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Patricia L. Dunnington,
Chief Information Officer.
[FR Doc. 04–19043 Filed 8–18–04; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 04–104]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Kathleen Shaeffer, Code V, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathleen Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street, SW., Code V, Washington, DC 20546, (202) 358–1230, *kshaeff1@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting Office of Management and Budget approval for a new information collection which will be used by NASA for the purpose of evaluating and selecting applicants for the NASA Science and Technology Scholarship Program (STSP.) The NASA STSP's establishment was authorized by the NASA Workforce Flexibility Act of 2004.

II. Method of Collection

Collection of information will be entirely through an on line web-based questionnaire in order to minimize respondent burden.

III. Data

Title: NASA Science and Technology Scholarship Program (STSP) Application.
OMB Number: 2700–XXXX.
Type of review: New collection.
Affected Public: Individuals or households.
Estimated Number of Respondents: 2,500.
Estimated Time Per Response: 1.5 hours.
Estimated Total Annual Burden Hours: 3,750.
Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: August 11, 2004.

Patricia L. Dunnington,
Chief Information Officer.
[FR Doc. 04–19044 Filed 8–18–04; 8:45 am]
BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Week of August 16, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

ADDITIONAL MATTER TO BE CONSIDERED:

Week of August 16, 2004

Tuesday, August 17, 2004

9:25 a.m. Affirmative Session (Public Meeting)

a. Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–ISFSI;

b. Final Rule: Medical Use of Byproduct Material—Minor Amendments: Extending Expiration Date for Subpart J of Part 35;

c. FirstEnergy Nuclear Operating Co. (Davis-Besse Nuclear Power Station, Unit 1); Petitioners' Appeal of LBP–04–11.

*The schedule of Commission meeting is subject to change on short notice. To verify the status of meetings call (recording) (301) 415–1292. Contract person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

ADDITIONAL INFORMATION: By a vote of 3–0 on August 16, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that ''Affirmation of FirstEnergy Nuclear Operating Co. (Davis-Besse Nuclear Power Station, Unit 1); Petitioners' Appeal of LBP–04–11'' be held August 17, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415–7080, TDD: (301) 415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 17, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–19090 Filed 8–17–04; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 23, 2004, through August 5, 2004. The last biweekly notice was published on August 3, 2004 (69 FR 46582).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 15, 2004.

Description of amendment request: The licensee proposes to implement an Alternate Source Term (AST) as permitted by section 50.67 of title 10 of the Code of Federal Regulations (10 CFR) for calculating accident offsite dose and doses to control room personnel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The use of an alternative source term is recognized in the NRC [Nuclear Regulatory Commission] regulation 10 CFR 50.67; guidance for its implementation is provided in Regulatory Guide 1.183. The AST involves quantities, isotopic composition, chemical and physical characteristics, and release timing of radioactive material for use as inputs to accident dose analyses. As such, the AST cannot affect the probability of occurrence of a previously evaluated accident. No facility equipment, procedure, or process changes are required in conjunction with implementing the AST that could increase the likelihood of a previously analyzed accident. The proposed changes in the source term and the methodology for the dose consequence analyses generally follow the guidance of Regulatory Guide 1.183. As a result, there is no increase in the likelihood of existing event initiators.

Regarding consequences, the results of accident dose analyses using the AST are compared to TEDE [total effective dose equivalent] acceptance criteria that account for the sum of deep dose equivalent (for external exposure) and committed effective dose equivalent (for internal exposure). Dose results were previously compared to separate limits on whole body, thyroid, and skin doses as appropriate for the particular accident analyzed. The results of the revised dose consequences analyses demonstrate that the regulatory acceptance criteria are met for each analyzed event. Implementing the AST, however, involves no facility equipment, procedure, or process changes that could affect the radioactive material actually released during an event. Consequently, no conditions have been created that could significantly increase the consequences of any of the events being evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any of the events being evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The AST involves quantities, isotopic composition, chemical and physical characteristics, and release timing of radioactive material for use as inputs to accident dose analyses. As such, the AST cannot create the possibility of a new or different kind of accident. No facility equipment, procedure, or process changes have been made in conjunction with implementing the AST that could initiate or substantially alter the progression of an accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Implementing the AST is relevant only to calculated accident dose consequences. The AST involves quantities, isotopic composition, chemical and physical characteristics, and release timing of radioactive material for use as inputs to accident dose analyses. The results of the revised dose consequences analyses demonstrate that the regulatory acceptance criteria are met for each analyzed event. No facility equipment, procedure, or process changes are required in conjunction with implementing the AST that could increase the exposure of control room or offsite individuals to radioactive material. The AST does not affect the transient behavior of non-radiological parameters (*e.g.*, RCS [reactor coolant system] pressure, containment pressure) that are pertinent to margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 8, 2004.

Description of amendment request: The proposed amendments would revise the Point Beach Nuclear Plant (PBNP) Technical Specification (TS) Surveillance Requirement (SR) 3.8.4.6 and SR 3.8.4.7, DC Sources-Operating, to change the values of battery charger currents, replace the specified battery charger voltage values with the phrase ''minimum established float voltage,'' add a new allowance for the method of verifying battery charger capacity, and remove a restriction on the conduct of a modified performance discharge test.

Basis for proposed no significant hazards consideration determination: As required by title 10 of the Code of Federal Regulations (10 CFR) section, 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The DC electrical power system provides normal and emergency DC electrical power for the standby emergency power sources, emergency auxiliaries, and control and switching during all Modes of operation. SR 3.8.4.6 verifies the design capacity of the battery chargers. SR 3.8.4.7 demonstrates the design requirements (battery duty cycle) of the DC electrical power system. The proposed amendment corrects a discrepancy between the TS Bases and FSAR [Final Safety Analysis Report] and better aligns the PBNP TS with the standard TS, which will enhance plant safety. Other proposed changes are bounded by different TS requirements or existing analyses contained in the FSAR, meet the intent of the existing tests, and do not result in relaxation of the underlying requirements.

The proposed change does not involve any hardware changes, nor does it affect the probability of any event initiators. There will be no change to normal plant operating parameters, engineered safety feature actuation setpoints, accident mitigation capabilities, or accident analysis assumptions or inputs.

Therefore, the probability or consequences of any accident previously evaluated will not be significantly increased as a result of the proposed change.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The revised surveillance requirements will continue to assure equipment reliability such that plant safety is maintained or will be enhanced.

Equipment important to safety will continue to operate as designed. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendment will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The DC electrical power system provides normal and emergency DC electrical power for the standby emergency power sources, emergency auxiliaries, and control and switching during all Modes of operation. SR 3.8.4.6 verifies the design capacity of the battery chargers. SR 3.8.4.7 demonstrates the design requirements (battery duty cycle) of the DC electrical power system.

The proposed change to these SRs continues to assure that design requirements of the DC electrical power system continue to be met. There will be no change to the departure from nucleate boiling ratio (DNBR) correlation limit, the design DNBR limits, or the safety analysis DNBR limits.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed amendment will not otherwise affect the plant protective boundaries, will not cause a release of fission products to the public, nor will it degrade the performance of any other structures, systems or components (SSCs) important to safety. Therefore, the requested change will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Section Chief: L. Raghavan.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: June 23, 2004.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) requirements for verifying the operability of the remaining operable emergency diesel generator (EDG) when either unit's dedicated EDG or the shared EDG is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Dominion has reviewed the requirements of 10 CFR 50.92 as they relate to the proposed change to the Surry Power Station, Units 1 and 2 Technical Specifications and has determined that a significant hazards consideration does not exist. The basis for this determination is provided as follows:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not impact the condition or performance of any plant structure, system or component. The proposed change clarifies the testing requirement for the operable EDG(s) to limit testing to only the intended purpose of the requirement, which is to confirm a common cause failure mechanism does not exist in the opposite train's EDG(s). The proposed change does not affect the initiators of analyzed events nor the assumed mitigation of accident or transient events. Common cause failure testing of the remaining operable EDG(s) will still occur unless the reason for the EDG inoperability is demonstrably not due to a common cause failure mechanism. Furthermore, elimination of unnecessary testing of the operable EDG(s) will reduce component wear and thus promote EDG reliability and consequentially safety equipment availability. As a result, the proposed change to the Surry Technical Specifications does not involve any increase in the probability or the consequences of any accident or malfunction of equipment important to safety previously evaluated since neither accident probabilities nor consequences are being affected by this proposed change.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant or a change in the methods used to respond to plant transients. No new or different equipment is being installed and no installed equipment is being removed or operated in a different manner. There is no alteration to the parameters within which the plant is normally operated or in the setpoints which initiate protective or mitigative actions. The EDGs will continue to perform their required safety functions. Furthermore, common cause failure testing will continue to occur if the EDG failure mechanism cannot be eliminated as a common cause possibility. Consequently, no new failure modes are introduced by the proposed change. Therefore, the proposed change to the Surry Technical Specifications does not create the possibility of a new or different kind of accident or malfunction of equipment important to safety from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed TS change does not impact station operation or any plant structure, system or component that is relied upon for accident mitigation. Margin of safety is established through the design of the plant structures, systems and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. Since station operations and EDG surveillance requirements are not affected by the proposed change, the EDGs will continue to be available to perform their required safety functions. Furthermore, the change does not impact the condition or performance of structures, systems or components relied upon for accident mitigation or any safety analysis assumptions. Therefore, the proposed change to the Surry Technical Specifications does not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: Stephanie M. Coffin, Acting.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: July 28, 2003, as supplemented on May 20, 2004.

Description of amendment request: The amendment would revise Technical Specification Section 5.5.6, ''Primary Containment Leakage Rate Testing Program,'' to allow a one-time extension of the interval between the Type A, integrated leakage rate tests, from 10 years to no more than 15 years.

Date of publication of individual notice in ***Federal Register****:* July 27, 2004 (69 FR 44696).

Expiration date of individual notice: September 27, 2004.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in

10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: April 21, 2003, as supplemented on September 11, 2003, March 31, 2004, and April 16, 2004.

Brief description of amendment: The amendment revised the Technical Specifications, Sections 3.7 and 4.7, ''Auxiliary Electrical Power,'' and added a new Section 6.8.5, ''Station Battery Monitoring and Maintenance Program,'' to make them generally consistent with guidance set forth in NUREG–1433, ''Standard Technical Specifications, General Electric Plants, BWR/4,'' Revision 2, and with the industry guidance identified as Technical Specifications Task Force traveler 360, Revision 1.

Date of Issuance: July 30, 2004.

Effective date: July 30, 2004 and shall be implemented within 60 days of issuance.

Amendment No.: 245.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***:

The September 11, 2003, March 31, 2004, and April 16, 2004, letters provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 30, 2004.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: April 19, 2004.

Brief description of amendment: The proposed change revises Technical Specification 3.7.3, ''Control Room Emergency Filtration (CREF) System,'' to provide specific conditions, required actions, and completion times that address a degraded control room envelope pressure boundary. The associated Bases were also revised.

Date of issuance: July 26, 2004.

Effective date: July 26, 2004, and shall be implemented within 30 days from the date of issuance.

Amendment No.: 188.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: May 25, 2004 (69 FR 29764).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 2004.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 7, 2004, as supplemented by letters dated July 8 and 16, 2004.

Brief description of amendment: The amendment clarifies the actions of Technical Specification (TS) 3/4.4.5.1, Reactor Coolant System (RCS) Leakage; revises the surveillance requirements (SRs) of TS 3/4.4.5.2, RCS Operational Leakage; and deletes duplication in TS 3/4.3.3.1, Radiation Monitoring Instrumentation. Also, the amendment deletes the containment atmosphere gaseous radioactivity monitoring system from TS 3/4.4.5.1. The amendment is based on NUREG–1432, ''Standard Technical Specifications Combustion Engineering Plants,'' Revision 2, dated April 30, 2001.

Date of issuance: July 30, 2004.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 197.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: May 25, 2004 (69 FR 29765).

The July 8 and 16, 2004, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: October 10, 2002, supplemented by letters dated October 10, and November 21, 2003, and January 13, July 8, and July 23, 2004.

Brief description of amendments: The amendments revise the Dresden, Units 2 and 3, technical specifications (TS) to increase the required number of operable main steam safety valves from eight to nine and add surveillance requirements for the ninth valve.

Date of issuance: July 30, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 208/200.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** Published in the **Federal Register** on December 10, 2002 (67 FR 75875).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 30, 2004.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: March 3, 2004.

Brief description of amendments: The amendments revised Technical Specification (TS) Surveillance Requirement 4.0.5 by updating the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code references as the source of inservice testing requirements for ASME Code Class 1, 2, and 3 pumps and valves. The amendments replace references to Section XI of the Code with references to the ASME Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code), and provides consistent use of terms between the TS and the ASME OM Code by adding a biennial surveillance interval.

Date of issuance: July 22, 2004.

Effective date: As of the date of issuance and shall be implemented by February 21, 2005 for Unit 3, and by April 14, 2005 for Unit 4.

Amendment Nos: 225 and 220.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 30, 2004 (69 FR 16620).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 22, 2004.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: September 18, 2003.

Brief description of amendment: The amendment revises Technical Specification (TS) Section 3.4.1, by relocating the primary coolant system pressure, cold-leg temperature, and flow departure from nucleate boiling limits to the core operating limits report. The amendment also revises TS section 5.6.5 to reflect the changes to TS section 3.4.1.

Date of issuance: August 2, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 217.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 14, 2003 (68 FR 59218).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 2004.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 1, 2003, and its supplement dated February 9, 2004.

Brief description of amendment: The amendment revises the following technical specifications (TS): (1) Item 14 of Table 3–3, ''Minimum Frequences for Checks, Calibrations and Testing of Miscellaneous Instrumentation and Controls,'' regarding testing of the nuclear detector well cooling annulus exit air temperature detectors, (2) Item 10a.2 of Table 3–5, ''Minimum Frequencies for Equipment Tests,'' correcting a typographical error in the title, (3) TS 3.17(iii), ''Steam Generator Tubes,'' (4) TS 5.5, ''Review and Audit,'' (5) TS 5.6, ''Reportable Event Action,'' (6) TSs 5.7.1.b, 5.7.1.c, and 5.7.1.d, ''Safety Limit Violation,'' (7) TS 5.9.1.a, ''Startup Report,'' and (8) TS 5.9.4.c, ''Fire Protection Deficiency Report.'' These changes consist primarily of relocating material not required in the TSs to other licensee-controlled documents and correcting a typographical error.

Date of issuance: July 23, 2004.

Effective date: July 23, 2004, and shall be implemented within 120 days of issuance.

Amendment No.: 228.

Renewed Facility Operating License No. DPR–40: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 2, 2004 (69 FR 9863).

The February 9, 2004, supplemental letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated July 23, 2004.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 23, 2002, as supplemented August 14, 2003.

Brief description of amendment: This amendment revises the Hope Creek licensing basis, as described in the Updated Final Safety Analysis Report, to replace the current plant-specific reactor pressure vessel material surveillance program with the Boiling Water Reactor Vessel and Internals Project Integrated Surveillance Program as the basis for demonstrating compliance with the requirements of Appendix H to Title 10 of the Code of Federal Regulations part 50, ''Reactor Vessel Material Surveillance Program Requirements.''

Date of issuance: July 23, 2004.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 151.

Facility Operating License No. NPF–57: This amendment revised the facility's License.

Date of initial notice in ***Federal Register:*** April 29, 2003 (68 FR 22752). The August 14, 2003, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 23, 2004.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal**

Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1–(800)–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within on of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Pacific Gas and Electric Company, Docket No. 50–323, Diablo Canyon Nuclear Power Plant, Unit No. 2, San Luis Obispo County, California

Date of application for amendment: July 30, 2004, and its supplement dated July 30, 2004.

Brief description of amendment: The amendment authorizes a one-time change to the completion time of Required Action A.1 of Technical Specification 3.6.6, ''Containment Spray and Cooling Systems,'' to increase the completion time for containment spray pump 2–2 from 72 hours to 14 days.

Date of issuance: July 30, 2004.

Effective date: July 30, 2004.

Amendment Nos.: 173.

Facility Operating License No. DPR–82: The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): No. The Commission's related evaluation of the amendment, finding of emergency circumstances, State consultation, and final NSHC determination are contained in a Safety Evaluation dated July 30, 2004.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Virginia Electric and Power Company, Docket No. 50–338, North Anna Power Station, Unit 1, Louisa County, Virginia

Date of amendment request: July 23, 2004.

Description of amendment request: This amendment allows a one-time 7-day completion time to repair a weld leak that was discovered on the low-head safety injection (LHSI) suction pump piping. This change is needed to prevent an unnecessary plant transient and unscheduled shutdown of North Anna Unit 1.

Date of issuance: July 23, 2004.

Effective date: July 23, 2004, and is effective until the 'A' train of the Unit 1 LHSI system is returned to operable status or until July 28, 2004, at 1723 hours, whichever occurs first.

Amendment No.: 236.

Renewed Facility Operating License No. NPF–4: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): No. The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated July 23, 2004.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: Stephanie M. Coffin, Acting.

Dated at Rockville, Maryland, this 9th day of August 2004.

For the Nuclear Regulatory Commission.

James E. Lyons,

Deputy Director, Division of Licensing Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 04–18512 Filed 8–18–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

September 20, 2004—Las Vegas, Nevada: The U.S. Nuclear Waste Technical Review Board Will Meet With the Department of Energy (DOE) and Interested Parties To Discuss the Processes Used To Develop and Review the DOE's Total System Performance Assessment of the Proposed Yucca Mountain Repository Site

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the U.S. Nuclear Waste Technical Review Board will meet in Las Vegas, Nevada, on Monday, September 20, 2004. The primary focus of the meeting will be an overview of the purpose, scope, methodology, criteria, and modeling of the Department of Energy's (DOE) Total System Performance Assessment (TSPA) of the Yucca Mountain site. Other issues pertinent to a proposed repository at Yucca Mountain in Nevada are scheduled to be discussed, including repository design and DOE activities related to seismic issues. The meeting

will be open to the public, and opportunities for public comment will be provided. The Board is charged by Congress with reviewing the technical and scientific validity of activities undertaken by the DOE related to nuclear waste disposal as stipulated in the Nuclear Waste Policy Amendments Act of 1987.

The meeting is scheduled to begin at 8 a.m. and to continue until approximately 5:30 p.m. It will be held at the Atrium Suites Hotel (formerly the Crowne Plaza Hotel); 4255 South Paradise Road; Las Vegas, NV 89109; (tel.) 702–369–4400; (fax) 702–369–3770.

The meeting will begin with DOE program and project updates for fiscal year 2005. The updates will be followed by discussions of the repository design that the DOE intends to carry forward in a Yucca Mountain license application and of activities that the DOE is undertaking related to seismic issues. After lunch, the focus will be on the DOE's TSPA for a Yucca Mountain repository. The DOE will begin the session with presentations on the purpose and scope of TSPA; regulatory requirements related to TSPA; the approach and methodology used to conduct the TSPA; and the development of TSPA models, including changes from the last TSPA. Following these presentations, representatives from the Nuclear Regulatory Commission (NRC) have been invited to comment on the TSPA process and criteria from the NRC's perspective. The Electric Power Research Institute also has been asked to present the latest version of its TSPA. Changes may be made to this tentative meeting agenda. A final agenda detailing meeting times, topics, and participants will be available approximately one week before the meeting date. Copies of the meeting agenda can be requested by telephone or obtained from the Board's Web site at *http://www.nwtrb.gov*.

Time will be set aside at the end of the day on Monday for public comments. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record. Interested parties also will have the opportunity to submit questions in writing to the Board. As time permits, submitted questions relevant to the discussion may be asked by Board members.

Transcripts of the meetings will be available on the Board's Web site, by e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board's staff, beginning on October 18, 2004.

A block of rooms has been reserved at the Atrium Suites Hotel for meeting participants. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. Reservations should be made by September 3, 2004, to ensure receiving the meeting rate.

For more information, contact Karyn Severson, NWTRB External Affairs; 2300 Clarendon Boulevard; Suite 1300; Arlington, VA 22201–3367; (tel.) 703–235–4473; (fax) 703–235–4495.

Dated: August 11, 2004.

Karyn D. Severson,

Director, External Affairs, Nuclear Waste Technical Review Board.

[FR Doc. 04–19015 Filed 8–18–04; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50188; File No. SR–Amex–00–27]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, 3, 4, 5, and 6 Thereto To Require the Immediate Display of Customer Option Limit Orders

August 12, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 10, 2000, 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, II and III below, which Items have been prepared by the Exchange. The Exchange filed amendments to the proposed rule change on March 13, 2002,[3] April 3, 2003,[4] July 15, 2003,[5] August 19, 2003,[6] October 22, 2003,[7] and August 12, 2004,[8] respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rules 958A and 958A—ANTE to require the immediate display of customer options limit orders that better the current market quotation. In addition, the Exchange proposes to amend Amex Rule 590 to include violations of the options limit order display rules in the Minor Rule Violation Fine System. The text of the proposed rule change follows. Proposed new text is in *italics*.

Rule 590 General Rule Violations

(a) through (f) No changes.

(g) The Enforcement Department may impose fines according to the following schedule for the rule violations listed below:

* * * * *

• Violation of the Limit Order Display Rule. (SEC Rule 11Ac1–4 *and Amex Rule 958A(e)*)

* * * * *

Rule 958A Application of the Firm Quote Rule and the Limit Order Display Rule

(a) through (d) No change.

(e) Customer Limit Orders: (1) Specialists shall publish immediately upon receipt the price and size of each customer options limit order held by the specialist that is at a price or size that would improve the displayed bid or offer in the option that is the subject of the limit order. ''Immediately upon receipt'' shall mean, under normal market conditions, as soon as practicable but no later than 30 seconds after receipt.

(2) The requirement in subparagraph (1) shall not apply to any customer options limit order that: (i) Is executed upon receipt of the order; (ii) is placed by a customer that expressly requests, either at the time that the order is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 13, 2002, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety (''Amendment No. 1'').

[4] On April 3, 2003, the Exchange filed a Form 19b–4, which replaced the original filing in and Amendment No. 1 in their entirety (''Amendment No. 2'').

[5] On July 15, 2003, the Exchange filed a Form 19b–4, which replaced the original filing in and all previous amendments in their entirety (''Amendment No. 3'').

[6] On August 19, 2004, the Exchange filed a Form 19b–4, which replaced the original filing and all previous amendments in their entirety (''Amendment No. 4'').

[7] *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 21, 2003 (''Amendment No. 5''). In Amendment No. 5, the Exchange amended the proposed text of Amex Rule 958(A)(e) to require that specialists publish immediately upon receipt, both the price and size of each customer options limit order that improves the displayed bid or offer.

[8] On August 12, 2004, the Exchange filed a Form 19b–4, which replaced the original filing and all previous amendments in their entirety (''Amendment No. 6'').

placed or prior thereto pursuant to an individually negotiated agreement with respect to each customer's order, that the order not be displayed and upon receipt of the order, the specialist announces to the trading crowd the information concerning the order that would be displayed absent the customer's request; (iii) is in excess of 100 contracts, unless the customer placing the order requests the order be displayed; (iv) is received prior to or during the opening trading rotation whether at the beginning of the trading day or after a trading halt, provided the order is displayed immediately upon the conclusion of the trading rotation; (v) is an order type set forth in Rules 131 (c), (e), (i), (k), (l), (q), (r) and (s), 950(e) and 950—ANTE (e); or (vi) the terms of which are delivered by the specialist to another exchange for an execution.

(3) For purposes of this rule, the term ''customer options limit order'' shall mean an order to buy or sell an option at a specified price and size that is for the account of a customer as defined in paragraph (a)(26) of Rule 11Ac1–1 under the Securities Exchange Act of 1934.

• • • Commentary

.01 through .02 No change.

* * * * *

Rule 958A—ANTE Application of the Firm Quote Rule and the Limit Order Display Rule

(a) through (d) No change.

(e) *Customer Limit Orders: (1) Specialists shall publish immediately upon receipt the price and size of each customer options limit order held by the specialist that is at a price or size that would improve the displayed bid or offer in the option that is the subject of the limit order. ''Immediately upon receipt'' shall mean, under normal market conditions, as soon as practicable but no later than 30 seconds after receipt.*

(2) The requirement in subparagraph (1) shall not apply to any customer options limit order that: (i) is executed upon receipt of the order; (ii) is placed by a customer that expressly requests, either at the time that the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to each customer's order, that the order not be displayed and upon receipt of the order, the specialist announces to the trading crowd the information concerning the order that would be displayed absent the customer's request; (iii) is in excess of 100 contracts, unless the customer placing the order requests the order be displayed; (iv) is received prior to or during the opening trading rotation whether at the beginning of the trading day or after a trading halt provided the order is displayed immediately upon the conclusion of the trading rotation; (v) is an order type set forth in Rules 131 (c), (e), (i), (k), (l), (q), (r) and (s), 950(e) and 950—ANTE (e); or (vi) the terms of which are delivered by the specialist to another exchange for an execution.

(3) For purposes of this rule, the term ''customer options limit order'' shall mean an order to buy or sell an option at a specified price and size that is for the account of a customer as defined in paragraph (a)(26) of Rule 11Ac1–1 under the Securities Exchange Act of 1934.

• • • Commentary

.01 through .02 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Amex Rules 958A and 958A—ANTE to require the immediate display of customer options limit orders. Customer limit orders in options are entered into the specialist's limit order book (the ''Amex Options Display Book'' or ''AODB'' or the ''Central Book'' for orders in options trading on the ANTE System [9]) either through the Exchange's electronic routing system or manually by the specialist after the order has been handed to him by a floor broker. Currently, customer options limit orders of up to 30,000 contracts can be electronically sent to the Exchange by the member firms through the Amex Order File system (''AOF''). If the limit order is executable (*i.e.*, the customer limit is at the displayed market) and is within certain order size parameters,[10] it will be automatically executed by the Exchange's Auto-Ex system or within the ANTE System. If the limit order is for greater than the established size parameter or is not executable (*i.e.*, the customer limit is away from—either better or worse than—the displayed market), it will be sent directly to the AODB. If the limit order is better than the current market, the specialist can either execute the order or display it.

To improve on the timeliness of displaying customer limit orders, the Exchange proposes to require the immediate display of customer options limit orders, which, under normal market conditions, would mean as soon as practicable but no later than 30 seconds after receipt,[11] unless a specific exception applies. The proposed limit order display rule would not apply to any customer limit order that: (i) Is executed upon receipt of the order; (ii) a customer expressly requests not be displayed and upon receipt of the order, the specialist announces to the trading crowd the information concerning the

[9] ANTE is an integrated, scaleable, easily configurable system developed to meet the Exchange's current and future competitive and economic challenges. ANTE has been designed to replicate and improve upon many of the processes and procedures in place on the trading floor. The ANTE System has replaced many of the Exchange's systems, including the automated quotation calculation system and specialist ''book'' functions such as limit order display, automatic order execution and allocation of trades. The functions available in the AODB are split between the ANTE Central Book and the ANTE Display Book. The Central Book contains what was formerly known as the ''specialist's limit order book'' and provides for the matching and execution of eligible orders similar to the Auto Match and Auto-Ex Systems. The ANTE Display Book is similar to the ''Acknowledgement Box'' currently found in the AODB and contains orders awaiting manual handling. Use of the ANTE System was approved by the Commission on May 20, 2004 and is currently being rolled-out across the Amex trading floor. It is expected that all equity and index option classes will be trading on the ANTE System by the end of the third quarter of 2005. *See* Securities Exchange Act Release No. 49747 (May 20, 2004), 69 FR 30344 (May 27, 2004) (Order Approving File No. SR–Amex–2003–89).

[10] The Exchange's Auto-Ex feature was initially approved in 1985 to allow orders of up to 10 contracts to be automatically executed. Over the years, the Exchange states that it has recognized that the order size for some option classes should be larger. The Exchange has obtained Commission approval to increase the order size for select option classes up to 500 contracts. *See* Securities Exchange Act Release No. 47673 (April 14, 2003), 68 FR 19242 (April 18, 2003)(Order Approving File No. SR–Amex–2003–08). In the ANTE System, the automatic matching and execution of the executable customer limit orders can occur up to the disseminated size of the displayed quote.

[11] ''Receipt'' for all option surveillance reports is the time the order enters the Amex Order File (''AOF''). Amex systems do not capture for use in the surveillance reports the time an order is displayed on the AODB or on the Central Book, which may be a few seconds after the order entered AOF. Thus, surveillance for the proposed limit order display rule is similar to other rules, such as the firm quote rule, wherein the Exchange measures compliance with the rule using the time the order enters AOF.

order that would be displayed absent the customer's request; (iii) is in excess of 100 contracts, unless the customer placing such order requests that the order be displayed; (iv) is received prior to or during the opening trading rotation whether at the beginning of the trading day or after a trading halt, provided the order is displayed immediately upon the conclusion of the trading rotation; (v) is an order type set forth in Amex Rule 131 and made applicable to options trading pursuant to Amex Rules 950(e) and 950—ANTE (e); and (vi) the terms of which are delivered by the specialist to another exchange for an execution.

The Exchange proposes to exempt the following order types set forth under Amex Rule 131 and discussed in item (v) above from display: (1) *All or None Orders*—a market or limited price order which is to be executed in its entirety or not at all (Amex Rule 131 (c));[12] (2) *At the Close Orders*—market on close (''MOC'') and limit on close (''LOC'') orders are orders to buy or sell a stated amount of a security at the Exchange's closing price. Regardless of the time at which an MOC or an LOC order is entered, the specialist is required to hold such order, and is precluded from representing, displaying or booking it until as near as possible to the close of trading. As a result it would be impossible to determine whether the specialist met the limit order display standard for those orders (Amex Rule 131(e)); (3) *Fill or Kill Orders*—market or limited price orders which are to be executed in their entirety as soon as they are represented in the trading crowd or on the ANTE System, and such orders, if not so executed, are to be treated as cancelled (Amex Rules 131(i) and 950—ANTE (e)(vi)); (4) *Immediate or Cancel Orders*—market or limited price orders which are to be executed in whole or in part as soon as such orders are represented in the trading crowd or on the ANTE System, and the portions not so executed are to be treated as cancelled (Amex Rules 131(k) and 950—ANTE (e)(v)); (5) *Not Held Order*—a discretionary order with instructions granting the agent discretion as to the price and/or the time of execution. Specialists are prohibited by Amex Rule 154, Commentary .03 from accepting Not Held Orders (Amex Rule 131(l)); (6) *Stop Orders*—a stop order to buy becomes a market order when a transaction in the option occurs at or above the stop price or the bid price is at or above the stop price after the order is represented in the trading crowd and a stop order to sell becomes a market order when transaction in the option occurs at or below the stop price or the offer price is at or below the stop price after the order is represented in the trading crowd (Amex Rule 131(q)); (7) *Stop Limit Orders*—a stop limit order to buy becomes a limit order executable at the limit price or at a better price, if obtainable, when a transaction in the option occurs at or above the stop price or when the bid price in such option is at or above the stop price and a stop limit order to sell becomes a limit order executable at the limit price or at a better price, if obtainable, when a transaction in the option occurs at or below the stop price or when the offer price in such option is at or below the stop price (Amex Rule 131 (r)); and (8) *Complex Orders: Spread, Straddle, Switch and Combination*—These orders involve the trading of more than one option series as a package, typically at a net debit or credit, as opposed to a specific limit price for each series involved. Therefore, there is no specified limit price for each series involved to display. Moreover, the Options Price Reporting Authority (''OPRA'') does not accept for dissemination complex order quotes at net prices. Each component series of these complex orders is contingent upon the ability to execute the other component series in the order (Amex Rules 131(s), 950(e) and 950—ANTE (e)).

The Exchange staff will conduct periodic reviews to ensure that specialists are displaying limit orders in a timely manner in compliance with the display requirement. In determining compliance with the Rule, the Exchange will take into consideration factors such as market conditions and trading activity in the option and underlying security.[13] Currently, violations of the limit order display rule for equities[14] are handled by the Exchange's Enforcement Department as part of the Minor Rule Violation Fine System set forth in Rule 590. The Exchange also proposes to expand Amex Rule 590 to include violations of the options limit order display rule set forth in Amex Rules 958A(e) and 948A—ANTE (e).

In addition, the Exchange has recently implemented a quote assist feature on a one-year pilot program basis for both the AODB and the ANTE System, which automatically displays eligible limit orders within a configurable time period.[15] While all customer limit orders are expected to be displayed immediately, the quote assist features can be set to automatically display limit orders at or close to the end of the 30-second time frame or within any other shorter time frame established by the Exchange. In the event there are instances where the specialist has not yet addressed the order within the applicable 30-second period, the quote assist feature will automatically display the eligible customer limit order at or close to the end of that period. The quote assist features help to ensure that eligible customer limit orders are displayed within the required time period then in effect. The Exchange notes that the quote assist feature will not relieve the specialists of their obligation to display customer limit orders immediately. To the extent that a specialist excessively relies on the quote assist feature to display eligible limit orders without attempting to address the orders immediately, the specialist could be violating his due diligence obligation. A practice of excessive reliance upon the quote assist feature is reviewed by the Exchange's Member Firm Regulation as a possible due diligence violation.

Finally, as part of the proposed rule change, the Exchange has developed automated systems to surveil for limit order display violations and an automated Specialist Limit Order Display Report that will detail, should the proposed rule change be approved, instances when a specialist held an open customer order to buy or sell at a price that was superior to the specialist's posted quote and did not either execute or display the order in compliance with the proposed rule change. The Exchange believes implementing these enhancements will be beneficial for the marketplace by

[12] The Commission's Limit Order Display Rule for equities provides an exception for ''all or none'' orders. *See* Exchange Act Rule 11Ac1–4(c)(7), 17 CFR 240.11Ac1–4(c)(7).

[13] *See also* Exchange Act Rule 11Ac1–4, 17 CFR 240.11Ac1–4, and *NASD Notice to Members 99–99,* which discusses member obligations to display customer limit orders. Exchange Act Rule 11Ac1–4 requires the immediate display of customer limit orders. In adopting Exchange Act Rule 11Ac1–4, the Commission clarified that the ''immediate'' display requirement meant that the orders must be displayed ''as soon as is practicable after receipt which, under normal market conditions, would require display no later than 30 seconds after receipt.'' *See* Securities Exchange Act Release No. 37619A, 61 FR 48290, at 48304 (September 12, 1996). Interpretations, such as *NASD Notice to Members 99–99,* further state that the 30-second requirement to display limit orders does not operate as a safe harbor, that various factors should be taken into consideration when evaluating the immediacy with which a customer limit order is displayed, and that any systematic delay in the handling of orders, regardless of how long, would constitute a violation of the Exchange Act Rule 11Ac1–4.

[14] *See* Exchange Act Rule 11Ac1–4, 17 CFR 240.11Ac1–4.

[15] *See* Securities Exchange Act Release No. 49797 (June 3, 2004) 69 FR 32637 (June 10, 2004) (Notice of Filing and Immediate Effectiveness of File No. SR–Amex–2004–41).

requiring the immediate display of customer limit orders that better the posted quote.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[16] in general, and furthers the objectives of section 6(b)(5),[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–00–27 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 File Number SR–Amex–00–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–00–27 and should be submitted on or before September 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18980 Filed 8–18–04; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50184; File No. SR–ISE–2004–20]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by International Securities Exchange, Inc. To Amend ISE Rule 722 Relating to Ratio Orders

August 12, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 21, 2004, the International Securities Exchange, Inc. (the ''ISE'' 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 ISE. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend Exchange Rule 722 ''Complex Orders'' to allow ratio orders equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). The text of the proposed rule change appears below. Proposed new language is in *italics;* proposed deletions are in [brackets].

Rule 722. Complex Orders:

(a) Complex Orders Defined. A complex order is any order for the same account as defined below:

(1)–(5)—No change.

(6) Ratio Order. A spread, straddle, or combination order may consist of legs that have a different number of contracts, so long as the number of contracts differs by a permissible ratio. For purposes of this paragraph, a permissible ratio [of contracts] is any ratio that is equal to or greater than [.5] *one-to-three (.333) and less than or equal to three-to-one (3.00).* For example, a one-to-two *(.5)* ratio, *a two-*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii).

to-three (.667) ratio, or a two-to-one (2.0) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not [(which is equal to .5) and a six-to-ten ratio (which is equal to .6) are permitted, but one-to-three ratio (which is equal to .333) is not].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Exchange Rule 722(a)(6), a spread, straddle, or combination order may consist of legs that have a different number of contracts, so long as the number of contracts differs by a permissible ratio. Currently, a permissible ratio is any ratio that is equal to or greater than .5. For example, under the current rule, a one-to-two ratio (which is equal to .5) and a six-to-ten ratio (which is equal to .6) are permitted, but one-to-four ratio (which is equal to .25) is not.

The Exchange proposes to amend the definition of a ratio order under Exchange Rule 722 to allow ratios down to one-to-three (.333). The Exchange also proposes to clarify the language of Exchange Rule 722(a)(6) to specify that ratios of up to three-to-one (3.0) are also permitted. For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.0) ratio will be permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio will not. The Exchange believes that permitting ratio orders to have ratios equal to or greater than one-to-three or less than or equal to three-to-one will help market participants to tailor their positions more precisely to implement their trading and hedging strategies.

The Exchange notes that it is only proposing to change the definition of ratio order in Exchange Rule 722(a)(6) by changing which ratios are permissible thereunder. The Exchange intends to apply the same, current priority rules set forth in Exchange Rule 722(b) to the proposed ratio orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with these objectives in that it helps market participants to tailor their positions more precisely to implement their trading and hedging strategies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange satisfied the five-day pre-filing requirement. The Exchange further requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[9] and designate the proposed rule change to become operative immediately. The Exchange represents that the proposed rule change is based on a Chicago Board Options Exchange (''CBOE'') rule change recently approved by the Commission,[10] and that, as a result, the ISE's proposed rule change does not present any novel issues.

The Commission believes that it is consistent with the protection of investors and the public interest to designate the proposal immediately operative.[11] The Commission believes that permitting ratio orders to have ratios equal to or greater than one-to-three (.333) or less than or equal to three-to-one (3.00) may provide market participants with greater flexibility and precision in effectuating trading and hedging strategies. The Commission also believes that the procedures governing ratio orders serve to reduce the risk of incomplete or inadequate executions.[12] In designating the proposal immediately operative, the Commission also does not believe that the proposed rule change raises any new issues of regulatory concern. The Commission notes that the proposed rule change is similar to a CBOE proposed rule change recently approved by the Commission that was subject to the full notice and comment period.[13] No comments were received on the CBOE proposal. Accordingly, the Commission, consistent with the protection of investors and the public interest, has waived the 30-day operative date requirement for this proposed rule change, and has determined to designate the proposed rule change as operative on July 21, 2004, the date it was submitted to the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b-4(f)(6)(iii).

[10] *See* Securities Exchange Act Release No. 48858 (December 1, 2003), 68 FR 68128 (December 5, 2003).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] We note that because of concerns that a higher ratio could provide market participants with a means to enter a ratio order that was designed primarily to give priority over orders on the limit order book or in the trading crowd, rather than to effectuate a bona-fide trading or hedging strategy, the Commission would need to closely examine any proposal to provide a higher ratio for ratio orders and would be concerned about whether such a proposal would be consistent with investor protection and the public interest under the Act.

[13] *See supra* note 10.

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.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2004–20 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 File Number SR–ISE–2004–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2004–20 and should be submitted by September 9, 2004.

[14] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18978 Filed 8–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50176; File No. SR–NASD–2004–065]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Regarding the Nasdaq Closing Cross

August 10, 2004.

On April 19, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Nasdaq Closing Cross. The proposed rule change was published for comment in the **Federal Register** on June 4, 2004.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The proposed rule change would amend NASD Rule 4709 to permit market participants to cancel Imbalance Only orders (''IOs''), Market on Close orders (''MOC''), or Limit on Close orders (''LOC'') between 3:50 p.m. EST and 3:55 p.m. EST where a firm is able to clearly demonstrate a legitimate error, including in the side, size, symbol, price, or duplication of the order. Market participants would not be permitted to cancel IO, MOC, or LOC orders after 3:55 p.m. EST for any reason.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[4] The Commission believes that the proposed rule change is consistent with Section 15A(b) of the Act,[5] in general, and furthers the objectives of Section 15A(b)(6),[6] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The proposed rule change will allow Nasdaq greater flexibility to correct errors prior to the Nasdaq Closing Cross, which should result in a Nasdaq Closing Cross that more accurately reflects the trading in a particular security at the close.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–2004–065) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18977 Filed 8–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50192; File No. SR–NASD–2004–123]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Delete IM–2210–4(b) and Rule Series 3400 as Obsolete

August 13, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on August 10, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49783 (May 27, 2004), 69 FR 31650.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been prepared by NASD. NASD has designated the proposed rule change as ''non-controversial'' pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) [4] thereunder. 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

NASD is proposing to delete as obsolete NASD IM–2210–4(b) (Certification of Membership) and NASD Rule Series 3400 (Computer Systems), which contains NASD Rule 3420 (Mandatory Decimal Pricing Testing). Below is the text of the proposed rule change. Proposed deletions are in brackets.

* * * * *

IM–2210–4. Limitations on Use of NASD's Name

[(a) Statements of Membership]

Members may indicate NASD membership in conformity with Article XV, Section 2 of the NASD By-Laws in one or more of the following ways:

(1) in any communication with the public, provided that the communication complies with the applicable standards of Rule 2210 and neither states nor implies that NASD or any other regulatory organization endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security;

(2) in a confirmation statement for an over-the-counter transaction that states: ''This transaction has been executed in conformity with the NASD Uniform Practice Code.''

[(b) Certification of Membership

Upon request to NASD, a member will be entitled to receive an appropriate certification of membership, which may be displayed in the principal office or a registered branch office of the member. The certification shall remain the property of NASD and must be returned by the member upon request of the NASD Board or its Chief Executive Officer.]

* * * * *

[3400. COMPUTER SYSTEMS]

[3420. Mandatory Decimal Pricing Testing]

[(a) Clearing firms and market makers of the Association must conduct or participate in the testing of their computer systems to ascertain decimal pricing conversion compatibility of such systems in such manner and frequency as the Association may prescribe.]

[(b) Every clearing firm and market maker required by the Association to conduct or participate in testing of computer systems shall provide to the Association such reports relating to the testing as the Association may prescribe.]

[(c) Clearing firms and market makers shall maintain adequate documentation of tests required pursuant to this Rule and the results of such testing for examination by the Association.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and statutory 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. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD is proposing to delete IM–2210–4(b) and Rule 3420 because NASD has determined that the provisions of IM–2210–4(b) and Rule 3420 are no longer applicable and, therefore, should be deleted as obsolete.

a. NASD IM–2210–4(b)

IM–2210–4(b) provides that, upon request to NASD, a member may receive an appropriate certification of membership. NASD represents that it no longer issues such certifications. NASD, therefore, proposes deleting IM–2210–4(b) as obsolete and amending IM–2210–4 to reflect subparagraph (a) as its only text.

b. NASD Rule 3420

On June 27, 2000, NASD adopted Rule 3420 (Mandatory Decimal Pricing Testing).[5] Rule 3420, among other things, requires NASD clearing firms and market makers to conduct or participate in the securities industry's decimalization pricing tests of computer systems. NASD required such testing in compliance with the Commission's order for certain securities industry participants to develop plans for conversion to decimal pricing.[6] NASD intended the testing to ascertain the decimal pricing conversion compatibility of its members' computer systems, and wanted to ensure that conversion to decimal pricing would occur successfully with minimal disruption of the markets and minimal impact on investors. Since the conversion to decimal pricing has occurred, NASD represents that it no longer requires its members to test their computer systems for any such decimal pricing conversion; therefore, NASD is proposing to the delete Rule 3420 as obsolete.

In connection with the deletion of Rule 3420, NASD is also proposing to delete the heading in the NASD Manual to the Rule 3400 Series (Computer Systems). NASD represents that, upon the deletion of Rule 3420, the heading for the Rule 3400 Series will no longer be necessary since Rule 3420 is the only rule in the series.

NASD represents that it will announce the rule change in a *Notice to Members* to be published no later than 30 days following the publication of this notice in the **Federal Register**.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(6) of the Act,[8] in particular, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B Self-Regulatory Organization's Statement of Burden on Competition

NASD does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 43003 (June 30, 2000), 65 FR 43067 (July 12, 2000) (SR–NASD–2000–40).

[6] *See* Securities Exchange Act Release No. 42360 (January 28, 2000), 65 FR 5003 (February 2, 2000).

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as ''non-controversial'' and a rule change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) [10] thereunder.

Under Rule 19b–4(f)(6)(iii), a proposed ''non-controversial'' rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time. NASD has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing, since the provisions of IM–2210–4(b) and Rule 3420 are obsolete and no longer applicable. The Commission hereby waives the 30-day operative delay and believes such waiver is consistent with the protection of investors and the public interest.[11] The Commission notes that the relevant provisions of IM–2210–4(b) and Rule 3420 are obsolete and no longer applicable. Accelerating the operative date will allow the NASD to immediately reflect the currently applicable rules in the NASD Manual.

In addition, Rule 19b–4(f)(6) requires the self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NASD complied with this requirement.

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.[12]

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NASD–2004–123 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 File Number SR–NASD–2004–123. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–123 and should be submitted on or before September 9, 2004.

[12] *See* 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18981 Filed 8–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50190; File No. SR–NSX–2004–09]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 To Amend NSX's SOR and Tape B Market Data Revenue Sharing Programs

August 12, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2004, National Stock Exchange (the ''Exchange'' or ''NSX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NSX filed an amendment to the proposed rule change on August 10, 2004.[3] The Exchange filed the proposal pursuant Section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(f)(2) [5] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSX is proposing to amend its specialist operating revenue (''SOR'')

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from James Yong, Senior Vice President (''SVP''), Regulation and General Counsel of the Exchange, to Nancy Sanow, Assistant Director (''AD''), Division of Market Regulation (''Division''), Commission, dated August 9, 2004 and attachment (''Amendment No. 1''). Amendment No. 1 replaced and superceded the original filing in its entirety. In Amendment No. 1, the Exchange provided additional clarification regarding its proposed changes and made a technical correction to the proposed rule text. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 10, 2004, the date the NSX filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

revenue sharing program set forth in Exchange Rule 11.10(A)(j) as well as its Tape B revenue sharing program set forth in Exchange Rule 11.10(A)(k). NSX will implement the proposed change on July 1, 2004.

The text of the proposed rule change is below.[6] Proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

CHAPTER XI

Trading Rules

* * * * *

Rule 11.10 National Securities Trading System Fees

A. Trading Fees

(a)–(i) No change.

(j) Revenue Sharing Program. After the Exchange earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of all Specialist Operating Revenue (''SOR'') shall be eligible for sharing with Designated Dealers. SOR is defined as operating revenue [which] *that* is generated by specialist firms. SOR consists of transaction fees, book fees, technology fees, and market data revenue [which] *that* is attributable to specialist firm activity. SOR shall not include any investment income or regulatory monies. The sharing of SOR shall be based on each Designated Dealer's pro rata contribution to SOR *in excess of $75,000 per quarter*. In no event shall the amount of revenue shared with Designated Dealers exceed SOR. To the extent market data revenue is subject to [year-end] *any* adjustment, SOR revenue may be adjusted accordingly.

(k) Tape ''B'' Transactions. Except as provided in Paragraph (A)(e)(4) above, the Exchange will not impose a transaction fee on Consolidated Tape ''B'' securities. In addition, Members will receive a 50 percent pro rata transaction credit of gross Tape ''B'' revenue; provided that, however, calculation of the transaction credit will be based on net Tape ''B'' revenues in those fiscal quarters where the overall revenue retained by the Exchange does not offset actual expenses and working capital needs. To the extent market data revenue from Tape ''B'' transactions is subject to [year-end] any adjustment, credits provided under this program may be adjusted accordingly.

(l)–(r) No change.

B. No change.

C. No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its SOR revenue sharing program to provide that only specialists that contribute more than $75,000 in quarterly SOR will be eligible to participate in the allocation of the SOR.[7] In addition, the first $75,000 in quarterly SOR contributed by a specialist will be excluded from the firm's *pro rata* percentage contribution calculation. Currently, there are no such limitations on SOR participation. In no event will the amount of revenue shared with specialist firms exceed SOR. The Exchange believes that the implementation of this minimum contribution requirement is reasonable and ensures that each member pays an equitable share of the costs associated with operating the Exchange.

Through this filing, NSX is also proposing to make amendments to its SOR revenue sharing program[8] and Tape B market data revenue sharing program[9] to provide that to the extent market data revenue is subject to any adjustments, not just year-end adjustments as the rule text currently provides, credit provided under the respective programs may be adjusted accordingly.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and with Section 6(b)(4) of the Act,[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The NSX believes the proposed rule change is also consistent with Section 6(b)(5) of the Act[12] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed change will create incentives for members to use the Exchange trading system, thereby increasing competition, which, in turn, will enhance the National Market System.

The Commission notes that, as a national securities exchange, NSX has an obligation to maintain the resources necessary to adequately conduct its surveillance, examination, and other regulatory responsibilities.[13] The Exchange has acknowledged to the Commission that it remains mindful of its regulatory responsibilities and will not compromise those responsibilities by sharing revenue that would more appropriately be used to fund its regulatory responsibilities.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 in connection with the proposed rule change.

[6] The language in Exchange Rule 11.10(A)(k) has been drafted based on the presumption that SR–NSX–2004–08 has already become effective. *See* Securities Act Release No. 50146 (August 4, 2004), 69 FR 49927 (August 12, 2004) (approving SR–NSX–2004–08).

[7] SOR is defined as operating revenue that is generated by specialist firms. SOR consists of transaction fees, book fees, technology fees, and market data revenue attributable to specialist firm activity. SOR does not include any investment income or regulatory monies. Exchange Rule 11.10(A)(j).

[8] Exchange Rule 11.10(A)(j).

[9] Exchange Rule 11.10(A)(k).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Securities Exchange Act Release No. 41286 (April 14, 1999), 64 FR 19843, 19844 (April 22, 1999) (reminding the Cincinnati Stock Exchange, Inc., the precursor to the NSX, of its regulatory responsibilities when considering its SOR program).

[14] Telephone conversation between James Yong, SVP, Regulation and General Counsel of the Exchange and Katherine England, AD, Division, Commission, on July 13, 2004 (regarding operation of the Exchange's SOR program and the need for the Exchange to remain mindful of its regulatory responsibilities).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [15] and subparagraph (f)(2) of Rule 19b–4[16] thereunder, because it involves a member due, fee, or other charge. 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.[17]

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–NSX–2004–09 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 File No. SR–NSX–2004–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR–NSX–2004–09 and should be submitted on or before September 9, 2004.

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18979 Filed 8–18–04; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

[17] *See* 15 U.S.C. 78s(b)(3)(C). *See also* footnote 3, *supra* (regarding calculation of the abrogation period).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50191; File No. SR–PCX–2004–78]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Priority and Order Allocation Procedures for PCX Plus

August 13, 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 August 10, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. 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 PCX proposes to amend PCX Rule 6.76 (Priority and Allocation Procedures of PCX Plus) to eliminate the requirement that inbound marketable Broker Dealer orders will route to Floor Broker Hand Held Terminals in some trading scenarios in lieu of receiving immediate electronic executions. The Exchange also proposes to eliminate Electronic Book Execution pursuant to PCX Rule 6.76(b)(4). Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

Rule 6

Options Trading

* * * * *

Priority and Order Allocation Procedures

Rule 6.76. The rules of priority and order allocation procedures set forth in this Rule 6.76 will apply to option issues designated by the Exchange to be traded in PCX Plus. The maximum size of an inbound order that may be eligible for execution on PCX Plus pursuant to Rule 6.76(b) (''the Maximum Order Size'') will be initially established by the LMM in the issue, subject to the approval of the Exchange. Any request by the LMM for changes to the Maximum Order Size must be accompanied by a verified statement indicating the business reason for the change and the estimated duration of such change. Such requests must be approved by two Floor Officials, whose approval must be further ratified by the Exchange. An LMM is prohibited from requesting changes to the Maximum Order Size in order to manipulate the operation of PCX Plus or for any anti-competitive purposes.

(a)—No Change.

(b) PCX Plus Executions. This subsection (b) addresses situations in which orders or Quotes with Size are executed through PCX Plus.

(1) An inbound order that is marketable will be immediately executed against bids and offers in the Consolidated Book, unless [one of the following conditions applies:]

[(A)] the size of the inbound order exceeds the Maximum Order Size established pursuant to Rule 6.76.[; or

(B) the inbound order is for the account of a Firm or Non-OTP Holder or OTP Firm Market Maker and more than 50% of the aggregate trading interest in the Consolidated Book at the execution price is for the account (or accounts) of Public Customers.]

If *it does exceed the maximum order size*, [the conditions specified in subsections (A) or (B) above apply,] the order will be represented in the trading crowd pursuant to Rule 6.76(d).

(2) An inbound order will be either fully or partially executed as follows:

(A) If more than 40% of the size in the Consolidated Book is comprised of a single Firm or Non-OTP Holder or OTP Firm Market Maker order at the price at which the inbound order would trade[, and such Firm or Non-OTP Holder or

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

OTP Firm Market Maker order was entered less than one minute before the inbound order,] then:

(i) the inbound order will first be matched against all available Public Customer interest in the Consolidated Book;

(ii) the inbound order, if not entirely filled, will then satisfy any available interest based on FIQ status and LMM guaranteed participation pursuant to Rule 6.76(a);

(iii) the inbound order, if not entirely filled, will then match, on a size pro rata basis, with the interest of the Market Makers, Firms and Non-OTP Holder or OTP Firm Market Makers in the Consolidated Book; provided that the size pro rata share interest of each individual Firm and each Non-OTP Holder or OTP Firm Market Maker will be limited to 40% of the size of the remaining inbound order; and

(iv) the balance of the order, if any, will then be routed to a Floor Broker Hand Held Terminal.

(B) If the same conditions set forth in subsection (b)(2)(A) above apply but the Firm or Non-OTP Holder or OTP Firm Market Maker order was entered one minute or more before the inbound order, then:

(i) the inbound order will first be matched against all available Public Customer interest in the Consolidated Book;

(ii) the inbound order, if not entirely filled, will then satisfy any available interest based on FIQ status and LMM guaranteed participation pursuant to Rule 6.76(a);

(iii) the inbound order, if not entirely filled, will then match, on a size pro rata basis, with the interest of the Market Makers, Firms and Non-OTP Holder or OTP Firm Market Makers in the Consolidated Book; provided that the size pro rata share interest of each individual Firm and each Non-OTP Holder or OTP Firm Market Maker will be limited to 40% of the size of the remaining inbound order;

(iv) the inbound order, if not entirely filled, will then match, on a size pro rata basis, with all other remaining volume in the Consolidated Book of Firms and Non-OTP Holder or OTP Firm Market Makers who were previously limited to 40%;] and

(*iv*) the balance of the order, if any, will then be either:

(a) routed to a Floor Broker Hand Held Terminal in the case where the order locks or crosses the NBBO; or

(b) executed at the next available price level based on split-price execution, as provided in subsection (b)(3), below.

If neither of the conditions specified in subsections (a) or (b) apply, and the order is no longer marketable, then such order will be represented in the Consolidated Book.

(b)(3)—No Change.

(b)(4)—*Reserved.* [Electronic Book Execution. This subsection addresses situations in which Market Makers interact electronically with orders in the Consolidated Book. When a Quote with Size from a Market Maker initiates a trade with the Consolidated Book (the ''initiating Quote with Size''), an Electronic Book Execution will occur as follows.

(A) The initiating Quote with Size will immediately execute against the Consolidated Book if the percentage of the transaction involving Public Customer interest (as represented in the Consolidated Book) would comprise no more than 40% of the transaction (*e.g.*, if the initiating Quote with Size is for 20 contracts and the size in the Consolidated Book at the execution price is 50 contracts, six contracts of which are the Public Customer interest (6÷20=30%), then the initiating Quote with Size for 20 contracts will be executed in full).

(B) If the initiating Quote with Size would effect a transaction against the Consolidated Book and the percentage of the transaction involving Public Customer interest would comprise more than 40% of the transaction, then the initiating Quote with Size will be processed as follows:

(i) the Market Makers initiating Quote with Size will receive an execution comprising the greater of:

(a) 40% of the Public Customer interest in the Consolidated Book at that price; or

(b) the total size to which the inbound initiating Quote with Size would receive pursuant to a size pro rata allocation.

(ii) the balance of the Consolidated Book at that price will be displayed for three seconds (via a System Alert Message—SAM) to all ''Crowd Participants'' (as defined in Rule 6.1(b)(38)).

(a) A Floor Broker holding an order for an account in which such broker has an interest, the account of an associated person, or an account with respect to which the Floor Broker or an associated person thereof exercises investment discretion, shall not be eligible for participation in Electronic Book Executions.

(iii) the balance of the Public Customer interest in the Consolidated Book will then be allocated on size pro rata basis to all Crowd Participants, if any, who have entered bids or offers to trade at the execution price within the three seconds provided.

(iv) after the Public Customer interest has been allocated, the initiating Quote with Size will match against all remaining interest in the Consolidated Book. If the initiating Quote with Size does not fill the Consolidated Book, then all Crowd Participants will be matched on a size pro rata basis with the remaining interest in the Consolidated Book at that price.

(v) if the remaining Quotes with Size are executable at the next price level, they will be matched against the Consolidated Book on a size pro rata basis.] (b)(5)–(c)—No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, PCX Rule 6.76(b) addresses the situations in which orders or Quotes with Size [3] are executed through PCX Plus. Today, when an inbound order is for the account of a Firm [4] or Non-OTP Holder Market Maker [5] and more than 50% of the aggregate trading interest in the Consolidated Book [6] at the execution price is for the account (or accounts) of Public Customers [7], the order is not eligible to be immediately executed on PCX Plus. Instead, such orders are routed to Floor Broker Hand Held terminals for manual representation in the trading crowd at which time they may receive full or partial execution based on the price and size disseminated at that time. According to the PCX, this, however, is not necessarily the price and size disseminated at the time of order entry because the price and size disseminated at the time the order is represented in

[3] *See* PCX Rule 6.1(b)(33).

[4] *See* PCX Rule 6.1(b)(36).

[5] *See* PCX Rule 6.1(b)(35).

[6] *See* PCX Rule 6.1(b)(37).

[7] *See* PCX Rule 6.1(b)(29).

the trading crowd may have changed from the time the order was entered. As a result, a Firm or Non-OTP Holder Market Maker may not know whether its order has been fully or partially executed and at what price until seconds after it sends the order to the Exchange. The PCX believes that this lack of certainty creates a disincentive for a Firm or Non-OTP Holder Market Maker to send orders via PCX Plus. The PCX also believes that removing the impediment and allowing Firm and Non-OTP Market Maker orders to immediately execute on PCX Plus would enable the Exchange to execute orders faster and create greater efficiencies and price transparency in the marketplace. To further provide the Exchange with the ability to execute orders faster, the proposed rule change would remove the restrictions on an order entered by a Firm or Non-OTP Holder or OTP Firm Market Maker less than one minute before the inbound order. In addition, the proposed rule change would eliminate the 40% participation limitation currently placed on a Firm, Non-OTP Holder or OTP Firm Market Maker for an inbound order that is not entirely filled.

In conjunction with this proposed amendment to PCX Rule 6.76(b)(1) and (b)(2), the Exchange also proposes to eliminate the Electronic Book Execution rules set forth in PCX Rule 6.76(b)(4) that prevent PCX Market Makers from immediately executing orders against the Consolidated Book. The PCX believes that eliminating these rules would give PCX Market Makers the same access to the Consolidated Book that a Firm or Non-OTP Holder Market Maker would have under the proposed rules, thereby eliminating any potential biases that a PCX Market Maker might encounter when using PCX Plus. The PCX believes that allowing PCX Market Makers to immediately execute against the Consolidated Book would also improve the speed of executions at the PCX and would add liquidity to the PCX's markets and, as a result, benefit the investing public.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(5) of the Act [9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2004–78 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 File Number SR–PCX–2004–78. 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 PCX. 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–PCX–2004–78 and should be submitted on or before September 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18982 Filed 8–18–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement—Proposed Watts Bar Reservoir Land Plan, Loudon, Meigs, Rhea, and Roane Counties, TN

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of public meeting and extension of public comment period.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508), Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800), and TVA's procedures implementing the National Environmental Policy Act (NEPA). On February 25, 2004, TVA published a Notice of Intent to prepare an Environmental Impact Statement (EIS) for a proposed Reservoir Land Plan for Watts Bar Reservoir, in Loudon, Meigs, Rhea, and Roane Counties, Tennessee

(**Federal Register**, Volume 69, Number 37, Pages 8793–8795). Subsequently, TVA published a notice in the **Federal Register**, extending the comment period for scoping of the EIS from April 15, 2004, to June 30, 2004 (**Federal Register**, Volume 69, Number 79, p. 21,880). Today's notice announces that the public scoping meeting for the EIS will take place on September 28, 2004, from 4 p.m. to 8 p.m., in the student lounge of Roane State Community College in Roane County Tennessee. Simultaneously, this notice further extends the comment period for the scoping phase of the environmental review to October 8, 2004. Written comments may be sent to the address specified below by October 8, 2004. Comments may also be provided in an oral or written format at the public scoping meeting. To facilitate public involvement, a public scoping form for gathering specific information will also be distributed at the public meeting and will be available on TVA's Web site at *http://www.tva.com.*

ADDRESSES: Written comments should be sent to Jon M. Loney, Manager, NEPA Administration, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Richard L. Toennisson, NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone: (865) 632–8517; or e-mail: *rltoennisson@tva.gov.*

SUPPLEMENTARY INFORMATION: Within the scope of the proposed Watts Bar Reservoir Land Plan, TVA is reviewing a preliminary development proposal by Valley Land Corporation (VLC) to Meigs County and to TVA for a 310 acre mixed use commercial/residential development on TVA lands on Watts Bar Reservoir. If a formal proposal is submitted, the 237 acres of the existing Meigs County Park currently under a public recreation easement to Meigs County, and the 73 acres of TVA project lands on the Watts Bar Dam Reservation currently being used for public recreation could be considered for development in preparing the land plan and EIS. The proposal could include the use of 20 acres for residential and commercial/retail sites (restaurant, motel, retail shops, and marina with yacht sales); and the use of another 190 acres for a golf course and campground. No private water use facilities are proposed, residential boating access would be accommodated by a proposed marina.

Public Participation

TVA is interested in receiving comments on the scope of issues to be addressed in the Watts Bar Reservoir Land Plan EIS. Written comments on the scope of the EIS, including the range of alternatives that should be considered and the impacts to be assessed should be received on or before October 8, 2004. Comments may also be provided in an oral or written format at the public meeting for scoping which will take place on September 28, 2004, from 4 p.m. to 8 p.m., in the student lounge of Roane State Community College, 276 Patton Lane, Harriman, Tennessee. Information on the meeting will be announced in local newspapers, on the TVA Web page at *http://www.tva.com,* and may also be obtained by contacting the persons listed above. To facilitate public involvement, a public scoping form for gathering specific information will be distributed at the public meeting and will be available on TVA's Web site.

Dated: August 13, 2004.

Kathryn J. Jackson,

Executive Vice President, River System Operations and Environment.

[FR Doc. 04–18996 Filed 8–18–04; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Announcement of FAA Advisory Circular (AC) 120–27D, Aircraft Weight and Balance Control

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of AC, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on AC 120–27D, which provides guidance on the requirements for maintaining an aircraft weight and balance control program.

DATES: Submit comments on or before September 17, 2004.

ADDRESSES: Send all maintenance-related comments on AC 120–27D to Mr. Darcy D. Reed, Aircraft Maintenance Division, Air Carrier Maintenance Branch (AFS–330), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; facsimile (202) 267–5115; e-mail *Darcy.D.Reed@faa.gov.* Send all operations-related comments on AC 120–27D to Mr. Dennis Pratte, Air Transportation Division, Air Carrier Operations Branch (AFS–220), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; facsimile (202) 267–5229; e-mail *Dennis.Pratte@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Darcy D. Reed, AFS–330, at the address, facsimile, or e-mail listed above, or by telephone at (202) 267–9948; or Mr. Dennis Pratte, AFS–220, at the address, facsimile, or e-mail listed above, or by telephone at (202) 267–5488.

SUPPLEMENTARY INFORMATION:

Comments Invited

AC 120–27D is available on the FAA's Regulatory Guidance Library Web site at *http://www.airweb.faa.gov/rgl,* under the Advisory Circulars link. Interested persons are invited to comment on the AC by submitting written data, views, or suggestions, as they may desire. Please identify AC 120–27D, Aircraft Weight and Balance Control, and submit comments, either hardcopy or electronic, to the appropriate address listed above. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

Issued in Washington, DC, on August 11, 2004.

John M. Allen,

Deputy Director, Flight Standards Service.

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AIRCRAFT WEIGHT AND BALANCE CONTROL

U.S. DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration
Flight Standards Service
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Chapter 1. Introduction

100. What Is the Purpose of This Advisory Circular (AC)?

a. This AC provides operators with guidance on how to develop and receive approval for a weight and balance control program for aircraft operated under Title 14 of the Code of Federal Regulations (14 CFR) part 91, subpart K of part 91, and parts 121, 125, and 135.

b. This AC presents recommendations for an acceptable means, but not the only means, to develop and receive approval for a weight and balance control program, and includes guidance for using average and estimated weights in accordance with part 121, section 121.153(b) and other applicable parts of subpart K of part 91 and parts 121, 125, and 135.

Note: Per part 125, section 125.91(b), no person may operate an airplane in a part 125 operation unless the current empty weight and center of gravity (CG) are calculated from the values established by actual weighing of the airplane within the preceding 36 calendar-months.

c. If an operator adopts the suggestions contained in this AC, the operator must ensure that, when appropriate, it replaces discretionary language such as ''should'' and ''may'' with mandatory language in relevant manuals, operations specifications (OpSpecs), or management specifications (MSpecs).

101. How Is This AC Organized?

This AC has four main chapters and seven appendixes. Chapter 1 contains general information about this AC and background. Chapter 2 addresses aircraft weighing and loading schedules. Chapter 3 describes different methods to determine the weight of passengers and bags. Chapter 4 addresses the Federal Aviation Administration's (FAA) role in developing and approving an operator's weight and balance control program. Finally, appendixes 1 through 7 contain technical information such as definitions, the source of data used in the AC, a sample loading envelope, an example of curtailments to the loading envelope, suggestions to improve accuracy, sample CG envelope development, and checklists for operators.

102. What Documents Does This AC Cancel?

This AC cancels—

a. AC 120–27C, *Aircraft Weight and Balance Control*, dated November 7, 1995; and

b. Joint Handbook Bulletin for Airworthiness (HBAW) 95–14 and Air Transportation (HBAT) 95–15, Adherence to Advisory Circular 120–27C, ''Aircraft Weight and Balance Control,'' dated November 17, 1995.

103. What Should an Operator Consider While Reading This AC?

a. Accurately calculating an aircraft's weight and CG before flight is essential to comply with the certification limits established for the aircraft. These limits include both weight and CG limits. By complying with these limits and operating under the procedures established by the manufacturer, an operator is able to meet the weight and balance requirements specified in the aircraft flight manual (AFM). Typically, an operator calculates takeoff weight by adding the operational empty weight (OEW) of the aircraft, the weight of the passenger and cargo payload, and the weight of fuel. The objective is to calculate the takeoff weight and CG of an aircraft as accurately as possible.

b. When using average weights for passengers and bags, the operator must be vigilant to ensure that the weight and balance control program reflects the reality of aircraft loading. The FAA will periodically review the guidance in this AC and update this AC if average weights of the traveling public should change or if regulatory requirements for carry-on bags or personal items should change. Ultimately, the operator is responsible for determining if the procedures described in this AC are appropriate for use in its type of operation.

104. Who Should Use This AC?

a. This document provides guidance to operators that are either required to have an approved weight and balance control program under parts 121 and 125, or choose to use average aircraft, passenger or baggage weights when operating under subpart K of part 91 or part 135. The guidance in this AC is useful for anyone involved in developing or implementing a weight and balance control program.

b. As shown in Table 1–1, the FAA has divided aircraft into three categories for this AC to provide guidance appropriate to the size of the aircraft.

TABLE 1–1.—AIRCRAFT CABIN SIZE

For this AC, an aircraft originally type-certificated with—	Is considered—
71 or more passenger seats.	A large-cabin aircraft.
30 to 70 passenger seats.	A medium-cabin aircraft.
5 to 29 passenger seats.	A small-cabin aircraft.
0 to 4 passenger seats.	Not eligible.

105. Who Can Use Standard Average or Segmented Weights?

a. *Standard Average Weights.* Use of standard average weights is limited to operators of multiengine turbine-powered aircraft originally type-certificated for five (5) or more passenger seats who hold a letter of authorization (LOA), OpSpecs, or MSpecs, as applicable, and were certificated under 14 CFR part 25, 29, or part 23 commuter category or the operator and manufacturer is able to prove that the aircraft can meet the performance requirements of subpart B of part 25. Single-engine and multiengine turbine Emergency Medical Service Helicopter (EMS/H) operators may use standard average weights for EMS operations, provided they have received an LOA.

b. *Segmented Weights.* Use of segmented weights is limited to those aircraft that meet the requirements of paragraph 105(a) or that are multiengine turbine-powered aircraft originally type-certificated for five (5) or more passenger seats and that do not meet the performance requirements of subpart B of part 25. Segmented passenger weights are listed in Chapter 3, Table 3–5.

Chapter 2. Aircraft Weights and Loading Schedules

Section 1. Establishing Aircraft Weight

200. How Does an Operator Establish the Initial Weight of an Aircraft?

Prior to being placed into service, each aircraft should be weighed and the empty weight and CG location established. New aircraft are normally weighed at the factory and are eligible to be placed into operation without reweighing if the weight and balance records were adjusted for alterations and modifications to the aircraft and if the cumulative change to the weight and balance log is not more than plus or minus one-half of one percent (0.5 percent) of the maximum landing weight or the cumulative change in the CG position exceeds one-half of one percent (0.5 percent) of the mean aerodynamic chord. Aircraft transferred from one operator that has an approved weight and balance program, to another operator with an approved program, need not be weighed prior to use by the

receiving operator unless more than 36 calendar-months have elapsed since last individual or fleet weighing, or unless some other modification to the aircraft warrants that the aircraft be weighed (*e.g.*, paragraph 203(c)). Aircraft transferred, purchased, or leased from an operator without an approved weight and balance program, and that have been unmodified or only minimally modified, can be placed into service without being reweighed if the last weighing was accomplished by a method established through an operator's approved weight and balance control program within the last 12 calendar-months and a weight and balance change record was maintained by the operator. See paragraph 203(c) for a discussion of when it may be potentially unsafe to fail to reweigh an aircraft after it has been modified.

201. How Does an Operator Document Changes to an Aircraft's Weight and Balance?

The weight and balance system should include methods, such as a log, ledger, or other equivalent electronic means by which the operator will maintain a complete, current, and continuous record of the weight and CG of each aircraft. Alterations and changes affecting either the weight and/or balance of the aircraft should be recorded in this log. Changes to an aircraft that result in a weight being added to the aircraft, weight being removed from the aircraft, or weight being relocated in or on the aircraft should be recorded in such a log. Changes in the amount of weight or in the location of weight in or on the aircraft should be recorded whenever the weight change is at or exceeds the weights listed in Table 2–1.

TABLE 2–1.—INCREMENTAL WEIGHT CHANGES THAT SHOULD BE RECORDED IN A WEIGHT AND BALANCE CHANGE RECORD

In the weight change record of a—	An operator should record any weight changes of—
Large-cabin aircraft ...	+/−10 lb or greater.
Medium-cabin aircraft	+/−5 lb or greater.
Small-cabin aircraft ...	+/−1 lb or greater.

202. How Does the Operator Maintain the OEW?

The loading schedule may utilize the individual weight of the aircraft in computing operational weight and balance or the operator may choose to establish fleet empty weights for a fleet or group of aircraft.

a. *Establishment of OEW.* The OEW and CG position of each aircraft should be reestablished at the reweighing periods discussed in paragraph 203. In addition, it should be reestablished whenever the cumulative change to the Weight and Balance Log is more than plus or minus one-half of 1 percent (0.5 percent) of the maximum landing weight, or whenever the cumulative change in the CG position exceeds one-half of 1 percent (0.5 percent) of the mean aerodynamic chord (MAC). In the case of helicopters and airplanes that do not have a MAC-based CG envelope (*e.g.*, canard equipped airplane), whenever the cumulative change in the CG position exceeds one-half of 1 percent (0.5 percent) of the total CG range, the weight and balance should be reestablished.

b. *Fleet Operating Empty Weights (FOEW).* An operator may choose to use one weight for a fleet or group of aircraft if the weight and CG of each aircraft is within the limits stated above for establishment of OEW. When the cumulative changes to an aircraft Weight and Balance Log exceed the weight or CG limits for the established fleet weight, the empty weight for that aircraft should be reestablished. This may be done by moving the aircraft to another group, or reestablishing new FOEWs.

203. How Often Are Aircraft Weighed?

a. *Individual Aircraft Weighing Program.* Aircraft are normally weighed at intervals of 36 calendar-months. An operator may, however, extend this weighing period for a particular model aircraft when pertinent records of actual routine weighing during the preceding period of operation show that weight and balance records maintained are sufficiently accurate to indicate that aircraft weights and CG positions are within the cumulative limits specified for establishment of OEW, (see paragraph 202). Such applications should be substantiated in each instance with at least two aircraft weighed. Under an individual aircraft weighing program, an increase should not be granted which would permit any aircraft to exceed 48 calendar-months since the last weighing, including when an aircraft is transferred from one operator to another. In the case of helicopters, increases should not exceed a time that is equivalent to the aircraft overhaul period.

Note: Per part 125, section 125.91(b), no person may operate an airplane in a part 125 operation, unless the current empty weight and center of gravity (CG) are calculated from the values established by actual weighing of the airplane within the preceding 36 calendar-months.

b. *Fleet Weighing.* An operator may choose to weigh only a portion of the fleet and apply the unaccounted weight and moment change determined by this sample to the remainder of the fleet.

(1) A fleet is composed of a number of aircraft of the same model (For example, B747–200s in a passenger configuration and B747–200 freighters should be considered different fleets. Likewise, B757–200s and B757–300s should be considered different fleets). The primary purpose of defining a fleet is to determine how many aircraft should be weighed in each weighing cycle. A fleet may be further divided into groups to establish FOEWs.

TABLE 2—2. NUMBER OF AIRCRAFT TO WEIGH IN A FLEET

For fleets of—	An operator must weigh (at minimum)—
1 to 3 aircraft.	All aircraft.
4 to 9 aircraft.	3 aircraft, plus at least 50 percent of the number of aircraft greater than 3.
More than 9 aircraft.	6 aircraft, plus at least 10 percent of the number of aircraft greater than 9.

(2) In choosing the aircraft to be weighed, the aircraft in the fleet having the most hours flown since last weighing should be selected.

(3) An operator should establish a time limit such that all aircraft in a fleet are eventually weighed. Based on the length of time that a fleet of aircraft typically remains in service with an operator, the time limit should not exceed 18 years (six 3-year weighing cycles). It is not intended that an operator be required to weigh any remaining aircraft in the event that business conditions result in retirement of a fleet before all aircraft have been weighed.

c. *Weighing Aircraft—Modifications.* For most aircraft modifications, computing the weight and balance changes is practical. For some modifications, such as interior reconfigurations, the large number of parts removed, replaced, and installed make an accurate determination of the weight and balance change by computation impractical. It would be potentially unsafe to fail to reestablish the aircraft weight and balance, by actually reweighing the aircraft, in situations where the cumulative net change in the weight and balance log exceeds:

(1) In the case of airplanes, plus or minus one-half of 1 percent (0.5

percent) of the maximum landing weight, or whenever the cumulative change in the CG position exceeds one-half of 1 percent (0.5 percent) of the MAC.

(2) In the case of helicopters and airplanes that do not have a MAC-based CG envelope (*e.g.*, canard equipped airplane), whenever the cumulative change in the CG position exceeds one-half of 1 percent (0.5 percent) of the total CG range.

Note: In the situations specified in paragraphs 203c(1) and (2), the operator should weigh two or more aircraft in a fleet, as required in Table 2–2, to get consistent results. The operator may choose to weigh the aircraft before and after the modification, or just after the modification.

204. What Procedures Should Be Used to Weigh Aircraft?

a. An operator should take precautions to ensure that it weighs an aircraft as accurately as possible. These precautions include checking to ensure that all required items are aboard the aircraft and the quantity of all fluids aboard the aircraft is considered. An operator should weigh aircraft in an enclosed building because scale readings stabilize faster in the absence of drafts from open doors.

b. An operator should establish and follow instructions for weighing the aircraft that are consistent with the recommendations of the aircraft manufacturer and scale manufacturer. The operator should ensure that all scales are certified and calibrated by the manufacturer or a certified laboratory, such as a civil department of weights and measures, or the operator may calibrate the scale under an approved calibration program. The operator should also ensure that the scale is calibrated within the manufacturer's recommended time period, or time periods, as specified in the operator's approved calibration program.

Section 2. Aircraft Loading Schedules

205. What is a Loading Schedule?

a. The loading schedule is used to document compliance with the certificated weight and balance limitations contained in the manufacturer's AFM and weight and balance manual.

b. The loading schedule is developed by the operator based on its specific loading calculation procedures and provides the operational limits for use with the operator's weight and balance program approved under this AC. These approved operational limits are typically more restrictive but do not exceed the manufacturer's certificated limits. This is because the loading schedule is generally designed to check only specific conditions (*e.g.*, takeoff and zero fuel) known prior to takeoff, and must account for variations in weight and balance in flight. It must also account for factors selected to be excluded, for ease of use, from the calculation process. Loading the aircraft so that the calculated weight and balance is within the approved limits will maintain the actual weight and balance within the certificated limits throughout the flight.

c. Development of a loading schedule represents a trade-off between ease of use and loading flexibility. A schedule can provide more loading flexibility by requiring more detailed inputs, or it can be made easier to use by further limiting the operational limits to account for the uncertainty caused by the less detailed inputs.

d. Several types of loading schedules are commonly-used, including computer programs as well as ''paper'' schedules, which can be either graphical, such as an alignment (''chase around chart'') system, slide rule, or numerical, such as an adjusted weight or index system.

e. It is often more convenient to compute the balance effects of combined loads and to display the results by using ''balance units'' or ''index units.'' This is done by adding the respective moments (weight times arm) of each item. Graphing the moments results in a ''fan grid'' where lines of constant balance arms (BA) or % MAC are closer together at lower weights and further apart at higher weights. Direct graphical or numerical addition of the balance effects are possible using these moment values.

f. To make the magnitude of the numbers more manageable, moments can be converted to an index unit. For example:

$$\text{index unit} = \frac{\text{weight} \times (\text{BA} - \text{datum})}{\text{M}} + \text{K}$$

Note: Where *datum* is the reference BA that will plot as a vertical line on the fan grid, M and K are constants that are selected by the operator. M is used to scale the index values, and K is used to set the index value of the reference BA.

206. How Should an Operator Determine the Weight of Each Fluid Used Aboard the Aircraft?

An operator should use one of the following:

a. The actual weight of each fluid,

b. A standard volume conversion for each fluid, or

c. A volume conversion that includes a correction factor for temperature.

Section 3. Constructing a Loading Envelope

207. What Should an Operator Consider When Constructing a Loading Envelope?

Each operator complying with this AC must construct a ''loading envelope'' applicable to each aircraft being operated. The envelope will include all relevant weight and balance limitations. It will be used to ensure that the aircraft is always operated within appropriate weight and balance limitations, and will include provisions to account for the loading of passengers, fuel, and cargo; the in-flight movement of passengers, aircraft components, and other loaded items; and the usage or transfer of fuel and other consumables. The operator must be able to demonstrate that the aircraft is being operated within its certificated weight and balance limitations using reasonable assumptions that are clearly stated.

208. What Information From the Aircraft Manufacturer Should an Operator Use?

The construction of the loading envelope will begin with the weight and balance limitations provided by the aircraft manufacturer in the weight and balance manual, type certificate data sheet, or similar approved document. These limitations will include, at minimum, the following items, as applicable:

a. Maximum zero-fuel weight.
b. Maximum takeoff weight.
c. Maximum taxi weight.
d. Takeoff and landing CG limitations.
e. In-flight CG limitations.
f. Maximum floor loadings-including both running and per square foot limitations.
g. Maximum compartment weights.
h. Cabin shear limitations.
i. Any other limitations provided by the manufacturer.

209. What Should the Operator Consider When Curtailing the Manufacturer's Loading Envelope?

a. The operator should curtail the manufacturer's loading limitations to account for loading variations and in-flight movement that are encountered in normal operations. For example, if passengers are expected to move about the cabin in flight, the operator must curtail the manufacturer's CG envelope by an amount necessary to ensure that movement of passengers does not take the aircraft outside its certified envelope. If the aircraft is loaded within the new, curtailed envelope, it will always be operated within the manufacturer's envelope, even though some of the loading parameters, such as

passenger seating location, are not precisely known.

b. In some cases an aircraft may have more than one loading envelope for preflight planning and loading. Each envelope must have the appropriate curtailments applied for those variables that are expected to be relevant for that envelope. For example, an aircraft might have separate takeoff, in-flight, and landing envelopes. Passengers are expected to remain seated in the cabin during take-off or landing. Therefore, the takeoff and landing envelope need not be curtailed for passenger movement.

c. Upon determination of the curtailed version of each envelope, the most restrictive points (for each condition the operator's program will check) generated by an ''overlay'' of the envelopes will form the aircraft operational envelopes. These envelopes must be observed. By restricting operation to these ''operational envelopes,'' compliance with the manufacturer's certified envelope will be ensured in all phases of flight, based upon the assumptions within the curtailment process. Optionally, an operator may choose to not combine the envelopes but observe each envelope independently. However, due to calculation complexity, this is typically only possible through automation of the weight and balance calculation.

210. What Are Some Examples of Common Curtailments to the Manufacturer's Loading Envelope?

The following subparagraphs provide examples of common loading curtailments. They are only examples. Operators using an approved weight and balance control program must include curtailments appropriate to the operations being conducted. Each of the items mentioned below is a single curtailment factor. The total curtailment of the manufacturer's envelope is computed by combining the curtailments resulting from each of these factors.

a. *Passengers.* The operator must account for the seating of passengers in the cabin. The loading envelope need not be curtailed if the actual seating location of each passenger is known. If assigned seating is used to determine passenger location, the operator must implement procedures to ensure that the assignment of passenger seating is incorporated into the loading procedure. It is recommended that the operator take into account the possibility that some passengers may not sit in their assigned seats.

(1) If the actual seating location of each passenger is not known, the operator may assume that all passengers are seated uniformly throughout the cabin or a specified subsection of the cabin. If this assumption is made, the operator must curtail the loading envelope to account for the fact that the passenger loading may not be uniform. The curtailment may make reasonable assumptions about the manner in which people distribute themselves throughout the cabin. For example, the operator may assume that window seats are occupied first, followed by aisle seats, followed by the remaining seats (window-aisle-remaining seating). Both forward and rear loading conditions should be considered. That is, the passengers may fill up the window, aisle, and remaining seats from the front of the aircraft to the back, or the back to the front.

(2) If necessary, the operator may divide the passenger cabin into subsections or ''zones'' and manage the loading of each zone individually. It can be assumed that passengers will be sitting uniformly throughout each zone, as long as the curtailments described in the previous paragraph are put in place.

(3) All such assumptions should be adequately documented.

b. *Fuel.* The operator's curtailed loading envelope must account for the effects of fuel. The following are examples of several types of fuel-related curtailments:

(1) *Fuel density.* A certain fuel density may be assumed and a curtailment included to account for the possibility of different fuel density values. Fuel density curtailments only pertain to differences in fuel moment caused by varying fuel volumes, not to differences in total fuel weight. The fuel gauges in most transport category aircraft measure weight, not volume. Therefore, the indicated weight of the fuel load can be assumed to be accurate.

(2) *Fuel movement.* The movement or transfer of fuel in flight.

(3) *Fuel usage in flight.* The burning of fuel may cause the CG of the fuel load to change. A curtailment may be included to ensure that this change does not cause the CG of the aircraft to move outside of the acceptable envelope.

c. *Fluids.* The operator's curtailed CG envelope must account for the effects of galley and lavatory fluids. These factors include such things as:

(1) Use of potable water in flight.

(2) Movement of water or lavatory fluids.

d. *In-Flight Movement of Passenger and Crew.* The operational envelope must account for the in-flight movement of passengers, crew, and equipment. This may be done by including a curtailment equal to the moment change caused by the motion being considered. It may be assumed that all passengers, crew, and equipment are secured when the aircraft is in the takeoff or landing configuration. Standard operational procedures may be taken into account. Examples of items that can move during flight are:

(1) *Flight deck crewmembers moving to the lavatory.* Flight deck crewmembers may move to the most forward lavatory in accordance with the security procedures prescribed for crews leaving the cockpit. An offsetting credit may be taken if another crewmember moves to the flight deck during such lavatory trip.

(2) *Flight attendants moving throughout the cabin.*

(3) *Service carts moving throughout the cabin.* Operators should take their standard operating procedures into account. If procedures do not dictate otherwise, it should be assumed that the service carts can travel anywhere within the compartment to which they are assigned. If multiple carts are in a given compartment, and no restrictions are placed on their movement, then the maximum number of carts, moving the maximum distance, must be considered. The weight of the number of flight attendants assigned to each cart must also be considered. The assumed weight of each cart may be the maximum anticipated cart-load or the maximum design load, as appropriate to the operator's procedures.

(4) *Passengers moving throughout the cabin.* Allowances should be made for the possibility that passengers may move about the cabin in flight. The most common would be movement to the lavatory, described below. If a lounge or other passenger gathering area is provided, the operator should assume that passengers move there from the centroid of the passenger cabin(s). The maximum capacity of the lounge should be taken into account.

(5) *Passengers moving to the lavatory.* Operators should account for the CG change caused by passengers moving to the lavatory. Operators should develop reasonable scenarios for the movement of passengers in their cabins and consider the CG shifts that can be expected to occur. Generally, it may be assumed that passengers to move to the lavatories closest to their seats. In aircraft with a single lavatory, movement from the ''most adverse'' seat must be taken into account. Assumptions may be made which reflect operator lavatory and seating policies. For example, it may be assumed that coach passengers may only use the lavatories in the coach

cabin, if that is the operator's normal policy.

e. *Movement of Flaps and Landing Gear.* If the manufacturer has not already done so, the operator must account for the movement of landing gear, flaps, wing leading edge devices, or any other moveable components of the aircraft. Devices deployed only while in contact with the ground, such as ground spoilers or thrust reversers, may be excluded from such curtailments.

f. *Baggage and Freight.* It can be assumed that baggage and freight may be loaded at the centroid of each baggage compartment. Operators do not need to include a curtailment if procedures are used which ensure that the cargo is loaded uniformly throughout each compartment.

Section 4. Automated Weight and Balance Systems

211. How does an onboard weight and balance system compare to a conventional weight buildup method?

a. An operator may use an onboard weight and balance system to calculate an aircraft's weight and balance, provided the FAA has approved the system for use in an operator's weight and balance control program. This section discusses the differences an operator should consider when using an onboard weight and balance system compared to a conventional weight buildup method. This section addresses only the operational considerations related to the use of an FAA-authorized onboard weight and balance system.

b. Like operators using a conventional weight buildup method to calculate weight and balance, an operator using an onboard weight and balance system as a primary weight and balance control system should curtail the manufacturer's loading envelope to ensure the aircraft does not exceed the manufacturer's certificated weight and CG limits. However, an operator using an onboard weight and balance system would not need to curtail the loading envelope for assumptions about passenger and bag weight or distribution.

c. Because an onboard weight and balance system measures the actual weight and CG location of an aircraft, an operator may not need to include certain curtailments to the loading envelope to account for variables such as passenger seating variation or variation in passenger weight. However, an operator should curtail the loading envelope for any system tolerances that may result in CG or weight errors. Using an onboard weight and balance system does not relieve an operator from the requirement to complete and maintain a load manifest.

212. What measures should an operator take to obtain operational approval for an onboard weight and balance system?

a. *System calibration.* An operator should develop procedures to calibrate its onboard weight and balance system equipment periodically in accordance with the manufacturer's instructions. An operator may calibrate its system with operational items or fuel aboard the aircraft to test the system at a representative operational weight. However, an operator may not use an onboard weight and balance system in place of procedures described in Section 1 of this chapter for weighing the aircraft to establish OEW or CG location.

b. *Demonstration of system accuracy.* As part of the operational approval process, an operator should demonstrate that its onboard weight and balance system maintains its certificated system accuracy between calibration periods. An operator should not have to conduct this demonstration more than once for installing a specific system on one type of aircraft. For the demonstration, the operator should use an aircraft in normal operational service, or in operations that represent the expected environmental and operational conditions in which the aircraft will operate.

213. What operational considerations should an operator take into account when using an onboard weight and balance system?

a. *Certification limits.* An operator using an onboard weight and balance system as its primary means of calculating weight and balance should have procedures in place to ensure that the system is operated within the limits established during the system's certification process.

b. *Environmental considerations.* An operator using an onboard weight and balance system should ensure that it uses the system within the environmental limits established by the manufacturer. Environmental conditions that may affect the performance of an onboard weight and balance system include temperature, barometric pressure, wind, ramp slope, rain, snow, ice, frost, dew, deicing fluid, etc.

c. *Aircraft considerations.* An operator using an onboard weight and balance system should ensure the weight and CG measured by the system are not affected by the aircraft configuration, such as the movement of flaps, stabilizers, doors, stairways or jetways, or any connections to ground service equipment. Other factors that an operator should consider include engine thrust, oleo strut extension, and aircraft taxi movement.

d. *Takeoff trim settings.* If the aircraft manufacturer provides trim settings for takeoff based on the aircraft's CG location, an operator using an onboard weight and balance system should ensure that the onboard weight and balance system provides flight crewmembers with adequate information to determine the appropriate trim setting.

e. *Operational envelope.* The operational envelope for onboard weight and balance systems shall be developed using the same procedures described in other parts of this AC, with the exception that the operational envelope need not be curtailed for passenger random seating and passenger weight variance. Also note that the fuel load is subtracted from the measured takeoff weight to determine the zero fuel weight and CG, instead of being added to the zero fuel weight as part of the load buildup. In addition, an operator must curtail the CG envelope for any system CG tolerance and the weight must be curtailed for any system tolerance above 1 percent.

f. *Complying with compartment or unit load device (ULD) load limits.* When using an onboard weight and balance system, an operator should develop in its weight and balance control program a method to ensure that it does not exceed the load limits specified for a compartment or ULD. If an operator develops appropriate procedures, an operator may request approval to exclude bag counts from its load manifest. The following are two examples of acceptable means to demonstrate compliance with compartment load limits.

(1) An operator may assign a standard average weight to bags. Based on that standard average weight, the operator may place a placard in each compartment stating the maximum number of bags permitted. An operator may also create a table that lists the total weight associated with a given number of bags to ensure the operator does not exceed the load limit of a compartment or ULD.

(2) By conducting sample loadings, an operator may demonstrate that the average density of the bags it places in a compartment or ULD would not allow it to exceed the compartment or ULD load limits inadvertently.

214. May an operator use the information in this AC to develop a backup system?

An operator using an onboard weight and balance system as its primary means of calculating weight and balance may use the guidance in this AC to develop a backup system based on a conventional weight buildup. If an operator develops and receives approval for a backup system, the FAA may grant the operator relief to include an onboard weight and balance system in the operator's minimum equipment list.

215. What operational considerations should an operator take into account when using a computerized weight and balance system?

a. An operator may use an installed computerized weight and balance system to calculate the load schedule for the aircraft's weight and balance for primary dispatch, provided that the system received certification and operational approval for use in an operator's approved weight and balance control program. The system consists of a computer program that runs on installed Electronic Flight Bag computing devices or the Aircraft Communication Addressing and Reporting System, and can be downloaded to ground operations via electronic links. The system displays the load sheet to the pilot or flight operations for primary dispatch.

b. Like operators using a conventional weight buildup method to calculate weight and balance, an operator may use the computerized weight and balance system to provide the FAA approved loading schedules. The operator who uses the computerized weight and balance system as part of its approved weight and balance program should meet all provisions pertinent to the operator's approved weight and balance program as described in this AC.

Chapter 3. Methods to Determine the Weight of Passengers and Bags

Section 1. Choosing the Appropriate Method

300. What should an operator consider when choosing the appropriate method?

a. For many years, operators of transport category aircraft have used average weights for passengers and bags to calculate an aircraft's weight and balance, in accordance with standards and recommended practices. This method eliminates many potential sources of error associated with accounting for a large number of relatively light weights. However, differences between the actual weight of passengers and bags and the average weight of passengers and bags can occur when using average weights.

b. Statistical probability dictates that the smaller the sample size (*i.e.*, cabin size), the more the average of the sample will deviate from the average of the larger universe. Because of this, the use of standard average passenger weights in weight and balance programs for small and medium cabin aircraft should be examined in greater detail.

c. The next four sections describe four methods available to operators to determine passenger and bag weight. They are standard average weights in Section 2; average weights based on survey results in Section 3; segmented weights in Section 4; and actual weights in Section 5. An operator should review the following discussion and consult Table 3–1 to determine which method or methods are appropriate to its type of operation.

d. *Large Cabin Aircraft.* Operators of large cabin aircraft may use the standard average weights for passengers and bags. If an operator determines that the standard average weights are not representative of its operation for some route or regions, it is encouraged to conduct a survey as detailed in Section 3 of this chapter, to establish more appropriate average weights for its operation. Operators should have procedures for identifying situations that would require the use of nonstandard or actual weights.

e. *Medium Cabin Aircraft.* Medium cabin aircraft should be evaluated to determine if the aircraft should be treated more like large or small cabin aircraft. To determine if a medium cabin aircraft can be treated as a large cabin aircraft, the aircraft must meet either both of the loadability criteria or the loading schedule criteria or else be subject to the small cabin weights and curtailments:

Loadability Criteria:

- The CG of the OEW is within the manufacturer's loading envelope, and
- The CG of the zero fuel weight is within the manufacturer's loading envelope when loaded with a full load of passengers and all cargo compartments are filled with a density of 10 pounds per cubic foot.

Or

Loading Schedule Criteria:

- The operator must use a loading schedule based upon zones. The aircraft cabin may have no more than four rows per zone with not less than four zones.

f. *Small Cabin Aircraft.* Operators of small cabin aircraft may request approval to use any one of the following methods when calculating the aircraft weight and balance.

(1) The operator may use actual passenger and bag weights, or

(2) The operator may use the segmented passenger weights listed in Table 3–5 and average bag weights listed in Section 2 of this chapter, or

(3) The operator may use the standard average passenger and bag weights prescribed for large cabin aircraft, or average weights based on an FAA-accepted survey, if—

(a) The aircraft was certificated under part 23 commuter category, part 25, or part 29 (or is able to prove an aircraft has equivalent part 25 or 29 performance data), and

(b) The operator curtails the aircraft CG envelope as prescribed in Appendixes 3 and 4 of this AC.

Section 2. Standard Average Weights

301. What standard average passenger weights should an operator with an approved carry-on bag program use?

a. The standard average passenger weights provided in Table 3–1 were established based on data from U.S. Government health agency surveys. For more background information on the source of these weights, refer to Appendix 2.

b. The standard average passenger weights in Table 3–1 include 5 pounds for summer clothing, 10 pounds for winter clothing, and a 16-pound allowance for personal items and carry-on bags. Where no gender is given, the standard average passenger weights are based on the assumption that 50 percent of passengers are male and 50 percent of passengers are female.

TABLE 3-1. STANDARD AVERAGE PASSENGER WEIGHTS

Standard Average Passenger Weight	Weight Per Passenger
Summer Weights	
Average adult passenger weight	190 lb
Average adult male passenger weight	200 lb
Average adult female passenger weight	179 lb
Child weight (2 years to less than 13 years of age)	82 lb
Winter Weights	
Average adult passenger weight	195 lb
Average adult male passenger weight	205 lb
Average adult female passenger weight	184 lb
Child weight (2 years to less than 13 years of age)	87 lb

c. An operator may use summer weights from May 1 to October 31 and winter weights from November 1 to April 30. However, these dates may not be appropriate for all routes or operators. For routes with no seasonal variation, an operator may use the average weights appropriate to the climate. Use of year-round average weights for operators with seasonal variation should avoid using an average weight that falls between the summer and winter average weights. Operators with seasonal variation that elect to use a year-round average weight should use the winter average weight. Use of seasonal dates, other than those listed above, will be entered as nonstandard text and approved through the operator's OpSpec, MSpec, or LOA, as applicable.

d. The standard average weights listed in Table 3–1 are based on the assumption that the operator has a carry-on bag program. Operators using a no-carry-on bag program should refer to paragraph 305 of this section.

Note: The weight of children under the age of 2 has been factored into the standard average and segmented adult passenger weights.

302. What standard average weights should an operator use for carry-on bags and personal items?

a. An operator using standard average passenger weights should include the weight of carry-on bags and personal items in the passenger's weight. The standard average passenger weights in Table 3–1 include a 16-pound allowance for personal items and carry-on bags, based on the assumption that—

(1) One-third of passengers carry one personal item and one carry-on bag.

(2) One-third of passengers carry one personal item or carry-on bag.

(3) One-third of passengers carry neither a personal item nor a carry-on bag.

(4) The average weight allowance of a personal item or a carry-on bag is 16 pounds.

b. If an operator believes the 16-pound allowance for personal items and carry-on bags is not appropriate for its operations or receives notification from the FAA that the assumptions provided in paragraph 302a are not consistent with the operator's approved program, the operator should conduct a survey to determine what percentage of passengers carry personal items or carry-on bags aboard the aircraft. An example of how to adjust the personal item and carry-on bag allowance, based on the results of a survey, is in Section 3. An operator should not use an allowance of less than 16 pounds for personal items and carry-on bags unless the operator conducts a survey or unless the operator has a no-carry-on bag program.

303. What standard average weights should an operator use for checked bags?

An operator that chooses to use standard average weights for checked bags should use a standard average weight of at least 30 pounds. An operator that requests approval to use a standard average weight of less than 30 pounds for checked bags should have current, valid survey data to support a lesser weight. An operator also may conduct a study to establish different standard average bag weights for portions of its operation to account for regional, seasonal, demographic, aircraft, or route variation. For example, an operator could establish different standard average bag weights for domestic and international routes.

a. *Heavy bags.* Heavy bags are considered any bag that weighs more than 50 pounds but less than 100 pounds. An operator should account for a heavy bag by using one of the following weights:

(1) A standard average weight of 60 pounds,

(2) An average weight based on the results of a survey of heavy bags, or

(3) The actual weight of the heavy bag.

Note: An operator that uses ''double-counting'' to treat a heavy bag as if it were two checked bags for weight purposes should ensure the load manifest represents the actual number of bags for counting purposes. An operator should have a system in place to ensure that heavy bags are identified, although operators may not be required to weigh heavy bags on a scale.

b. *Non-luggage bags.* A non-luggage bag is any bag that does not meet the normal criteria for luggage. Examples include golf bags, fishing equipment packages, wheelchairs and strollers in their shipping configuration, windsurfing kits, boxed bicycles, etc. For non-luggage bags, operators may use any appropriate combination of actual weights, average weights based on survey results, or standard average bag weights. Operators that wish to establish an average weight for a particular type of non-luggage bag, such as a golf bag, must conduct a survey in accordance with the procedures established in Section 3 of this chapter. Operators also should establish a method to calculate the effect on CG of a large non-luggage bag, such as a surfboard, that may occupy more than one compartment on the aircraft.

304. What standard average weight should an operator of large cabin aircraft use for bags checked plane-side?

Operators with a carry-on bag program that use standard average weights should account for the weight of each carry-on bag checked plane-side as 30 pounds. An operator may request approval to use a weight other than 30 pounds if the operator has current, valid survey data to support a different average weight for plane-side-loaded bags.

305. What standard average weights should an operator of small and medium cabin aircraft use, if it has a ''no-carry-on bag program?'

Note: A no-carry-on bag program is limited to small and medium cabin aircraft. A no-carry-on bag program is a term of art created for this AC. Associated with this program are certain standard average weight credits and reductions. Nothing in this AC prevents an operator of large cabin aircraft from having a no-carry-on bag ''policy;'' however, the acceptable standard bag weights for such checked baggage for large cabin aircraft are outlined in paragraphs 303 and 304 above. Furthermore, the passenger weight credit associated with a no-carry-on-bag program is limited to the small and medium cabin aircraft.

a. An operator with a no-carry-on bag program may allow passengers to carry only personal items aboard the aircraft. Because these passengers do not have carry-on bags, an operator may use standard average passenger weights that are 6 pounds lighter than those for an operator with an approved carry-on bag program. See Table 3–2.

TABLE 3-2. AVERAGE PASSENGER WEIGHTS FOR OPERATORS WITH A NO-CARRY-ON BAG PROGRAM

Average Passenger Weight	Weight Per Passenger
Summer Weights	
Average passenger weight	184 lb
Average male passenger weight	194 lb
Average female passenger weight	173 lb
Child weight (2 years to less than 13 years of age)	76 lb
Winter Weights	
Average passenger weight	189 lb
Average male passenger weight	199 lb
Average female passenger weight	178 lb
Child weight (2 years to less than 13 years of age)	81 lb

b. An operator that has a no-carry-on bag program may account for a plane-side loaded bag as 20 pounds. To receive authorization to use 20 pounds as the average weight for a plane-side loaded bag, an operator should demonstrate that sufficient controls exist to ensure that passengers do not bring carry-on bags aboard the aircraft. An operator also should demonstrate that sufficient controls exist to ensure the personal items brought aboard the aircraft can fit completely under a passenger seat or in an approved stowage compartment.

c. If an operator discovers that a plane-side loaded bag should have been treated as a checked bag, the operator should account for that bag at the standard average weight of 30 pounds for a checked bag.

306. What are the standard average weights for crewmembers?

a. An operator may choose to use the standard crewmember weights shown in Table 3–3 or conduct a survey to establish average crewmember weights appropriate for its operation.

TABLE 3-3. STANDARD CREWMEMBER WEIGHTS

Crewmember	Average Weight	Average Weight with Bags
Flight crewmember	190 lb	240 lb
Flight attendant	170 lb	210 lb
Male flight attendant	180 lb	220 lb
Female flight attendant	160 lb	200 lb
Crewmember roller bag	30 lb	NA
Pilot flight bag	20 lb	NA
Flight attendant kit	10 lb	NA

b. The flight crewmember weights in Table 3–3 were derived from weights listed on all first- and second-class medical certificates. The flight crewmember weight with bags assumes that each flight crewmember has one crewmember roller bag and one pilot flight bag.

c. The flight attendant weights in Table 3–3 were derived from National Health and Nutrition Examination Survey (NHANES) data. (For additional information on NHANES, see Appendix 2.) The flight attendant weights with bags assume that each flight attendant has one crewmember roller bag and one flight attendant kit.

d. An operator may include the weight of crewmembers in an aircraft's OEW or add the weight to the load manifest prepared for each flight.

307. What weights may be used for company materials and mail?

a. *Company Material.* An operator should use actual weights for company material and aircraft parts carried aboard an aircraft.

b. *Mail.* An operator should use the weights provided with manifested mail shipments to account for the weight of the mail. If an operator has to separate a shipment of mail, the operator may make actual estimates about the weight of the individual pieces, provided the sum of the estimated weights is equal to the actual manifested weight of the entire shipment.

308. What are the standard average weights for special passenger groups that do not fit an operator's standard average weight profile?

a. *Sports Teams.*

(1) Actual passenger weights should be used for nonstandard weight groups (sports teams, etc.) unless average weights have been established for such groups by conducting a survey in accordance with the procedures established in Section 3 of this chapter. When such groups form only a part of the total passenger load, actual weights, or established average weights for the nonstandard group, may be used for such exception groups and average weights used for the balance of the passenger load. In such instances, a notation should be made in the load manifest indicating the number of persons in the special group and identifying the group; *e.g.*, football squad, etc.

(2) Roster weights may be used for determining the actual passenger weight.

(3) A standard allowance of 16 pounds per person may be used to account for carry-on and personal items as provided in the operator's approved carry-on bag program.

(4) If the carry-on bags are representative of the operator's profile but do not meet the number of bags authorized per person, the operator may count bags and use a 16 pounds per bag allocation.

(5) Actual weights must be used in cases where the carry-on bags are not representative of the operator's profile.

b. Groups that are predominantly male or female should use the standard average weights for males or females provided in Table 3–1.

c. *Military Groups.* The Department of Defense (DOD) requires actual passenger and cargo weights be used in computing the aircraft weight and balance for all DOD charter missions. This requirement is specified in DOD Commercial Air Carrier Quality and Safety requirements (reference 32 CFR part 861, section 861.4(e)(3)(ix), as revised). FAA-approved air carrier weight and balance control programs may be used to account for carry-on/personal items for mixed loads of military and their dependents (such as channel missions). For combat-equipped troop charters, the Air Mobility Command (AMC) will provide guidance to account for the additional weight. If aircraft operators perceive that the weights provided are understated, they should seek confirmation of the actual weights and should make reasonable upward estimations and adjustments to those passenger and/or bag weights.

Section 3. Average Weights Based on Survey Results

309. What should an operator consider when designing a survey?

a. This section provides operators with an acceptable survey method to use in determining average weights for a weight and balance control program. This section also describes how an operator can conduct a survey to count personal items and carry-on bags to determine an appropriate allowance for those items to include in passenger weight. In addition, an operator may use the methods described in this section to conduct a survey to determine the percentage of male and female passengers, to calculate an average passenger weight.

b. Surveys conducted correctly allow an operator to draw reliable inferences about large populations based on relatively small sample sizes. In designing a survey, an operator should consider—

(1) The sample size required to achieve the desired reliability,

(2) The sample selection process, and

(3) The type of survey (average weights or a count of items).

310. What sample sizes should an operator use?

Several factors must be considered when determining an adequate sample size. The more varied the population, the larger the sample size required to obtain a reliable estimate. Paragraph 311 provides a formula to derive the absolute minimum sample size to achieve a 95-percent confidence level. Table 3–4 has been provided for those operators that wish to use calculations other than those listed in paragraph 311. Table 3–4 provides the operator with an acceptable number of samples that may be collected to obtain a 95-percent confidence level and lists the tolerable error associated with each category.

TABLE 3-4. MINIMUM SAMPLE SIZES

Survey Subject	Minimum Sample Size	Tolerable Error
Adult (standard adult/male/female)	2,700	1%
Child	2,700	2%
Checked bags	1,400	2%
Heavy bag	1,400	2%
Plane-side loaded bags	1,400	2%
Personal items and carry-on bags	1,400	2%
Personal items only (for operators with no carry-on bag program)	1,400	2%

311. When conducting a survey, can an operator collect a smaller sample size than that published in Table 3–4?

If the operator has chosen to use a sample size that is smaller than that provided in Table 3–4, the operator should collect a sufficient number of samples to satisfy the following formulas:

$$s = \frac{\sqrt{\sum_{j=1}^{n}\left(x_j - \bar{x}\right)^{\wedge 2}}}{\sqrt{n-1}}$$

Where:
s is the standard deviation
n is the number of points surveyed
x_j is the individual survey weights
$\bar{x}$ is the sample average

$$e = \frac{1.96 * s * 100}{\sqrt{n * \bar{x}}}$$

Where:
e is the tolerable error

312. What sampling method should an operator use?

a. An operator conducting a survey must employ random sampling techniques. Random sampling means that every member of a group has an equal chance of being selected for inclusion in the sample. If an operator conducts a survey that does not employ random sampling, the characteristics of the selected sample may not be indicative of the larger group as a whole. Because of this, any conclusions drawn from such a survey may not be valid.

b. The following are two examples of random sampling methods that an operator may find appropriate for the type of survey conducted. An operator may also consult a basic textbook on statistics to determine if another random sampling method is more appropriate.

(1) *Simple random selection.* An operator should assign a sequential number to each item in a group (such as passengers waiting on a line or bag claim tickets). Then the operator randomly selects numbers and includes the item corresponding with the number in the sample. The operator repeats this process until it has obtained the minimum sample size.

(2) *Systematic random selection.* An operator should randomly select an item in sequence to begin the process of obtaining samples. The operator should then use a predetermined, systematic process to select the remaining samples following the first sample. For example, an operator selects the third person in line to participate in the survey. The operator then selects every fifth person after that to participate in the survey. The operator continues selecting items to include in the sample until it has obtained the minimum sample size.

c. Regardless of the sampling method used, an operator has the option of surveying each passenger and bag aboard the aircraft and should always give a passenger the right to decline to participate in any passenger or bag weight survey. If a passenger declines to participate, the operator should select the next passenger based on the operator's random selection method rather than select the next passenger in a line. If a passenger declines to participate, an operator should not attempt to estimate data for inclusion in the survey.

313. What should an operator consider when developing a survey plan and submitting it to the FAA?

a. *Developing a survey plan.* Before conducting a survey, an operator should develop a survey plan. The plan should describe the dates, times, and locations the survey will take place. In developing a survey plan, the operator should consider its type of operation, hours of operation, markets served, and frequency of flights on particular routes. An operator should avoid conducting surveys on holidays unless it has a valid reason to request the particular date.

b. *Submitting the survey plan to the FAA.* It is recommended that an operator submit its survey plan to the FAA at least 2 weeks before the survey is expected to begin. Before the survey begins, the operator's principal inspectors (PI) will review the plan and work with the operator to develop a mutually acceptable plan. During the survey, the PI will oversee the survey process to validate the execution of the survey plan. After the survey is complete, the PI will review the survey results and issue the appropriate OpSpecs or MSpecs. Once a survey begins, the operator should continue the survey until complete, even if the initial survey data indicates that the average weights are lighter or heavier than expected.

314. What general survey procedures should an operator use?

a. *Survey locations.* An operator should accomplish a survey at one or more airports that represent at least 15 percent of an operator's daily departures. To provide connecting passengers with an equal chance of being selected in the survey, an operator should conduct its survey within the secure area of the airport. An operator should select locations to conduct its survey that would provide a sample that is random and representative of its operations. For example, an operator should not conduct a survey at a gate used by shuttle operations unless the operator is conducting a survey specific to that route or the operator only conducts shuttle operations.

b. *Weighing passengers.* An operator that chooses to weigh passengers as part of a survey should take care to protect the privacy of passengers. The scale

readout should remain hidden from public view. An operator should ensure that any passenger weight data collected remains confidential.

c. *Weighing bags.* When weighing bags on a particular flight, an operator should take care to ensure that it is properly accounting for all items taken aboard the aircraft.

d. *Rounding sample results.* If the operator uses rounding in the weight and balance calculations, it is recommended that the operator round passenger weights to the nearest pound and bag weights to the nearest half-pound. An operator should ensure that rounding is done consistently in all calculations.

e. *Surveys for particular routes.* An operator may conduct a survey for a particular route if the operator believes that the average weights on that route may differ from those in the rest of its operations. To establish a standard average passenger weight along the route, an operator may survey passengers at only one location. However, an operator should conduct surveys of personal items and bags at the departure and arrival locations, unless the operator can verify there is no significant difference in the weight and number of bags in either direction along the route.

315. What information might an operator gain from conducting a count survey?

a. An operator may conduct a survey to count certain items without determining the weight of those items. For example, an operator may determine that the standard average weights for male and female passengers are appropriate for its operations, but on some routes the passengers are predominantly male or female. In this case, an operator may conduct a survey to determine the percentage of male and female passengers. The operator could use the results of the survey to justify a weight other than the standard weights, which assume a 50-percent male and 50-percent female mix of passengers. Similarly, an operator may conduct a survey to determine the number of personal items and carry-on bags passengers carry aboard aircraft to determine if the allowance of 16 pounds per passenger is appropriate to its operations.

b. For example, an operator conducts a survey on a particular route (or multiple routes if amending the program average weight) to count the percentage of passengers carrying personal items and carry-on bags. The operator finds that—

(1) Fifty percent of passengers carry one carry-on bag and one personal item.

(2) Thirty percent of passengers carry one carry-on bag or one personal item.

(3) Twenty percent of passengers carry neither a carry-on bag nor a personal item.

(4) The survey results show that the average passenger carries approximately 21 pounds of personal items and carry-on bags rather than the standard allowance of 16 pounds. In such a case, it would be irresponsible for the operator to fail to increase the standard average weights for that route(s) by 5 pounds per passenger.

Note: The calculation below determines the appropriate allowance for personal items and carry-on bags.

0.50 ‘‘(16 pounds + 16 pounds)] + [0.30 ‘‘(16 pounds)] + [0.20 ‘‘(0 pounds)] = 20.8 pounds

316. When should an operator conduct another survey to revalidate the data from an earlier survey?

In order to use survey-derived average weights, an operator must revalidate such survey data every 36 calendar-months or revert to the standard average weights, provided the new survey average weight results are within 2 percent of the standard average weights listed in this AC.

Section 4. Segmented Passenger Weights

317. What should an operator consider when using segmented weights?

a. The concept of segmented weights involves adding a portion of the standard deviation to an average weight to increase the confidence that the actual weight will not exceed the average weight. Like the standard average weights in Section 2, the segmented weights in Table 3–5 were derived from average weights and standard deviations found based on NHANES data, assuming a 95-percent confidence interval and 1-percent tolerable error.

TABLE 3-5. SEGMENTED WEIGHTS FOR ADULT PASSENGERS (IN POUNDS; SUMMER)

Maximum Certificated Passenger Seating Capacity	Ratio of Male to Female Passengers										
	0/100	10/90	20/80	30/70	40/60	50/50	60/40	70/30	80/20	90/10	100/0
1 to 4	Use actual weights, or asked (volunteered) weights plus 10 lb										
5	231	233	235	237	239	241	243	245	247	249	251
6 to 8	219	221	223	225	227	229	231	233	235	237	239
9 to 11	209	211	213	215	217	219	221	223	225	227	229
12 to 16	203	205	207	209	211	213	215	217	219	221	223
17 to 25	198	200	202	204	206	208	210	212	214	216	218
26 to 30	194	196	198	200	202	204	206	208	210	212	214
31 to 53	191	193	195	197	199	201	203	205	207	209	211
54 to 70	188	190	192	194	196	198	200	202	204	206	208

b. An operator may make the following adjustments to the table above:

(1) An operator may subtract 6 pounds from the passenger weight outlined above if it has a no-carry-on bag program or does not allow any carry-on baggage into the cabin of the aircraft.

(2) An operator should add 5 pounds to the weights above during the winter season.

c. An operator may interpolate between columns on the chart if the operator's assumed ratio of male passengers to female passengers does not exactly match the values given.

d. To account for a child's weight, for children ages 2 years to less than 13 years of age, the standard average child weight located in Table 3–1 may be used. Weights of children under the age of 2 have been factored into the segmented adult passenger weight.

318. How are loading envelope curtailment and bag weight affected by an operator's use of segmented weights?

a. *Loading envelope curtailment.* An operator using segmented passenger weights should consider curtailing its operational loading envelope using the methods described in Appendix 4.

b. *Bag weights.* An operator using segmented weights may use actual weights for bags or the standard average bag weights provided in Section 2. An operator using segmented passenger weights may not use survey-derived average bag weights.

319. What might be an example of an operator using the segmented weights in Table 3–5?

An operator of a 30 passenger-seat aircraft conducts a survey to count the percentage of male and female passengers on its flights and determines that 50 percent of its passengers are male and 50 percent are female. If the operator has an approved carry-on bag program, the operator should use 204 pounds in the summer and 209 pounds in the winter. If the operator has a no-carry-on bag program, the operator should use 198 pounds in the summer and 203 pounds in the winter and account for all plane-side loaded bags as 20 pounds each.

Section 5. Actual Weight Programs

320. If the operator decides to use an actual weights program, how might it determine the actual weight of passengers?

An operator may determine the actual weight of passengers by—

a. Weighing each passenger on a scale before boarding the aircraft (types of weight scales and scale tolerances will be defined in the operator's approved weight and balance control program); or

b. Asking each passenger his or her weight. An operator should add to this asked (volunteered) weight at least 10 pounds to account for clothing. An operator may increase this allowance for clothing on certain routes or during certain seasons, if appropriate.

Note: If an operator believes that the weight volunteered by a passenger is understated, the operator should make a reasonable estimate of the passenger's actual weight and add 10 pounds.

321. If the operator decides to use an actual weight program, how should it determine the actual weights of personal items and bags?

To determine the actual weight of a personal item, carry-on bag, checked bag, plane-side loaded bag, or a heavy bag, an operator should weigh the item on a scale.

322. What approach should an operator use to record actual weights?

An operator using actual weights should record all weights used in the load buildup.

Chapter 4. Operator Reporting Systems and FAA Oversight

Section 1. Pilot and Agent Reporting Systems

400. What are the pilots' and operators' responsibilities in reporting aircraft loading and manifest preparation discrepancies?

Each operator should develop a reporting system and encourage employees to report any discrepancies in aircraft loading or manifest preparation. These discrepancies may include errors in documentation or calculation, or issues with aircraft performance and handling qualities that indicate the aircraft weight or balance is not accurate. Operators should attempt to determine the cause of each discrepancy and take appropriate corrective action. This would include a load audit on affected flights or conducting a passenger or bag weight survey in accordance with this AC if trends indicate it is warranted.

Section 2. FAA Oversight

401. Which FAA inspectors are responsible for overseeing an operator's weight and balance program?

The FAA has divided the responsibility of overseeing an operator's weight and balance control program between the operator's principal operations inspector (POI) and principal maintenance inspector (PMI). An operator that wishes to change aspects of its weight and balance control program, including average weights, should submit all applicable supporting data to the POI and PMI, as applicable, for approval. If the FAA approves the changes, the FAA will issue revised OpSpecs, MSpecs, or LOA, as appropriate.

402. Which portions of OpSpecs or MSpecs are relevant to an operator's weight and balance program?

a. This AC details methods to develop a weight and balance control program with greater accuracy and increased flexibility. By changing its OpSpecs or MSpecs, an operator may alter the weights used in its weight and balance control program to include appropriate combinations of standard average weights, average weights based on survey results, or actual weights.

b. Parts A and E of OpSpecs or MSpecs authorize an operator's weight and balance control program. These parts will address—

(1) Average passenger and bag weights;

(2) Situations when the use of average weights is inappropriate;

(3) The treatment of charter flights or special groups, if applicable;

(4) The type of loading schedule and instructions for its use;

(5) Aircraft weighing schedules; and

(6) Other procedures that the operator may require to assure control of weight and balance.

c. Paragraph E096 of the OpSpecs or MSpecs is issued to an operator with an approved aircraft fleet actual or average weight program. The FAA issues this paragraph after reviewing and approving an operator's weight and balance control program in its entirety.

d. Paragraph A011 of the OpSpecs or MSpecs is issued to an operator with an approved carry-on bag program. This paragraph provides details about the operator's approved carry-on bag program and states whether the operator has a carry-on bag program or a no-carry-on bag program. The FAA will issue this paragraph after reviewing the operator's carry-on baggage program in its entirety.

e. If an operator chooses to use standard average weights as outlined in this AC, the FAA will document that decision by issuing one or more of the following OpSpecs or MSpecs paragraphs. If an operator proposes to use different average weights (weights other than the standard average or segmented weights) and the FAA concurs with the statistically valid data provided by the operator to support

such average weight differences, then those differences will be documented in the following OpSpecs or MSpecs. Although these paragraphs authorize an operator to use average and/or segmented weights, an operator may use actual weights at any time once issued these paragraphs.

(1) Paragraph A097—Small Cabin Aircraft Passenger and Baggage Weight Program.

(2) Paragraph A098—Medium Cabin Aircraft Passenger and Baggage Weight Program.

(3) Paragraph A099—Large Cabin Aircraft Passenger and Baggage Weight Program.

Note: If an operator does not provide the FAA with adequate information to justify the issuance of one of the above paragraphs that documents the use of standard average, survey-derived average, and/or segmented weights, the FAA may issue paragraph A096, requiring the operator to use actual weights for a specific aircraft or aircraft fleet.

f. If an operator chooses to develop a weight and balance control program using only actual weights for all the aircraft it operates, the FAA may issue OpSpec/MSpec paragraph A096. The FAA will not issue paragraphs A097, A098, or A099 to operators with a weight and balance control program that uses only actual weights. The FAA will only issue paragraphs A096, A097, A098, and/or A099 after reviewing the operator's actual or average weight program.

g. An operator that receives approval to use nonstandard average weights should document and make available, upon request, the data and methodology used to derive those weights. An operator's documentation should be sufficiently comprehensive to allow the FAA to reproduce the same results during an audit. An operator should retain this documentation for as long as the operator uses the nonstandard average weights in its weight and balance control program.

h. If an operator chooses to conduct a survey, the operator will use the results of the survey to establish a revised average weight and must curtail the loading envelope as necessary. However, if the survey results indicate the average weights are within 2 percent of the standard average weights outlined in this AC, the operator may elect to adopt the standard average weights only after submitting the survey results to the FAA and receiving approval through its OpSpecs, MSpecs, or LOA.

i. For operators using an onboard weight and balance system to determine the weight and balance of the aircraft, the FAA will issue OpSpecs or MSpecs paragraph A096. Paragraph A096 documents the use of actual weights and the use of its onboard weight and balance system. For an operator that chooses to use standard average weights as a backup system, the FAA will issue paragraphs A097, A098, or A099, as appropriate. By authorizing the use of average weights, the operator may elect to use actual weights derived from its onboard weight and balance system, and may use average weights as an alternative should the system be inoperative.

j. For operators of all-cargo aircraft, the FAA will issue OpSpecs or MSpecs paragraph A096. Paragraph A096 documents the use of actual weights, with the exception of flightcrew and flightcrew bag weights. These weights may be accounted for using the standard average weights described in Chapter 3, Table 3–3.

403. When will the FAA revise the standard average weights in this AC?

The FAA will periodically review the standard average passenger weights listed in this AC, after the release of a new NHANES. If the FAA finds that the data from NHANES indicates a weight change of more than 2 percent, the FAA will revise this AC to update the standard average weights.

James J. Ballough,

Director, Flight Standards Service.

Appendix 1. Definitions

1. *Basic empty weight.* The aircraft empty weight, adjusted for variations in standard items.

2. *Cargo.* As used in this advisory circular (AC), cargo refers to everything carried in the cargo compartments of the aircraft. This includes bags, mail, freight, express, and company material. It also includes live animals, dangerous goods, and hazardous materials as subcategories of the above.

3. *Carry-on bag.* A bag that the operator allows the passenger to carry onboard. It should be of a size and shape that will allow it to be stowed under the passenger seat or in a storage compartment. The operator establishes the exact dimensional limits based on the particular aircraft stowage limits.

4. *Certificated weight and CG limits.* Weight and center of gravity (CG) limits are established at the time of aircraft certification. They are specified in the applicable aircraft flight manual (AFM).

5. *Checked bags.* Checked bags are those bags placed in the cargo compartment of the aircraft. This includes bags that are too large to be placed in the cabin of the aircraft or those bags that are required to be carried in the cargo compartment by regulation, security program, or company policy. For bags checked plane-side, see the definition for plane-side loaded bags.

6. *Curtailment.* Creating an operational loading envelope that is more restrictive than the manufacturers' CG envelope, to assure the aircraft will be operated within limits during all phases of flight. Curtailment typically accounts for, but is not limited to, in-flight movement, gear and flap movement, cargo variation, fuel density, fuel burn-off, and seating variation.

7. *Fleet empty weight.* Average operational empty weight (OEW) used for a fleet or group of aircraft of the same model and configuration.

8. *Freight.* Cargo carried for hire in the cargo compartment that is not mail or passenger bags.

9. *Heavy bags.* For this AC, heavy bags are considered any bag that weighs more than 50 pounds but less than 100 pounds. Bags that are 100 pounds or more are considered freight.

10. *Large cabin aircraft.* Aircraft with a maximum type-certificated seating capacity of 71 or more passenger seats.

11. *Loading envelope.* Weight and CG envelope used in a loading schedule. Loading the aircraft within the loading envelope will maintain the aircraft weight and CG within the manufacturer's type-certificated limits throughout the flight.

12. *Loading schedule.* Method for calculating and documenting aircraft weight and balance prior to taxiing, to ensure the aircraft will remain within all required weight and balance limitations throughout the flight.

13. *Manufacturer's empty weight.* Weight of structure, powerplant, furnishings, systems, and other items of equipment that are an integral part of a particular aircraft configuration. (It is essentially a ''dry'' weight, including only those fluids contained in closed systems.)

14. *Maximum landing weight.* The maximum weight at which the aircraft may normally be landed.

15. *Maximum takeoff weight.* The maximum allowable aircraft weight at the start of the takeoff run.

16. *Maximum taxi weight.* The maximum allowable aircraft weight for taxiing.

17. *Maximum zero-fuel weight.* The maximum permissible weight of an aircraft with no disposable fuel and oil.

18. *Medium cabin aircraft.* Aircraft with a maximum type-certificated seating capacity between 70 and 30 passenger seats, inclusive.

19. *Moment.* A force that causes or tries to cause an object to rotate.

20. *Onboard weight and balance system.* A system that weighs an aircraft and payload, then computes the CG using equipment onboard the aircraft.

21. *Operational empty weight (OEW).* Basic empty weight or fleet empty weight plus operational items.

22. *Operational items.* Personnel, equipment, and supplies necessary for a particular operation but not included in basic empty weight. These items may vary for a particular aircraft and may include, but are not limited to, the following:

a. Crewmembers, supernumeraries, and bags;

b. Manuals and navigation equipment;

c. Passenger service equipment, including pillows, blankets, and magazines;

d. Removable service equipment for cabin, galley, and bar;

e. Food and beverage, including liquor;
f. Usable fluids, other than those in useful load;
g. Required emergency equipment for all flights;
h. Life rafts, life vests, and emergency transmitters;
i. Aircraft unit load devices;
j. Potable water;
k. Drainable unusable fuel;
l. Spare parts normally carried aboard and not accounted for as cargo; and
m. All other equipment considered standard by the operator.

23. *Passenger assist/comfort animals and devices.* These include, but are not limited to, canes, crutches, walkers, wheelchairs, medically-required animal comfort companions, or animals required to assist the vision impaired.

24. *Passenger weight.* Passenger weight is the actual weight or the approved average weight of the passenger.

a. An adult is defined as an individual 13 years or older.

b. A child is defined as an individual aged 2 to less than 13 years of age.

c. Infants are children who have not yet reached their second birthday and are considered part of the adult standard average and segmented passenger weight.

25. *Personal item.* Items the operator may allow a passenger to carry aboard, in addition to a carry-on bag. Typically, an operator may allow one personal item such as a purse, briefcase, computer and case, camera and case, diaper bag, or an item of similar size. Other items, such as coats, umbrellas, reading material, food for immediate consumption, infant restraining device, and passenger assist/comfort animals and devices, are allowed to be carried on the aircraft and are not counted against the personal item allowance.

26. *Plane-side loaded bag.* Any bag or item that is placed at the door or steps of an aircraft and subsequently placed in the aircraft cargo compartment or cargo bin.

27. *Reference Balance Arm (BA).* The horizontal distance from the reference datum to the CG of an item.

28. *Segmented Weights.* Passenger weights derived by adding a portion of the standard deviation to an average weight to increase the confidence that the actual weight will not exceed the average weight.

29. *Small cabin aircraft.* Aircraft with a maximum type-certificated seating capacity between 5 and 29 passenger seats, inclusive.

30. *Standard basic empty weight.* Manufacturer's empty weight plus standard items.

31. *Standard items.* Equipment and fluids not considered an integral part of a particular aircraft and not a variation for the same type of aircraft. These items may include, but are not limited to, the following:

a. Unusable fuel and other unusable fluids;
b. Engine oil;
c. Toilet fluid and chemical;
d. Fire extinguishers, pyrotechnics, and emergency oxygen equipment;
e. Structure in galley, buffet, and bar; and
f. Supplementary electronic equipment.

32. *Useful Load.* Difference between takeoff weight and OEW. It includes payload, usable fuel, and other usable fluids not included as operational items.

Appendix 2. Source of Standard Average Weights in This AC

1. *Standard average passenger weights.*

a. The Federal Aviation Administration (FAA) examined data from several large-scale, national health studies conducted by U.S. Government health agencies. The FAA found that the National Health and Nutrition Examination Survey (NHANES), conducted by the Centers for Disease Control (CDC), provided the most comprehensive and appropriate data. The data in NHANES cover a broad spectrum of the general population, are based on a large sample size, and are not restricted geographically to a particular area.

b. The CDC collects NHANES data annually by conducting an actual scale weighing of approximately 9,000 subjects in a clinical setting. The standard deviation of the sample was 47 pounds. The CDC last published results from NHANES in 2000. Additional information on NHANES can be found at the following Web sites:

(1) *General information. http://www.cdc.gov/nchs/nhanes.htm.*

(2) Analytic and reporting guidelines. *http://www.cdc.gov/nchs/data/nhanes/nhanes3/nh3gui.pdf.*

(3) Data files for 1999–2000 survey. *http://www.cdc.gov/nchs/about/major/nhanes/NHANES99_00.htm.*

c. The FAA used most recent NHANES data set from surveys conducted in 1999 and 2000 to calculate the standard average passenger weights used in this advisory circular (AC). From this data set, the FAA separated out a separate data set of individuals who had not yet reached their 13th birthday to determine average child weight. From the remaining adult data set, the FAA removed all weight data that indicated the subject was clothed during the weighing and removed all data points more than two standard deviations from the mean. The FAA then calculated the average weights for males and females in the remaining data set.

2. *Standard average bag weights.*

To determine standard average weights for different types of bags, the FAA closely examined previous surveys conducted by operators, including several surveys conducted in response to FAA Notice 8400.40, Weight and Balance Control Programs for 10 to 19 Seat Airplanes Operated Under 14 CFR 121. The results of those surveys are summarized in Table 2–1.

TABLE 2-1. BAG SURVEY RESULTS

Item Surveyed	Average Weight	Standard Deviation
Personal items and carry-on bags	15.1 lb	8.2 lb
Checked bags	28.9 lb	10.8 lb
Heavy bags	58.7 lb	7.2 lb

Appendix 3. Sample Operational Loading Envelope

1. *Introduction.*

The following is an example of how to develop an operational loading envelope. For this example, a hypothetical 19-seat commuter category aircraft is used. Although this example uses inches to measure fuselage station, an operator may choose to use an index system for convenience.

2. *Assumptions for this example.*

a. *Passenger weight.* Because the aircraft is certificated under the commuter category of Title 14 of the Code of Federal Regulations (14 CFR) part 23 and because it is originally type-certificated for 5 or more passenger seats, it would be appropriate to use the average weights listed in Chapter 3, Section 2. For this example, it is assumed that the operator does not have a carry-on bag program. Therefore, the operator should use a standard average passenger weight of 189 pounds in winter and 184 pounds in summer. For this example, a standard average passenger weight of 189 pounds is used. The operator also assumes that passengers are distributed throughout the cabin in accordance with the window-aisle-remaining method. Note that because this aircraft has only two window seats per row, the operator may reasonably assume that passengers begin seating themselves in the front of the cabin and select the most forward seat available.

b. *Bag weights.* For this example, the operator assumes that a checked bag weighs 30 pounds and a plane-side loaded bag weighs 20 pounds.

c. *Interior seating.* For this example, consider a commuter category 19-seat aircraft with the interior seating diagram shown in Figure 3–1.

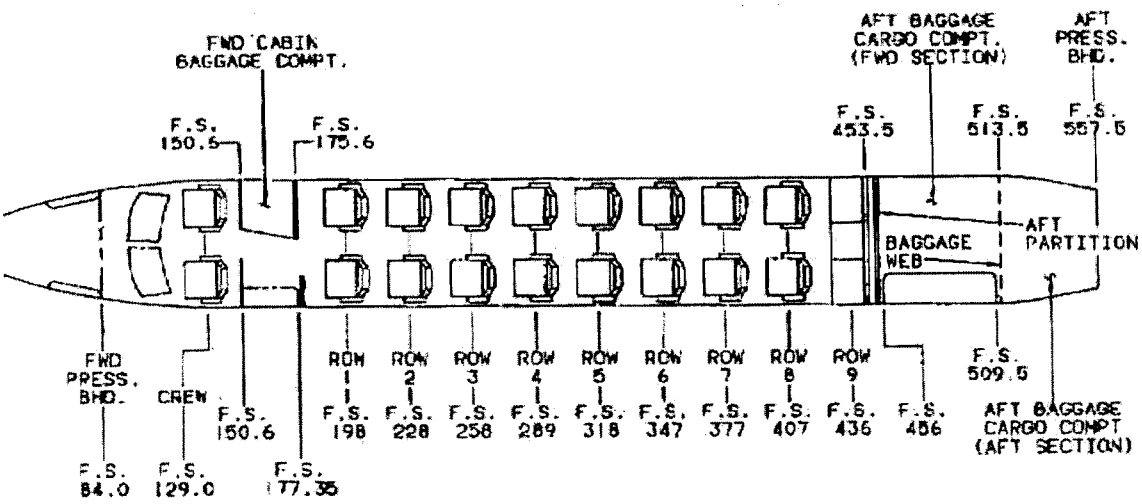


FIGURE 3-1. SAMPLE AIRCRAFT INTERIOR SEATING DIAGRAM

(Diagram courtesy of Raytheon Aircraft Company)

3. *Curtailments for passenger seating variation.*

a. *Establishing zones.* The operator elects to separate the passenger cabin into three zones. Zone 1 will contain rows 1 to 3, zone 2 will contain rows 4 to 6, and zone 3 will contain rows 7 to 9.

b. *Determining the centroid of each zone.* When using cabin zones, an operator assumes that all passengers are sitting at the centroid of their zone. To find the centroid of each zone—

(1) Multiply the number of seats in each row of the zone by the location of the row,

(2) Add each number calculated in step 1, and

(3) Divide the number in step 2 by the total number of seats in the zone.

Note: For this sample aircraft, see Tables 3–1 through 3–3 below.

TABLE 3-1. CALCULATION OF ZONE 1 CENTROID

Row No.	No. of Seats	Row Location	No. of Seats × Row Location
1	2	198 in	396 in
2	2	228 in	456 in
3	2	258 in	516 in
TOTAL	6	NA	1,368 in
1,368 in / 6 seats = 228 in			

TABLE 3-2. CALCULATION OF ZONE 2 CENTROID

Row No.	No. of Seats	Row Location	No. of Seats × Row Location
4	2	289 in	578 in
5	2	318 in	636 in
6	2	347 in	694 in
TOTAL	6	NA	1,908 in
1,908 in / 6 seats = 318 in			

TABLE 3-3. CALCULATION OF ZONE 3 CENTROID

Row No.	No. of Seats	Row Location	No. of Seats × Row Location
7	2	377 in	754 in
8	2	407 in	814 in
9	3	436 in	1,308 in
TOTAL	7	NA	2,876 in
2,876 in / 7 seats = 411 in			

c. *Comparing loading assumptions.* To determine the appropriate amount of curtailment, the operator should compare aircraft loading based on the window-aisle-remaining assumption with aircraft loaded based on the assumption that passengers are sitting at the centroid of their respective zones. An operator may determine the appropriate curtailment by comparing the moments resulting from these assumptions and identifying the loading scenarios that result in the most forward or aft center of gravity (CG) location. See Tables 3–4 through 3–12 below.

(1) *Curtailment calculation for zone 1.*

TABLE 3-4. MOMENTS RESULTING FROM THE ZONE CENTROID ASSUMPTION FOR ZONE 1

Passenger No.	Assumed Weight	Assumed Arm	Moment	Cumulative Moment
1	189 lb	228 in	43,092 in-lb	43,092 in-lb
2	189 lb	228 in	43,092 in-lb	86,184 in-lb
3	189 lb	228 in	43,092 in-lb	129,276 in-lb
4	189 lb	228 in	43,092 in-lb	172,368 in-lb
5	189 lb	228 in	43,092 in-lb	215,460 in-lb
6	189 lb	228 in	43,092 in-lb	258,552 in-lb

TABLE 3-5. MOMENTS RESULTING FROM THE WINDOW-AISLE-REMAINING ASSUMPTION FOR ZONE 1

Passenger No.	Assumed Row	Weight	Arm	Moment	Cumulative Moment
1	1	189 lb	198 in	37,422 in-lb	37,422 in-lb
2	1	189 lb	198 in	37,422 in-lb	74,844 in-lb
3	2	189 lb	228 in	43,092 in-lb	117,936 in-lb
4	2	189 lb	228 in	43,092 in-lb	161,028 in-lb
5	3	189 lb	258 in	48,762 in-lb	209,790 in-lb
6	3	189 lb	258 in	48,762 in-lb	258,552 in-lb

TABLE 3-6. COMPARISON OF MOMENTS FOR ZONE 1

Passenger No.	Cumulative Moment From the Zone Centroid Assumption	Cumulative Moment From the Window-Aisle-Remaining Assumption	Difference
1	43,092 in-lb	37,422 in-lb	-5,670 in-lb
2	86,184 in-lb	74,844 in-lb	-11,340 in-lb
3	129,276 in-lb	117,936 in-lb	-11,340 in-lb
4	172,368 in-lb	161,028 in-lb	-11,340 in-lb
5	215,460 in-lb	209,790 in-lb	-5,670 in-lb
6	258,552 in-lb	258,552 in-lb	0 in-lb

(2) *Curtailment calculation for zone 2.*

TABLE 3-7. MOMENTS RESULTING FROM THE ZONE CENTROID ASSUMPTION FOR ZONE 2

Passenger No.	Assumed Weight	Assumed Arm	Moment	Cumulative Moment
7	189 lb	318 in	60,102 in-lb	60,102 in-lb
8	189 lb	318 in	60,102 in-lb	120,204 in-lb
9	189 lb	318 in	60,102 in-lb	180,306 in-lb
10	189 lb	318 in	60,102 in-lb	240,408 in-lb
11	189 lb	318 in	60,102 in-lb	300,510 in-lb
12	189 lb	318 in	60,102 in-lb	360,612 in-lb

TABLE 3-8. MOMENTS RESULTING FROM THE WINDOW-AISLE-REMAINING ASSUMPTION FOR ZONE 2

Passenger No.	Assumed Row	Weight	Arm	Moment	Cumulative Moment
7	4	189 lb	289 in	54,621 in-lb	54,621 in-lb
8	4	189 lb	289 in	54,621 in-lb	109,242 in-lb
9	5	189 lb	318 in	60,102 in-lb	169,344 in-lb
10	5	189 lb	318 in	60,102 in-lb	229,446 in-lb
11	6	189 lb	347 in	65,583 in-lb	295,029 in-lb
12	6	189 lb	347 in	65,583 in-lb	360,612 in-lb

TABLE 3-9. COMPARISON OF MOMENTS FOR ZONE 2

Passenger No.	Cumulative Moment From the Zone Centroid Assumption	Cumulative Moment From the Window-Aisle-Remaining Assumption	Difference
7	60,102 in-lb	54,621 in-lb	-5,481 in-lb
8	120,204 in-lb	109,242 in-lb	-10,962 in-lb
9	180,306 in-lb	169,344 in-lb	-10,962 in-lb
10	240,408 in-lb	229,446 in-lb	-10,962 in-lb
11	300,510 in-lb	295,029 in-lb	-5,481 in-lb
12	360,612 in-lb	360,612 in-lb	0 in-lb

(3) *Curtailment calculation for zone 3.*

TABLE 3-10. MOMENTS RESULTING FROM THE ZONE CENTROID ASSUMPTION FOR ZONE 3

Passenger No.	Assumed Weight	Assumed Arm	Moment	Cumulative Moment
13	189 lb	411 in	77,679 in-lb	77,679 in-lb
14	189 lb	411 in	77,679 in-lb	155,358 in-lb
15	189 lb	411 in	77,679 in-lb	233,037 in-lb
16	189 lb	411 in	77,679 in-lb	310,716 in-lb
17	189 lb	411 in	77,679 in-lb	388,395 in-lb
18	189 lb	411 in	77,679 in-lb	466,074 in-lb
19	189 lb	411 in	77,679 in-lb	543,753 in-lb

TABLE 3-11. MOMENTS RESULTING FROM THE WINDOW-AISLE-REMAINING ASSUMPTION FOR ZONE 3

Passenger No.	Assumed Row	Weight	Arm	Moment	Cumulative Moment
13	7	189 lb	377 in	71,253 in-lb	71,253 in-lb
14	7	189 lb	377 in	71,253 in-lb	142,506 in-lb
15	8	189 lb	407 in	76,923 in-lb	219,429 in-lb
16	8	189 lb	407 in	76,923 in-lb	296,352 in-lb
17	9	189 lb	436 in	82,404 in-lb	378,756 in-lb
18	9	189 lb	436 in	82,404 in-lb	461,160 in-lb
19	9	189 lb	436 in	82,404 in-lb	543,564 in-lb

TABLE 3-12. COMPARISON OF MOMENTS FOR ZONE 3

Passenger No.	Cumulative Moment From the Zone Centroid Assumption	Cumulative Moment From the Window-Aisle-Remaining Assumption	Difference
13	77,679 in-lb	71,253 in-lb	-6,426 in-lb
14	155,358 in-lb	142,506 in-lb	-12,852 in-lb
15	233,037 in-lb	219,429 in-lb	-13,608 in-lb
16	310,716 in-lb	296,352 in-lb	-14,364 in-lb
17	388,395 in-lb	378,756 in-lb	-9,639 in-lb
18	466,074 in-lb	461,160 in-lb	-4,914 in-lb
19	543,753 in-lb	543,564 in-lb	-189 in-lb

(4) *Determining the most adverse loading.* It is important that an operator examine the above results for each zone and determine which loading scenario results in the greatest difference in moments. For zones 1 and 2, having two, three, or four passengers in the zone results in the largest difference between the moments. For zone 3, having four passengers in the zone results in the largest difference. In this case, the operator should curtail the manufacturer's loading envelope forward and aft by the sum of these moments, 36,666 inch-pounds, to account for the potential variation in passenger seating. In this example, the 36,666 inch-pounds is the sum of 11,340 from Table 3–6; 10,962 from Table 3–9; and 14,364 from Table 3–12.

(5) *Using actual seating location.* Alternatively, an operator may reasonably avoid the above curtailment calculations by determining the actual seating location of

each passenger in the cabin. By eliminating potential variation in passenger seating, an operator would not need to make assumptions about passenger seating and would not need to curtail the loading envelope accordingly. An operator choosing to use actual seating location should have procedures in place to ensure that passengers sit in their assigned location.

4. *Other curtailments to the manufacturer's loading envelope.*

a. *Variation in passenger weight.* Because the operator in this example elects to use standard average weights on a small-cabin aircraft, an additional curtailment for potential variation in passenger weight is required. The operator should curtail the manufacturer's loading envelope by 23,791 inch-pounds forward and aft to account for the variation in passenger weight. A full explanation of this calculation is contained in Appendix 4.

b. *Variation in fuel density.* Because the loading of fuel does not significantly change the CG of the aircraft, the operator would not need to provide a curtailment for variation in fuel density.

c. *Fuel movement in flight.* For this sample aircraft, the manufacturer has considered the movement of fuel in flight. Therefore, the operator does not need to include additional curtailments in the operational loading envelope.

d. *Fluids.* The sample aircraft does not have a lavatory or catering.

e. *Bags and freight.* The sample aircraft has an aft bag compartment split into two sections. If the operator has procedures in place to restrict the movement of bags between the two sections, no additional curtailment to the envelope is required.

f. *In-flight movement of passengers and crewmembers.* Because there are no flight attendants and the aircraft is not equipped with a lavatory, it is reasonable to assume that passengers or crewmembers will not move about the cabin in flight.

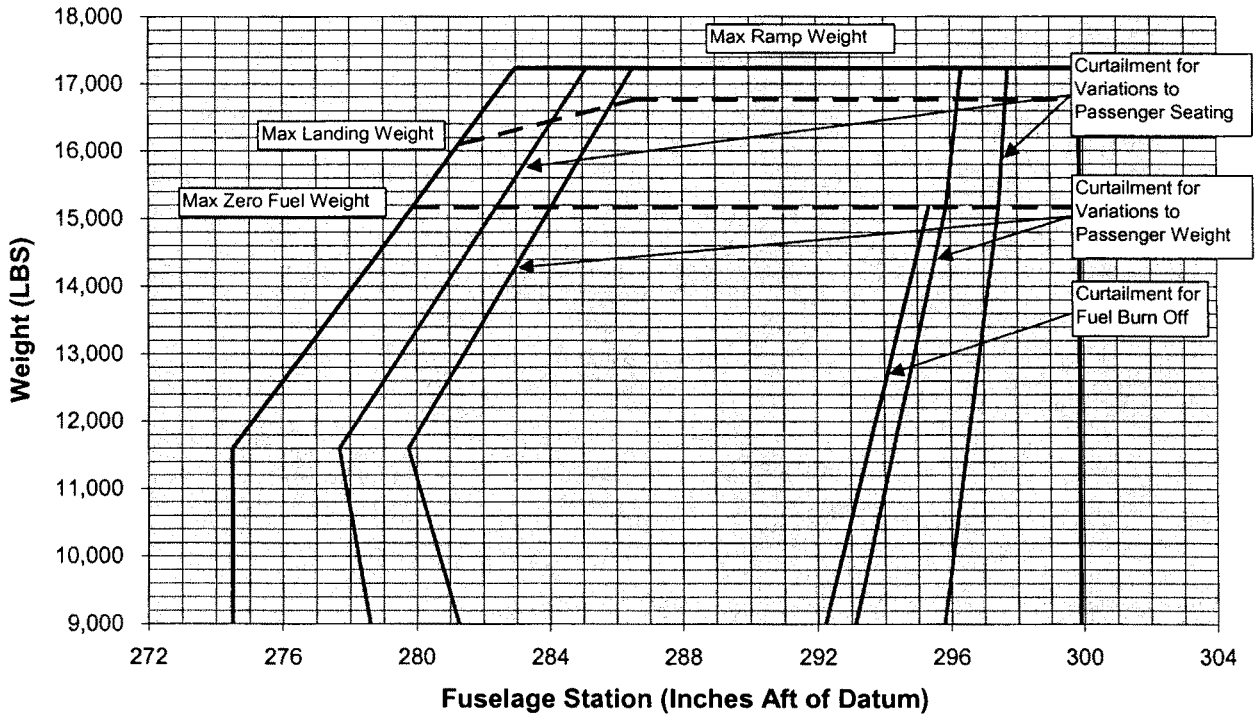
g. *Movement of flaps and landing gear.* The manufacturer of the sample aircraft has considered the movement of flaps and landing gear in the development of its loading envelope. The operator does not need to include any additional curtailments in its operational loading envelope for the movement of those items.

h. *Fuel consumption.* To ensure the sample aircraft remains within the manufacturer's CG limits as fuel is consumed, the operator should curtail the aft CG at weights less than the zero-fuel weight by 8,900 inch-pounds. In this example, the 8,900 inch-pounds is the fuel burn deviation that would bring the aircraft outside the aft CG limit during the course of flight.

5. *Operational loading envelope diagrams.*

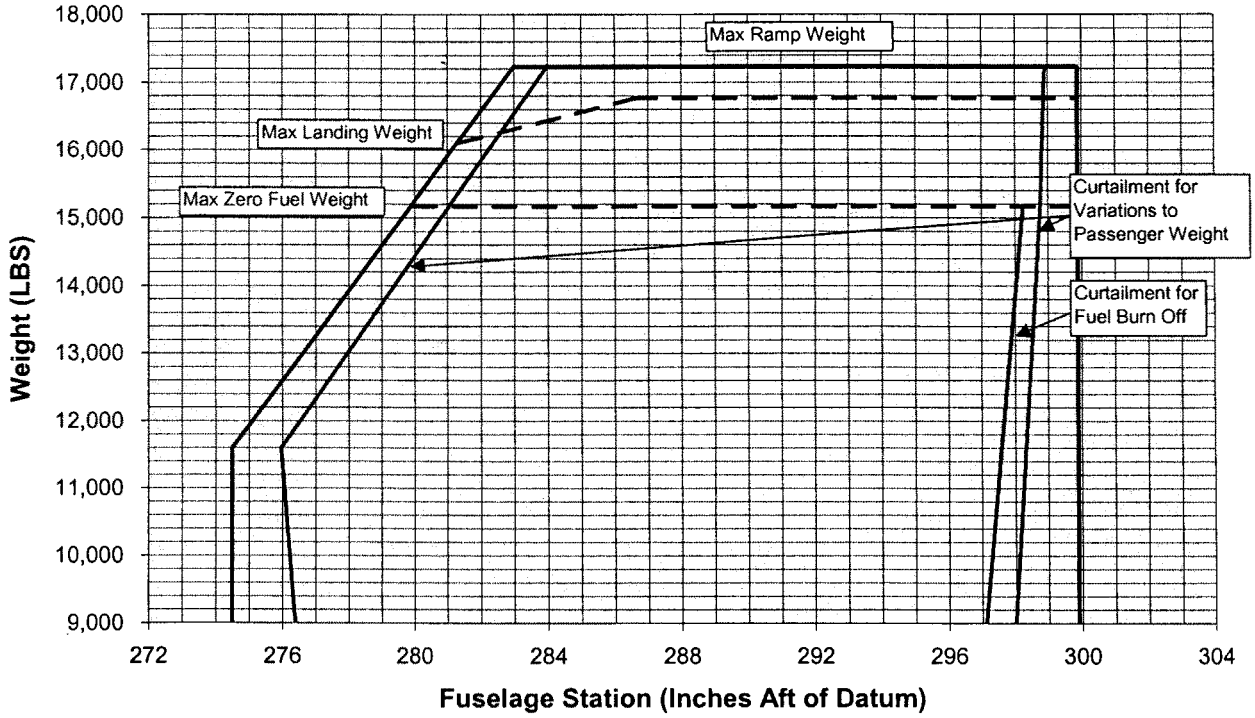
a. Figure 3–2 below shows the operator's curtailments to the manufacturer's loading envelope, based on the assumptions made about variations in passenger seating and weight, as well as fuel consumption.

FIGURE 3-2. OPERATIONAL LOADING ENVELOPE WITH A CURTAILMENT FOR VARIATIONS IN PASSENGER SEATING



b. To expand the operational loading envelope, an operator could choose to use the actual seating location of passengers in the cabin and eliminate the curtailment for variations in passenger seating. Figure 3–3 below shows the expansion of the operational loading envelope.

FIGURE 3-3. OPERATIONAL LOADING ENVELOPE USING ACTUAL SEATING LOCATION OF PASSENGERS



Appendix 4. Additional Curtailments to CG Envelopes To Account for Variations to Passenger Weights

a. The use of average weights for small cabin aircraft requires consideration of an additional curtailment to the center of gravity (CG) envelope for passenger weight variations and male/female passenger ratio. This curtailment is in addition to the standard curtailments discussed in Chapter 2.

(1) Passenger weight variation is determined by multiplying the standard deviation (from the source of the average passenger weight used) by the row factor from Table 4–1. The following table ensures a 95-percent confidence level of passenger weight variation, using the window-aisle-remaining seating method.

TABLE 4-1. ROW FACTOR

No. of Rows	2-abreast	3-abreast	4-abreast
2	2.96	2.73	2.63
3	2.41	2.31	2.26
4	2.15	2.09	2.06
5	2.00	1.95	1.93
6	1.89	1.86	1.84
7	1.81	1.79	1.77
8	1.78	1.73	1.69
9	1.70	1.68	1.65
10	1.66	1.65	1.62
11	1.63	1.59	1.59
12	1.60	1.57	1.57
13	1.57	1.54	1.54
14	1.55	1.52	1.52
15	1.53	1.51	1.51
16	1.49	1.49	1.49
17	1.48	1.48	1.48
18	1.46	1.46	1.46

(2) Protect against the possibility of an all-male flight by subtracting the difference between the male and average passenger weight.

(3) The sum of these two provides an additional weight to be used for CG curtailment, similar to the way in which passenger seating variation is calculated.

b. If the operator chooses to use the passenger cabin zone concept (as described in Appendix 3) and apply this concept to account for variation in passenger weight, then the row factor in Table 4–1 corresponding to the number of rows in each zone should be used. For the purposes of this curtailment, the zone can be no smaller than two rows, if row count is used for passenger seating calculations. Therefore, if an operator chooses to use row count, the operator must use the row factor for two rows.

c. Calculation of the curtailment passenger weight variation is decided by multiplying the standard deviation by the correction factor and adding the difference between male and female passenger weight. For example, assuming a 47 pound standard deviation, the difference between the average passenger weight and an all-male weight is 10 pounds (from 1999–2000 National Health and Nutrition Examination Survey (NHANES) data), and a sample aircraft with 9 rows in a 2-abreast configuration. The additional weight to be curtailed is determined as:

Weight for Additional Curtailment = (47 × 1.70) + (10) = 90 lbs

d. For the example, the additional curtailment should be accomplished by assuming passenger loading at 90 pounds using the program method for passenger seating variation (*e.g.*, window-aisle-remaining). Using the window-aisle-remaining method, the additional curtailment in the example is determined to be 62,310 inch-pounds forward and aft. Table 4–2 displays the calculations used in this example.

Note: The following definitions describe the parameters used in the sample:

- Seat Centroid: Location of passenger weight at seat.
- Seat Moment: Additional passenger weight × seat centroid.
- Total Weight: Sum of additional passenger weights (running total).
- Total Moment: Sum of additional passenger moments.
- Moment Deviation: Difference between total moment and moment generated by assuming additional passenger weight is located at the cabin centroid (323.8 in).

TABLE 4-2. SAMPLE CURTAILMENT DUE TO VARIATIONS IN PASSENGER WEIGHT AND MALE/FEMALE RATIO USING WINDOW-AISLE METHOD

Coach Class (Y) Cabin Centroid 323.8

Passenger Weight: 95

Forward Seating					Aft Seating				
Seat Centroid	Seat Moment	Total Weight	Total Moment	Moment Deviation	Seat Centroid	Seat Moment	Total Weight	Total Moment	Moment Deviation
198.0	18,810	95	18,810	-11,950	436.0	41,420	95	41,420	10,660
198.0	18,810	190	37,620	-23,900	436.0	41,420	190	82,840	21,320
228.0	21,660	285	59,280	-33,000	436.0	41,420	285	124,260	31,980
228.0	21,660	380	80,940	-42,100	407.0	38,665	380	162,925	39,885
258.0	24,510	475	105,450	-48,350	407.0	38,665	475	201,590	47,790
258.0	24,510	570	129,960	-54,600	377.0	35,815	570	237,405	52,845
289.0	27,455	665	157,415	-57,905	377.0	35,815	665	273,220	57,900
289.0	27,455	760	184,870	-61,210	347.0	32,965	760	306,185	60,105
318.0	30,210	855	215,080	-61,760	347.0	32,965	855	339,150	62,310
318.0	30,210	950	245,290	-62,310	318.0	30,210	950	369,360	61,760
347.0	32,965	1,045	278,255	-60,105	318.0	30,210	1,045	399,570	61,210
347.0	32,965	1,140	311,220	-57,900	289.0	27,455	1,140	427,025	57,905
377.0	35,815	1,235	347,035	-52,845	289.0	27,455	1,235	454,480	54,600
377.0	35,815	1,330	382,850	-47,790	258.0	24,510	1,330	478,990	48,350
407.0	38,665	1,425	421,515	-39,885	258.0	24,510	1,425	503,500	42,100
407.0	38,665	1,520	460,180	-31,980	228.0	21,660	1,520	525,160	33,000
436.0	41,420	1,615	501,600	-21,320	228.0	21,660	1,615	546,820	23,900
436.0	41,420	1,710	543,020	-10,660	198.0	18,810	1,710	565,630	11,950
436.0	41,420	1,805	584,440	0	198.0	18,810	1,805	584,440	0
				-6.2					6.2

Appendix 5. Options To Improve Accuracy

A number of options are available that enable operators to deviate from standard assumed weights and may also provide relief from constraints required when assumed averages are used. These options include:

(1) *Surveys.* Surveys may be accomplished for passenger weights (to include carry-on bags), checked baggage weights, male/female ratios and fuel densities. These surveys may be conducted for entire operator route systems, or by specific market or region. Surveys practices and data reduction must conform to the requirements defined in this advisory circular (AC). Use of surveys may allow an operator to use passenger and baggage weights less than the standard specified in this AC. Also, a survey may find that the assumed male/female ratio is incorrect and appropriate adjustments must be made. For example, let's assume the following results from an approved passenger and baggage survey.

Male passenger weight (M) = 183.3 pounds
Female passenger weight (F) = 135.8 pounds
Difference between male and average passenger weights = 24.0 pounds
Standard deviation of total sample (Sigma) = 47.6 pounds
Male/female ratio (Pax Ratio) = 50.6 percent
Checked baggage weight = 29.2 pounds
Baggage checked plane-side = 21.3 pounds
Carry-on and personal items weight (CO Wt) = 10.4 pounds
Carry-on and personal items per passenger ratio (CO Ratio) = 0.82 pounds
Survey conducted in summer months

The resulting assumed passenger weight for loading is expressed as:

Passenger Weight = M × Pax Ratio + F × (1 − Pax Ratio) + CO Wt × CO Ratio

And is determined as:

Summer Passenger Weight = 0.506 × 183.3 + (1 − 0.506) × 135.8 + 10.4 × 0.82 = 169 lb

Winter Passenger Weight = 169 + 5 = 174 lb

Survey results would also be used to determine the additional curtailment for variations to passenger weight. Assuming a 19-seat aircraft in 2-abreast configuration in our example, the additional weight to be curtailed would be:

Additional Weight for Curtailment = (47.6 × 1.70) + 24 = 104.9 lb

Also in our example, the assumed checked baggage weight is 30 pounds. Plane-side loaded bags would be assumed to weigh 20 pounds. (These weights are the standard average weights provided for a no-carry-on baggage program as described in Chapter 3, Section 2).

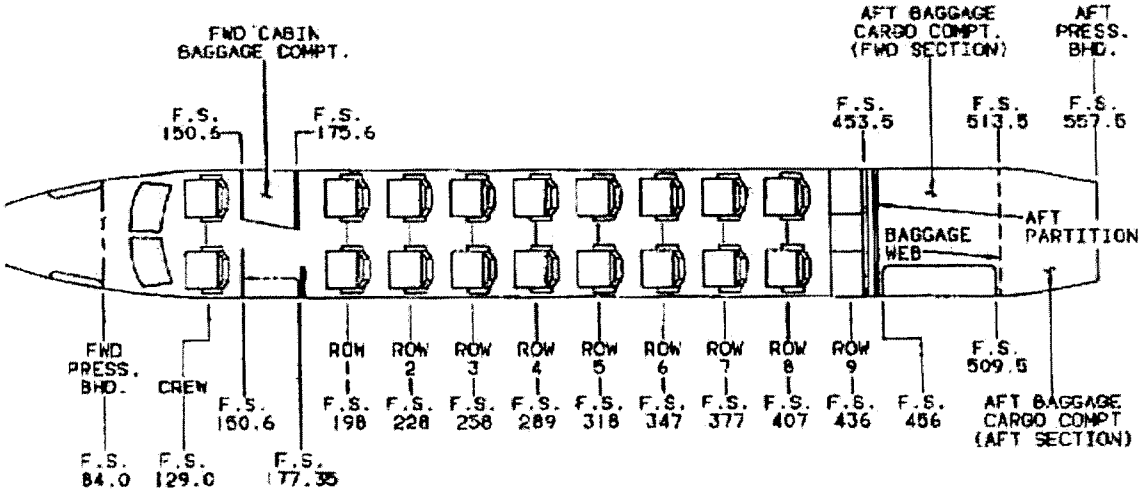
(2) *Actual Weights.* It is permissible to use actual weights in lieu of standard average, segmented, or survey-derived average weights (if applicable). Parameters that may use actual weights include passenger weights, checked baggage weights, carry-on bag weights, crew weights, and fuel density/weight.

(3) *Passenger Cabin Zones and Row Count.* Passenger cabins may be split up into zones provided an acceptable procedure for determination of passenger seating is included (*e.g.*, use of seat assignments or crew counts seated passengers by zone). If zones are used, it may be reasonable for the operator to reduce the center of gravity (CG) passenger seating curtailment suggested in this AC by accommodating variations within each individual zone separately and totaling the results. Passenger row count allows the operator to eliminate the seating variation by accounting for where the passenger is actually seated.

An example of use of passenger zones follows.

Assume an aircraft interior as displayed in Figure 5–1.

FIGURE 5-1. SAMPLE AIRCRAFT INTERIOR SEATING DIAGRAM



(Diagram courtesy of Raytheon Aircraft Company)

Assume that for weight and balance purposes, it is desirable to break the cabin up into three passenger zones. The passenger zones will be determined as zone 1 (rows 1–3), zone 2 (rows 4–6), and zone 3 (rows 7–9). Use of the window-aisle-remaining method will be used in each zone to provide a total curtailment to the CG envelope. (For this sample aircraft, window-aisle-remaining method simply becomes forward and aft end loading). For each zone, a zone centroid must be calculated by counting the total number of seats and averaging their location.

Zone 1 centroid = $(2 \times 198.0 + 2 \times 228.0 + 2 \times 258.0) / (2 + 2 + 2) = 228.0$ in.

Zone 2 centroid = $(2 \times 289.0 + 2 \times 318.0 + 2 \times 347.0) / (2 + 2 + 2) = 318.0$ in.

Zone 3 centroid = $(2 \times 377.0 + 2 \times 407.0 + 3 \times 436.0) / (2 + 2 + 3) = 410.9$ in.

Assuming the standard winter passenger weight of 195 pounds is used for the curtailment, the calculation of total moment is required for comparison to moment assuming each passenger is seated at the centroid of each passenger zone. The total moment is found by summing the individual moments calculated at each occupied seat in the window-aisle-remaining progression.

Forward Curtailment Calculations—ZONE 1

Pax	Row	Arm	Total Moment	Zone Centroid	Zone Moment	Delta Moment
1	1	198.0	38,610	228.0	44,460	-5,850
2	1	198.0	77,220	228.0	88,920	-11,700
3	2	228.0	121,680	228.0	133,380	-11,700
4	2	228.0	166,140	228.0	177,840	-11,700
5	3	258.0	216,450	228.0	222,300	-5,850
6	3	258.0	266,760	228.0	266,760	0

Forward Curtailment Calculations—ZONE 2

Pax	Row	Arm	Total Moment	Zone Centroid	Zone Moment	Delta Moment
1	4	289.0	56,355	318.0	62,010	-5,655
2	4	289.0	112,710	318.0	124,020	-11,310
3	5	318.0	174,720	318.0	186,030	-11,310
4	5	318.0	236,730	318.0	248,040	-11,310
5	6	347.0	304,395	318.0	310,050	-5,655
6	6	347.0	372,060	318.0	372,060	0

Forward Curtailment Calculations—ZONE 3

Pax	Row	Arm	Total Moment	Zone Centroid	Zone Moment	Delta Moment
1	7	377.0	73,515	410.9	80,117	-6,602
2	7	377.0	147,030	410.9	160,234	-13,204
3	8	407.0	226,395	410.9	240,351	-13,956
4	8	407.0	305,760	410.9	320,469	-14,709
5	9	436.0	390,780	410.9	400,586	-9,806
6	9	436.0	475,800	410.9	480,703	-4,903
7	9	436.0	560,820	410.9	560,820	0

The curtailment for passenger seating variation is determined by adding the largest delta moments from each of the passenger zones. In our example, the curtailment to the forward CG limit for passenger seating variation is −37,719 inch-pounds (−11,700 + −11,310 + − 4,709). Similarly, curtailment to the aft limit of the CG envelope using window-aisle-remaining method loading from the most aft seat row moving forward (in each zone) would result in an adjustment of 37,719 inch-pounds. Figures 5–2 through 5–4 graphically show the curtailments for each passenger zone through use of forward and aft end loading using our example.

FIGURE 5-2. SAMPLE PASSENGER SEATING MOMENT

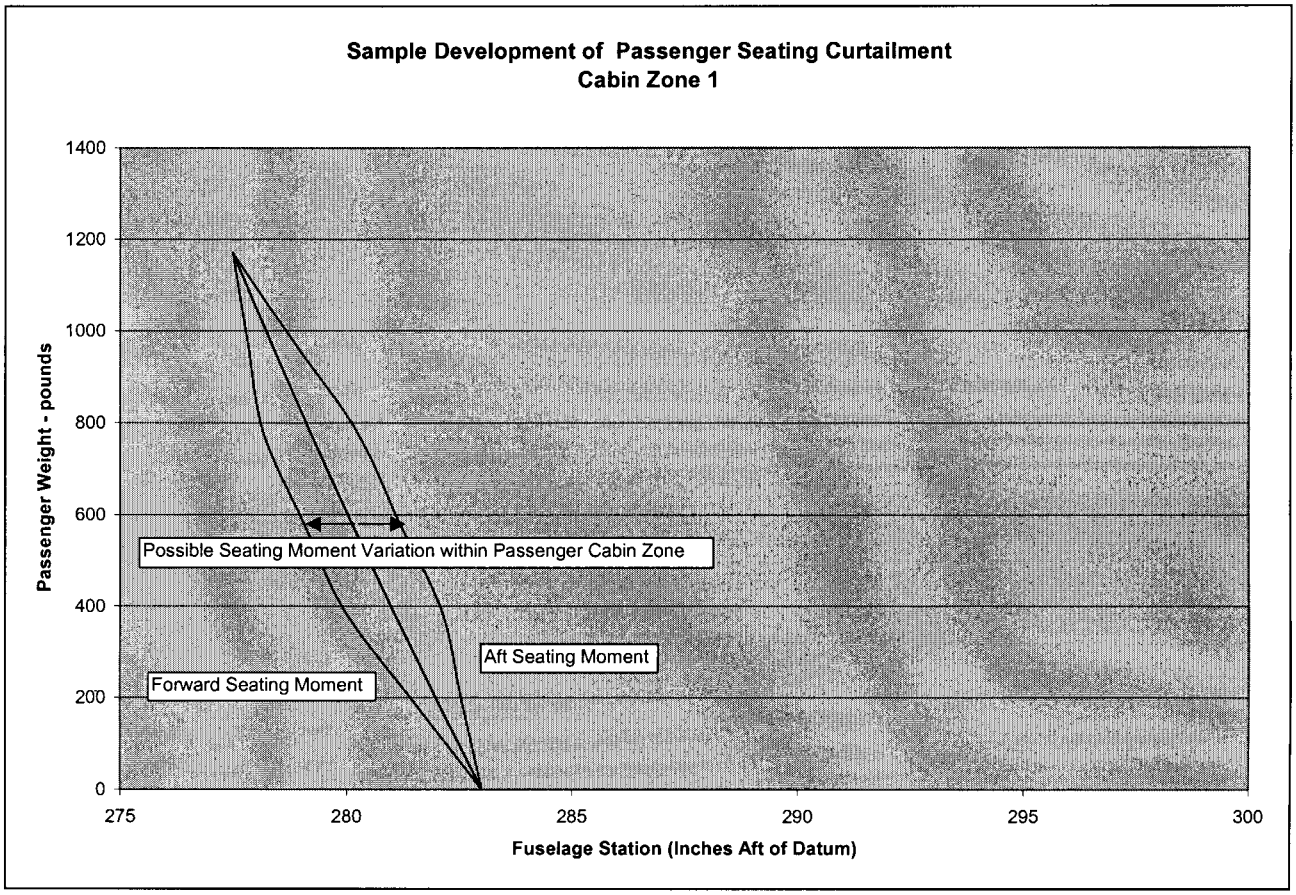


FIGURE 5-3. SAMPLE PASSENGER SEATING MOMENT

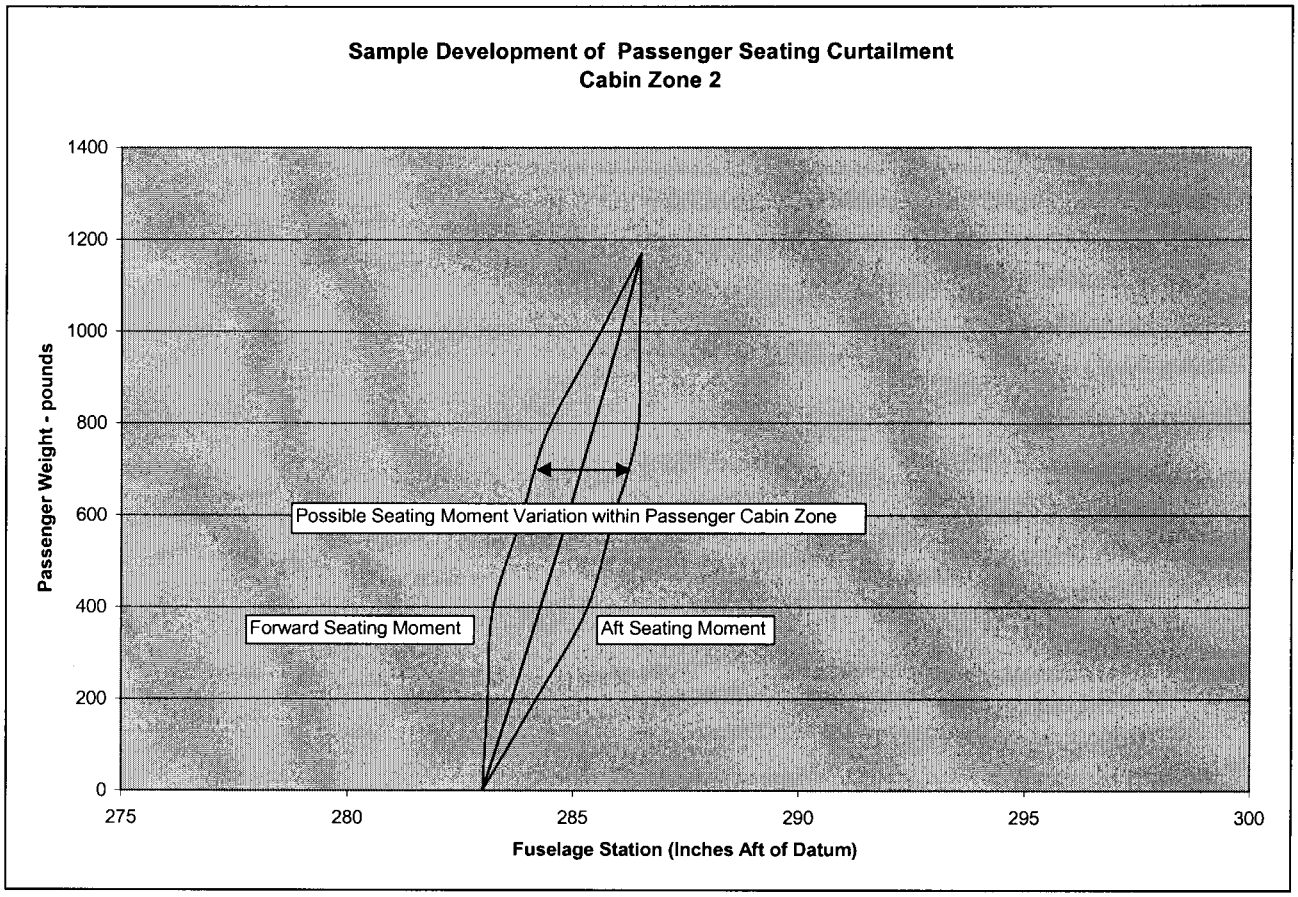
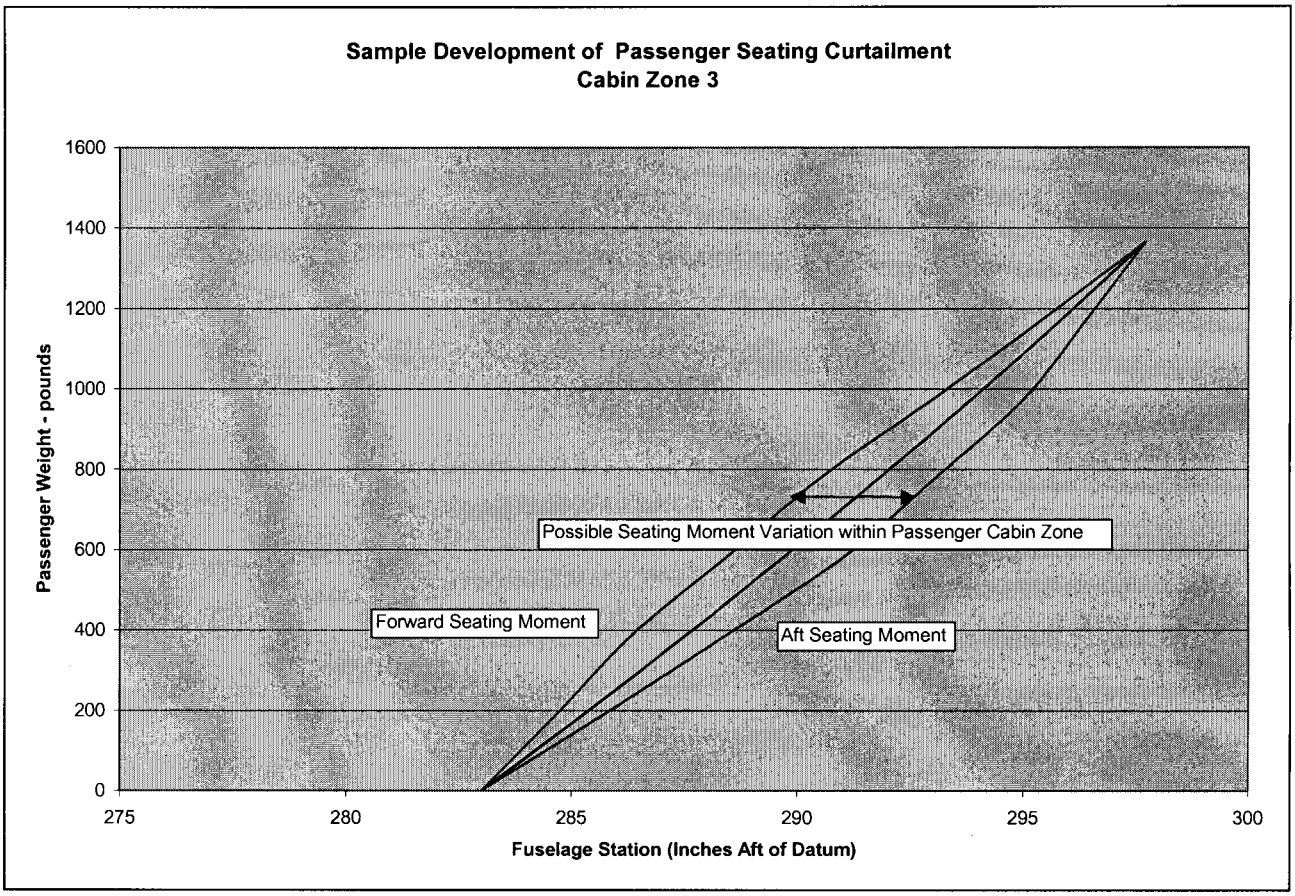


FIGURE 5-4. SAMPLE PASSENGER SEATING MOMENT



(4) *Actual M/F Counts.* Loading systems may use separate male and female assumed passenger weights for each operation. If the operator's weight and balance program is approved for use of male/female weights, then the operator must count the number of male passengers and female passengers separately. The male and female weights used may be from the development of standard passenger weight as described in this AC or they may be determined through an operator-developed survey as also described in this AC. Use of male/female weights may be for entire operations or for a particular route and/or region of flying.

An example of how male/female ratios can be applied to weight and balance systems follows.

Assuming the operator is using the survey results as described in subparagraph (1) above, the assumed male and female passenger weights, including average carry-on baggage, are computed as:

Male passenger weight (summer) = 183.3 + 10.4 × 0.82 = 192 lb

Male passenger weight (winter) = 192 + 5 = 197 lb

Female passenger weight (summer) = 135.8 + 10.4 × 0.82 = 144 lb

Female passenger weight (winter) = 144 + 5 = 149 lb

The weight and balance manifest would provide for identification of male/female identification and the passenger weights would be summed accordingly. For instance, 7 male and 11 female passengers would result in a total passenger weight of (7 × 192) + (11 × 144) = 2,928 pounds.

(5) *Adolescent (Child) Weights.* In most circumstances, an operator may consider any passenger less than 13 years of age, who is occupying a seat, to weigh less than an adult passenger as described in this AC. The standard adolescent child weights can be found in Table 3–1 of Chapter 3.

(6) *Standard Weights With Approved No-Carry-on Baggage Program.*

Summer Passenger Weight = 184 lb

Winter Passenger Weight = 189 lb

Checked Baggage Weight = 30 lb each

Baggage Checked Plane-side = 20 lb each

Inclusion in the no-carry-on baggage program does not preclude use of actual or surveyed weights for passengers, carry-on/personal items, checked baggage, or baggage checked plane-side.

(7) *Automation.* Automation may also be used to provide a more accurate weight and balance program. Examples of automation include use of seat assignments for the determination of passenger moment and historical seating to determine passenger moment.

Appendix 6. Sample CG Envelope Development

Outlined below is an example of the development of a center of gravity (CG) envelope construction for a 19-seat commuter category aircraft. The sample system uses a CG diagram displayed in inches. Operators' systems may use a variety of methods to display CG diagram, including an Index system detailed in Chapter 2, Section 2 and in Appendix 3.

Sample Development of Weight and Balance System for 19-Seat Aircraft

a. *CG Envelope Construction.* The certified CG envelope provided by the manufacturer must be examined for the following curtailments.

(1) *Variations to Passenger Seating (Outlined in Chapter 2).* In this example, the window-aisle-remaining method was used considering a passenger weight of 189 pounds and using 3 passenger zones, where zone 1 is defined as rows 1–3, zone 2 is defined as rows 4–6, and zone 3 is defined as rows 7–9. (189 lb/pax is used since the operator will be using a no-carry-on baggage program as detailed later on in this sample exercise). The resulting curtailment for use of 3 passenger zones is 36,600 inch-pounds forward and aft.

(2) *Variations to Passenger Weight (Outlined in Appendix 4).* Since the sample

aircraft falls into the group of aircraft requiring full evaluation of small cabin aircraft rules, application of a curtailment due to variations to passenger weight is required.

(a) *Use of Passenger Zone Concept for Curtailment.* Considering three cabin zones with each zone containing three rows in a 2-abreast configuration, the required row factor (see Appendix 4, Table 4–1) is 2.41. The row factor is multiplied by the standard deviation and the difference between average male and average female weights is added to provide the additional weight consideration. In our example, the standard deviation is calculated from the National Health and Nutrition Examination Survey (NHANES) data as 47 pounds, and the difference between average all-male and average passenger weights is 10 pounds. The resulting additional weight for curtailment is $47 \times 2.41 + 10 = 123$ pounds. This additional weight is applied per the window-aisle-remaining concept for each cabin zone independently and the results are summed to determine the amount of curtailment. In this case, the curtailment is found to be 23,791 inch-pounds forward and aft.

(b) *Use of Row Count for Curtailment.* When using row count, the required row factor is 2.96. The row factor is multiplied by the standard deviation and the difference between average male and average female weights is added to provide the additional weight consideration. In our example, the standard deviation is calculated from the NHANES data as 47 pounds, and the difference between average all-male and average passenger weights is 10 pounds. The resulting additional weight for curtailment is $47 \times 2.96 + 10 = 149$ pounds. This additional weight is applied as if a 2-row passenger zone concept is used for passenger seating. The resulting curtailment is determined to be 16,657 inch-pounds forward and aft.

(3) *Variations to Fuel Density.* Since the loading of fuel does not significantly shift the CG for the aircraft, it is not necessary to correct for variations in fuel density (*i.e.*, the correction is negligible).

(4) *Fuel Movement in Flight.* Fuel movement has been considered by the manufacturer in the development of the certified envelope, making an additional curtailment unnecessary.

(5) *Fluids.* The sample aircraft does not have a lavatory and there is no catering.

(6) *Baggage and Freight.* The sample aircraft provides a baggage web in the aft baggage compartment, splitting the compartment into forward and aft sections. In our example, we assume the operator is making full use of this web and the movement of baggage is restricted. No curtailment is necessary.

(7) *In Flight Movement of Passengers and Crew.* Since there are no flight attendants and no lavatories on the sample aircraft, it is reasonable to assume that the passengers will remain in their seats for the duration of the flight. Therefore, it is not necessary to curtail the limits for passenger and crew in-flight movement.

(8) *Movement of Flaps and Landing Gear.* In the case of the sample aircraft, the manufacturer has included consideration of flap and landing gear movement in the development of the certified envelope. No additional curtailment is necessary.

(9) *Fuel consumption.* The fuel vector for the sample aircraft provides a small aft movement that requires a $-8{,}900$ inch-pounds curtailment to the aft zero fuel weight limits to ensure the aircraft does not exceed the aft limit as fuel is burned. This equates to a -0.8 inch curtailment at an estimated operational empty weight of 11,000 pounds with a linear transition to a -0.6 inch curtailment at MZFW of 16,155 pounds. In this example, the 8,900 inch-pounds is the fuel burn deviation that would bring the aircraft outside the aft CG limit during the course of flight.

b. Three operational curtailments to the sample aircraft CG envelope are required. These are for variations to passenger seating and passenger weight, and fuel burn-off. Figure 6–1 displays the operational CG envelope highlighting the required curtailments.

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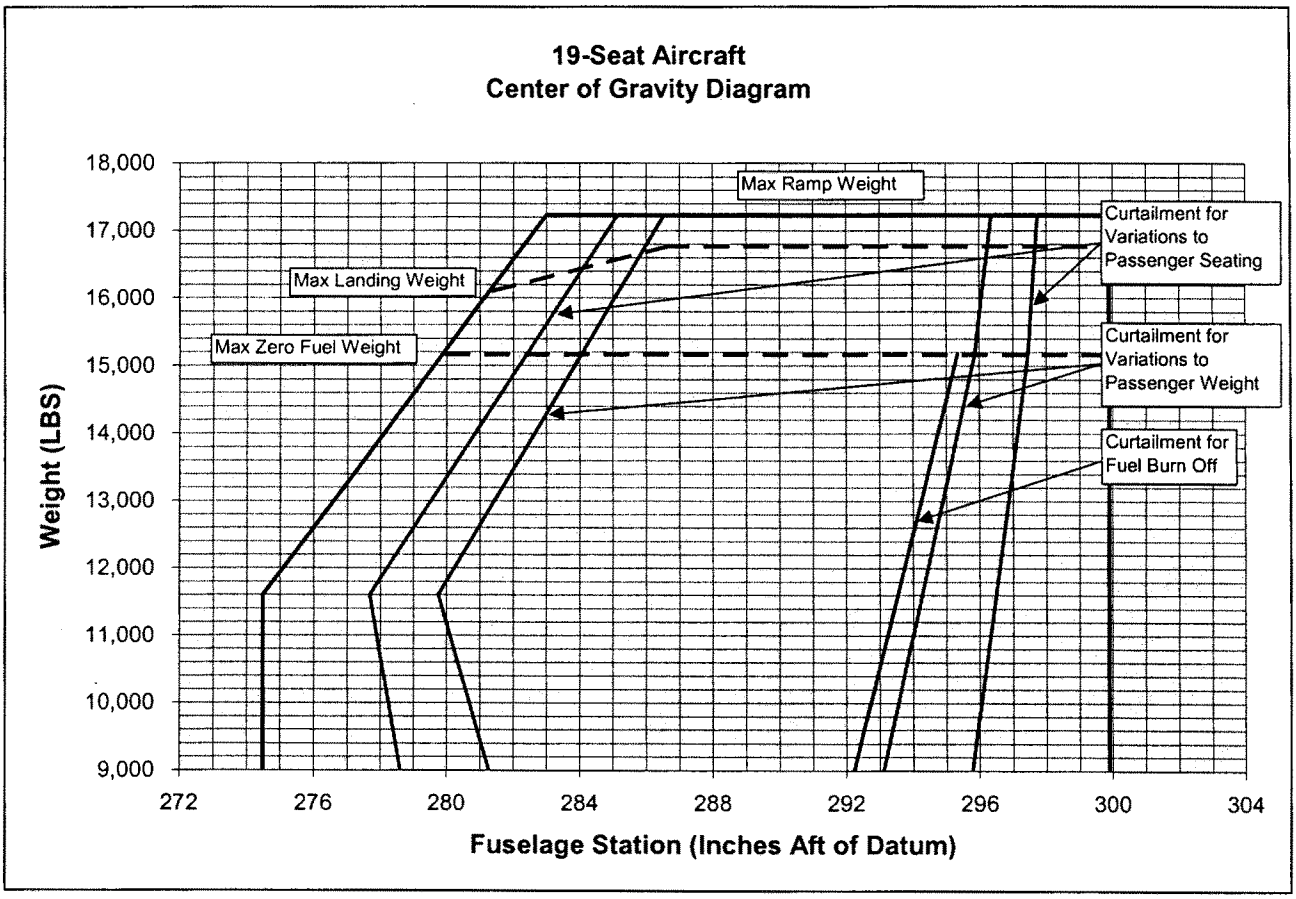
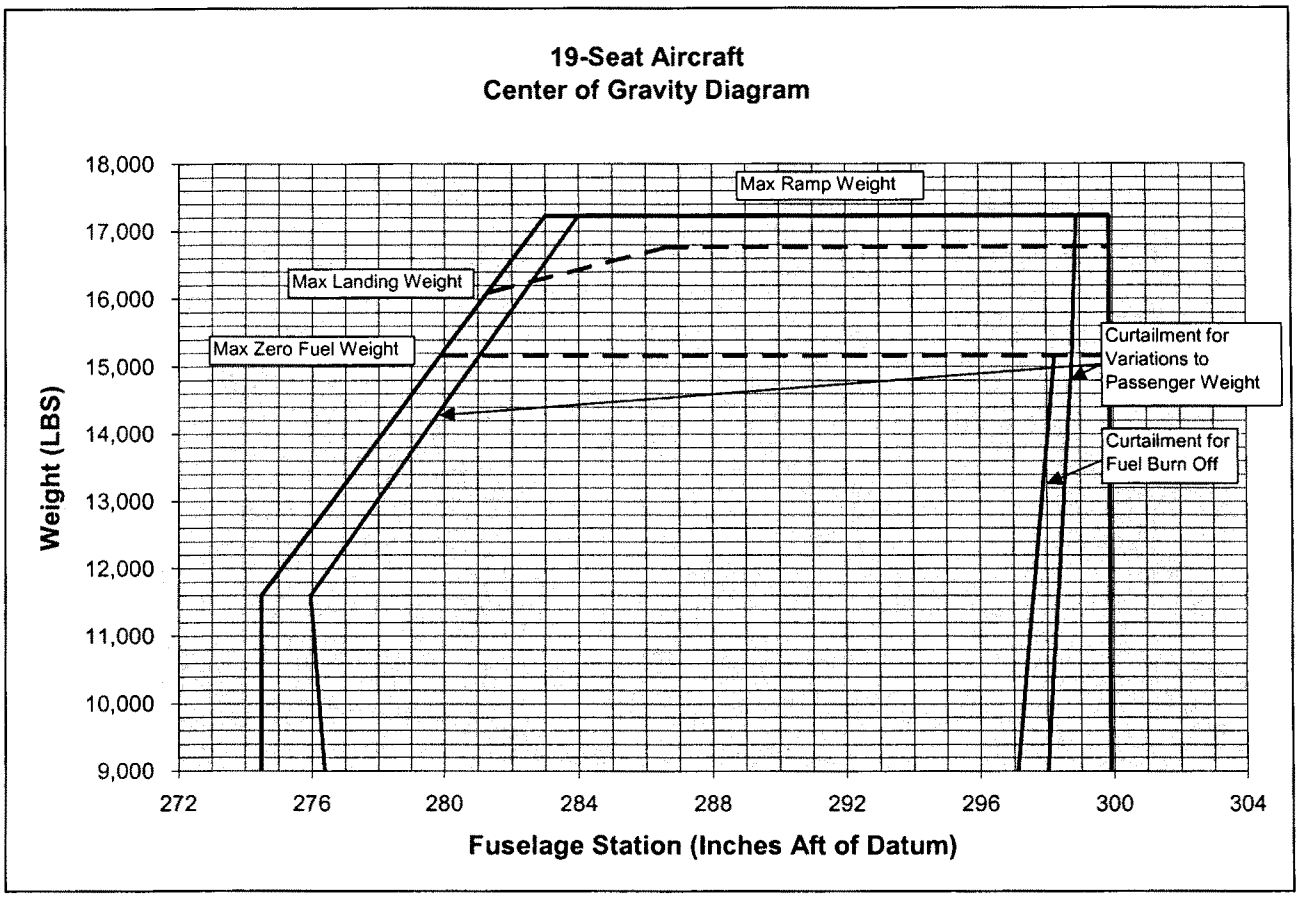
FIGURE 6-1. OPERATIONAL CG ENVELOPE—3 PASSENGER CABIN ZONES



c. Assuming the operator wishes to widen the envelope, use of actual passenger seating (row count) may be used to eliminate the curtailment required for variations to passenger seating. Figure 6–2 displays a CG envelope that makes use of actual passenger seating.

FIGURE 6-2. OPERATIONAL CG ENVELOPE—ACTUAL PASSENGER SEATING



d. *No-Carry-On Baggage Program.* This example assumes a no-carry-on bag program. This allows consideration of reduced passenger weight to 184 pounds (summer) and 189 pounds (winter). Carry-on bags checked at the gate or ''plane-side loaded'' will be counted as 20 pounds/bag. Bags checked at the ticket counter will remain at 30 pounds/bag.

APPENDIX 7. CHECKLIST

Aircraft Type _____

Region _____

Route _____

Aircraft Size / Carry-on Bag Assessment

1 Is the aircraft certificated under part 23 commuter category, part 25, or part 29 (or has equivalent performance data)? (Yes or No)

2 What is the certified maximum number of seats for the aircraft?

If answer to (2) is greater than 70, then aircraft is large cabin size. If answer to (2) is less than 30, then aircraft is small cabin size. If answer to (2) is 30 to 70, then aircraft is medium cabin size. Continue with next question.

3a Does aircraft CG at OEW and at ZFW when fully loaded with passengers and cargo at 10 lbs/cu.ft. fall within the manufacturer's certified envelope limits? (Yes or No)

3b Does operator's loading schedule use passenger zone loading with no more than 4 rows per zone with not less than 4 zones or does operators loading schedule use passenger row count? (Yes or No)

If answer to either (3a) or (3b) is yes, then aircraft weight & balance program may follow large aircraft cabin guideline. If answer to (3a) and (3b) is no, then aircraft weight & balance program should follow small cabin aircraft guidelines.

4 Does operator have in place a program that will prohibit placing of carry-on bag in passenger compartment? (Yes or No)

If answer to (4) is yes, then the aircraft is eligible to be included in a no carry-on bag program. If answer to (4) is no, aircraft is not eligible for carry-on bag program.

5 Aircraft weight & balance program guidelines (Small or Large)

6 Aircraft eligible for no carry-on bag program? (Yes or No)

Passenger Weights Assumptions

7 Was a valid and current passenger weight survey performed? (Yes or No)

The survey may include passenger weights and/or Male/Female ratios. If yes, then the passenger weights used should reflect the results of the survey.

8 Was a valid and current carry-on bag weight survey performed? (Yes or No)

The survey may include checked bag weights and/or counts. If the answer to (8) is yes, then the passenger weights used should reflect survey results.

9 Will aircraft weight & balance program follow small aircraft guidelines? (Yes or No)

If answer to (9) is yes, proceed with next question. If answer is no, go to question (12).

10 Will segmented passenger weights be used? (Yes or No)

If answer to (10) is yes, use segmented passenger weights per Appendix 3 and go to question (12).

11 If answer to question (1) is Yes, will standard average passenger weights be used? (Yes or No)

If answer to (11) is yes, use standard average passenger weights per Chapter 4.

12 If answer to question (6) is Yes, does operator intend to include aircraft in a no carry-on bag program? (Yes or No) *If answer to (12) is yes, adjust passenger weight assumptions by -6 lb/pax.*

CHECKLIST (cont.)

13 Will actual, separate Male and Female weights be used? (Yes or No)

If answer to (13) is yes, then individual male and female weights should be provided in (15) and (16). If answer to (13) is no, then non-gender specific weights should be provided in (15) and (16).

14 Will Child weights be used? (Yes or No)

If answer to (14) is yes, then child weights should be provided in (15) and (16).

15 Adult Male Summer Weight (lb)

Adult Female Summer Weight (lb)

Adult (non-gender specific) Summer Weight (lb)

Child Summer Weight (lb)

16 Adult Male Winter Weight (lb)

Adult Female Winter Weight (lb)

Adult (non-gender specific) Winter Weight (lb)

Child Winter Weight (lb)

Checked Bag Weight Assumptions

17 Was a valid and current checked bag weight survey performed? (Yes or No)

If the answer to (17) is yes, then the checked bag weights used should reflect survey results. If no, then standard average checked bag weights as defined in Chapter 4 should be used.

18 If answer to question (6) is yes, does operator intend to include aircraft in a no-carry-on bag program? (Yes or No)

If answer to question (18) is yes, then carry-on bags checked plane-side should be counted as weighing 20 lb. each.

19 Does operator have an approved heavy bag program?

If the answer to (19) is yes, then bags over 50 lb and less than 100 lb are counted as 60 lb. If (19) is no, then actual weights should be used for bags weighing over 50 lb.

20 Domestic Checked Bag Weight (lb)

21 International Checked Bag Weight (lb)

22 Plane-side Checked Bag Weight (lb)

CHECKLIST (cont.)

Center of Gravity Envelope Curtailment

Which method of passenger seating assumptions will be used?

23 - Actual seat assignment? (Yes or No)

If (23) is yes, then curtailment to the center of gravity envelope for variation in passenger seating not required. If yes, proceed to question (27). It may be appropriate for the operator to provide a small curtailment to accommodate passengers not sitting in their assigned seats if the operator does not have a program in place to ensure passengers are sitting in their assigned seats.

24 - Random seating with single cabin zone? (Yes or No)

If (24) is yes, then curtailment to the center of gravity envelope for variation in passenger seating required per a documented method, such as Boeing window-aisle-remaining or Airbus root mean square methods. Passenger weight used in the loading system should be used when developing the curtailments. If yes, proceed to question (27).

25 - Random seating with multiple cabin zones? (Yes or No)

If (25) is yes, then curtailment to the center of gravity envelope for variation in passenger seating for each passenger cabin zone is required per a documented method, such as Boeing window-aisle-remaining or Airbus root mean square methods. The curtailments for each passenger cabin zone are summed to provide the total curtailment required for random passenger seating. Passenger weight used in the loading system should be used when developing the curtailments. If yes, proceed to question (27).

26 - Historically-based? (Yes or No)

If (26) is yes, then forward and aft curtailments to center of gravity envelope should be calculated to a 95% confidence level based on recorded data. Passenger weight used in the loading system should be used when developing the curtailments.

27 Will aircraft weight & balance program follow small aircraft guidelines? (Yes or No)

If answer to (27) is yes, operator should curtail center of gravity envelope for variations to passenger weight per Appendix 4.

28 Has aircraft manufacturer included variation to fuel density considerations in the development of the certified center of gravity envelope? (Yes or No)

If the answer to (28) is no, then operator should curtail center of gravity envelope for expected variations in fuel density.

29 Does aircraft's fuel burn moment cause the aircraft to exceed the forward or aft center of gravity limits anytime during flight? (Yes or No)

If answer to (29) is yes, then operator should curtail center of gravity envelope to ensure fuel burn will not result in a limit exceedance unless the manufacturer has already considered this in the development of the certified center of gravity envelope.

30 Has aircraft manufacturer included consideration of fuel movement in the development of the certified center of gravity envelope, e.g., fuel transfer between tanks? (Yes or No)

If the answer to (30) is no, then operator should curtail center of gravity envelope for other fuel movement expected in flight.

31 Does aircraft have galley and/or lavoratory in the cabin? (Yes or No)

If answer to (31) is yes, then operator should curtail center of gravity envelope for movement of potable water and/or lavoratory fluids in flight. Operator should also curtail for movement of passengers and crew members to lavoratories and flight attendant with serving cart moving through cabin.

32 Does the operator use procedures which ensure that the cargo is loaded uniformly throughout each compartment? (Yes or No)

If answer to (32) is no, then operator should curtail center of gravity envelope to accommodate expected shifting of cargo load.

[FR Doc. 04–18905 Filed 8–18–04; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–04–18675]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before October 18, 2004.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 400 Seventh Street, SW., Plaza 401, Washington, DC 20590. Docket No. NHTSA–04–18675.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Block, Contracting Officer's Technical Representative, Office of Research and Technology (NTI–131), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5119, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the Federal Register providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Increasing Safety Belt Use Among Children Ages 8–15

Type or Request—New information collection requirement.

OMB Clearance Number—None.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—October 30, 2007.

Summary of the Collection of Information—NHTSA proposes to conduct immersion sessions with 27 families and triad interviews with 288 children as part of a study on safety belt use by children 8–15 years old. Participation by respondents would be voluntary. NHTSA's information needs require research to reveal the best interventions for influencing children 8 years and older to wear safety belts at all times when riding in a motor vehicle.

Immersion sessions will be conducted with 27 different families: 9 African-American, 9 Hispanic, and 9 White. Immersion is a research technique that involves ''immersing'' oneself in the environment of one's research subjects in order to better understand them. For this project, each immersion session will consist of interviewing a child and that child's family with his/her home environment over a two-hour period, while at the same time observing interactions among the family participants.

A total of 96 triad interviews will also be conducted, using a sample independent from the immersion session sample. The triads will consist of 75-minute sessions with groups of three children in an information collection setting similar to that of a focus group. One-third of the triads will be composed of African-American participants, one-third by Hispanic participants, and one-third by White participants. The triads will also be segmented by the sex of the participants, their age (8–9, 10–11, 12–13, 14–15), and their level of safety belt use (full time use, part time use, and non-use).

Description of the Need for the Information and Proposed Use of the Information

Wearing a safety belt when riding in a motor vehicle is the single most effective action that a person can take to prevent injury or fatality in the event of a motor vehicle crash. Research has shown that lap/shoulder belts, when used, reduce the risk of fatal injury to front-seat passenger car occupants by 45 percent and the risk of moderate-to-critical injury by 50 percent. For light truck occupants, safety belts reduce the risk of fatal injury by 60 percent and moderate-to-critical injury by 65 percent.

While more than 90 percent of infants and toddlers use safety restraints when riding in motor vehicles, the percentage drops significantly for older children. In 2003, 81 percent of children ages 8–15 sitting in the front seat of passenger motor vehicles were using a safety belt according to observation data collected by the National Highway Traffic Safety Administration (NHTSA). Moreover, NHTSA's Fatality Analysis Reporting System (FARS) has consistently found more than one-half of child fatalities in the 8–15 age range not using a safety belt.

Little is currently known about the context of safety belt use and non-use by 8–15 year olds as occupant protection studies have tended to focus on older or younger subjects. Yet encouraging safety belt use by 8–15 year olds will not only help save young lives, but also help to establish health and safety behaviors that will be maintained for the rest of their lives.

In order to meet the objective of increasing safety belt use among 8–15 year olds, NHTSA needs additional information from formative research to assist in the development of programs, message, and strategies addressing this issue. If approved, results from the proposed research would be used to (a) reveal opportunities and barriers to 8–15 year old safety belt usage; (b) identify strategies and interventions that will motivate children 8–15 years old to wear their safety belts; and (c) reveal the most effective channels for reaching and influencing children 8–15 years old to wear their safety belts.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

Under this proposed effort, information collection would be conducted with members of the general public. Businesses are ineligible for the study and would not be interviewed.

Immersion sessions two hours in length would be conducted with each of 27 families meeting sample selection criteria. The immersion sessions would be conducted in three different metropolitan areas. The families participating in the immersion sessions would have one or more children in the 8–15 age range. The sample would be selected to include families that differ on demographic factors as well as the child's frequency of safety belt use. Interviewing would be conducted in-person at the home of the families. Multiple family members would be interviewed during the immersion session. Each participating family member would complete one immersion session.

In addition, triad interviews of 75 minutes in length per triad would be conducted with 288 children meeting sample selection criteria. Three children would be interviewed per triad. The triad interviews would be conducted in four metropolitan areas. The age, race and ethnicity, sex, and frequency of safety belt use would be the same for the three children in any triad; but would vary across triads. Each child participant would complete one triad interview.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting From the Collection of Information

NHTSA estimates that each immersion session would be two hours in length. Family members would participate concurrently in the immersion sessions, with an average of 3.5 participants per family. Thus the number of reporting burden hours a year on the general public for the immersion sessions (27 families multiplied by 3.5 family members multiplied by 2 hours) would be 189 hours for the proposed study.

NHTSA estimates that each triad interview would be 75 minutes in length. The three members of each triad would participate concurrently. Thus the total number of reporting burden hours a year on the general public for the triad interviews (288 children multiplied by 1 interview multiplied by 75 minutes) would be 360 hours for the proposed study.

The combined reporting burden hours a year for the immersion sessions (189) and triad interviews (360) would be 549. The respondents would not incur any reporting cost for the information collection. The respondents also would not incur any record keeping burden or record keeping cost from the information collection.

Marilena Amoni,

Associate Administrator, Program Development and Delivery.

[FR Doc. 04–19020 Filed 8–18–04; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3911

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3911, Taxpayer Statement Regarding Refund.

DATES: Written comments should be received on or before October 18, 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 form and instructions 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: Taxpayer Statement Regarding Refund.

OMB Number: 1545–1384.

Form Number: 3911.

Abstract: Form 3911 is used by taxpayers to notify the IRS that a tax refund previously claimed has not been received. The form is normally completed by the taxpayer as the result of an inquiry in which the taxpayer claims non-receipt, loss, theft or destruction of a tax refund, and IRS research shows that the refund has been issued. The information on the form is needed to clearly identify the refund to be traced.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 520,000.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 43,160.

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.

Dated: August 13, 2004.

Carol Savage,

Management and Program Analyst.

[FR Doc. 04–19037 Filed 8–18–04; 8:45 am]

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